

(1983) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7027 of 1972

Bhillar and Others

APPELLANT

Vs

Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 26-05-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 109, 143, 144, 3(14)

Citation : (1983) RD 299

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; N.P. Misra, K.B. Garg and S.C., for the Respondent

Judgement

K.P. Singh, J.—In this writ petition the disputed plot is numbered as 1986 measuring 1.13 acres. The aforesaid area was recorded as Bhita in the basic year. The Petitioners had filed an objection claiming grove holders' right in the disputed area.

2. The Consolidation Officer did not accept the claim of the Petitioners as is evident from Annexure "1" dated 11-4-1970. In appeal the appellate authority has accepted the claim of the Petitioners as is evident from Annexure "2" attached with the writ petition. Against the judgment of the appellate authority the Gaon Sabha and one Jagarnath had filed two separate revision petitions which have been dealt with by the revisional court through the impugned judgment dated 24-2-1972. The Petitioners have approached this Court under Article 226 of the Constitution.

3. The learned Counsel for the Petitioners has contended before me that the revisional court has patently erred in not recognising the claim of the Petitioners in the disputed land as bhumidhari on the ground that the disputed land was Bhita. According to the learned Counsel for the Petitioner if the Bhita is under

cultivation or if the trees had been planted over the Bhita land and the Bhita land is grove, the right of the cultivator or owner of the trees standing on Bhita land cannot be negated simply on the ground that the Bhita would not be treated as "land" within the meaning of tenancy laws.

4. The learned Counsel for the contesting opposite party has submitted in reply that because Bhita could not be cultivated, hence no tenancy right would accrue therein. According to him the impugned judgment does not suffer from any patent error of law and it need not be interfered within writ jurisdiction.

5. I have considered the contentions raised on behalf of the parties. Section 3(14) of UP ZA and LR Act defines "land" as below:

Land" except in (Section 109, 143 and 144, and Chapter VII) means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.

6. In the above definition if a piece of land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, that piece of land would be "land" within the meaning of UP ZA and LR Act and a person having right under the provisions of UP ZA and LR Act would be entitled to declaration of that right in the aforesaid piece of land.

7. The facts of each case would determine whether Bhita as a tank can be characterised as the "land" within the meaning of Act No. 1 of 1951. As a broad proposition of law it cannot be held that Bhita cannot be termed as "land" within the meaning of aforesaid Act. In the present case there is a finding by the revisional court also that the disputed land presents the nature of a grove on the spot, hence in my opinion the revisional court has patently erred in negating the claim of the Petitioners in disputed plot No. 1986. The revisional court has made the following observation in this regard in the impugned judgment:

...No doubt there are a large number of mango, Mahuwa and Neem trees situate over the said Bhita. If these trees could have been situate over the Banjar land then they obviously could have presented a character of grove of the above three families. Since then the trees are situate over the old Bhita and the same is very obvious to naked eye. I do not consider proper to accord the grove holder rights to the above three families. The A.S.O.C. was not justified in giving grove holder rights to two families. Either he should have given the grove holder rights to the three families or to none and would have maintained the basic year entry of bhita. But he committed an error in giving grove-holder rights in favour of two families. The A.S.O.C. obviously had in mind the entry of 1288F. regarding the ownership of trees recorded in the names of Sri. Ram Dihal of the family of Sri. Ram Jan and in the name of Sri. Pabaroo of the family of Sri. Bechu but he ignored the claim of Jagarnath and others of the family of Sri. Dhulat inspite of the fact that Bhola son of Sri. Dhulat was also recorded in possession over the trees in the settlement year of 1288F. Moreover Sri. Jagarnath and others of the

family of Sri. Dhulat were also found in possession over the trees situate in the north. As stated earlier, all the three families could continue to be owners of the trees situate over the said Bhita but they cannot be declared grove holders of the same.

8. If the disputed land though Bhita presents shape of a grove on the spot and the Petitioners along with others are owners in possession of the trees situate thereon since the year 1288F. I think that the Petitioners would acquire grove holder right in the disputed land under the provisions of Tenancy Laws and under the provisions of UP ZA and LR Act, they would acquire bhumidhari right in the disputed area.

9. To my mind the revisional court has patently erred in negating the claim of the Petitioners in the disputed land on the ground that the disputed area was only a part of Bhita.

10. In Gaon Sabha v. Raghunath 1970 (?) (Rev.) page 47 a learned Member of the Board of Revenue has indicated that Bhita is nothing but land surrounding the tank and is covered by the provisions of UP ZA and LR Act. There is no absolute bar for a person to acquire khudkasht or tenancy right in Bhita land. In this view of the matter I do not agree with the contention of the learned Counsel for the opposite party that a Bhita could not be "land" under the provisions of Tenancy laws, hence the revisional court was justified in negating the claim of the Petitioners.

11. In the result the writ petition succeeds and the impugned judgment of the revisional court is hereby quashed and the case is sent back to the revisional court for passing a suitable and final order in the light of the observation made above. Parties are directed to bear their own costs.