
(1991) 12 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5148 of 1980

Bhorik

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Uttar Pradesh Land Reforms (Supplementary) Act, 1952 — Section 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 1(3), 1(4),
171, 2(1), 20

Citation : (1992) 1 AWC 344 : (1992) RD 129

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Mohammad Moonis, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—By this writ petition, Petitioner has questioned the legality of the order dated 27-3-1980 by which revision filed by Petitioner against order dated 17-4-1967 has been dismissed.

2. The facts, in brief, giving rise to the present writ petition are that Ganpat (father of Petitioner) filed objection in consolidation proceedings claiming title over plots Nos. 71, 72, 73, 116 and 148 which in basic year were recorded in the name of Lal Ji, (now represented by Respondents Nos. 4, 5 and 61. Case of Ganpat was that his father Kanhai was sub-tenant of the plots in dispute and a recorded occupant in 1356 F. and was in possession in 1359 F. and consequently has become Adhivasi on abolition of Zamindari and became Sirdar. After death of Kanhai as he continued in possession as Sirdar, he is entitled to be recorded in Revenue papers as such. It was contended that Lal Ji has no right, title or interest nor was he in possession. The entries in his favour are fictitious and liable to be expunged.

3. Lal Ji resisted the claim of Ganpat by filing objection inter alia on the ground that Kanhai had surrendered the sub-tenancy rights on 20-5-1951 (i.e. in 1358

Fasli) and after surrender he was not in possession, his name was illegally continued in 1359 F. and after surrender he could not be Adhivasi or Sirdar of the land in dispute.

4. Both the parties adduced oral and documentary evidence. Consolidation Officer vide order dated 30-9-1966 allowed claim of Ganpat and directed him to be recorded as Sirdar of the land in dispute. Aggrieved by the order of the Consolidation Officer, Lal Ji filed appeal which was allowed by Settlement Officer of Consolidation on 17-4-1967 and revision filed by Ganpat against it was dismissed on 6-12-1967 by the Dy. Director of Consolidation. Then, a writ petition was filed by Ganpat in this Court which was dismissed vide order dated 12-2-1969. However, the Special Appeal No. 350 of 1969 preferred against the judgment of the Learned Single Judge was allowed by Division Bench on 19-4-1974 and the matter was remanded to the Dy. Director of Consolidation for deciding the revision on merit afresh after hearing the parties. On remand the Dy. Director of Consolidation, however, again dismissed the revision by order dated 27-3-1980 against which the present writ petition has been filed.

5. I have heard Shri G.N. Verma, Learned Counsel for Petitioner, and Shri Sankatha Rai, Learned Counsel appearing for the Respondents and I have also perused the record. Learned Counsel for the Petitioner submitted that as Kanhai was recorded occupant in 1356 F. of Plots Nos. 72, 73 and 77, he became Adhivasi u/s 20(b)(i) and only on the strength of the entries of 1356 F. he was entitled for the rights and to retain possession of the plots in dispute. The alleged surrender set up by the land holder could not affect the rights of Kanhai against accruing rights u/s 20. Learned Counsel for Petitioner relied on a case decided by the Board of Revenue, Ram Lakhan Pandey v. Chhahaun Rai 1957 RD 211. Sri G.N. Verma further submitted that rights of Adhivasi are heritable rights u/s 231 (2) of UP ZA and LR Act (hereinafter referred to as the Act) and as such the Petitioner's father Ganpat and after his death the Petitioner are entitled for the same rights. Shri Verma relied on a judgment of this Court in case Ram Deo v. Dy. Director of Consolidation Varanasi 1987 AWC 276.

6. Shri Sankatha Rai, Learned Counsel for Respondents has, on the other hand, submitted that plots Nos. 71 116 and 148 were recorded in 1356 F. in the name of Kanhai which he had surrendered and this entry continued in 1356, 1357 and 1358 Fasli. Other plots in dispute, i.e. 72, 73 and 77 were recorded in the name of Jokhan and it could not be said that Kanhai was recorded occupant of all the plots in dispute. It has been further submitted the Kanhai died on 19-12-1951 which is not disputed and as he died before the date of vesting, he could not become Adhivasi u/s 20 of the Act nor could he be in possession in 1359 F., hence he could not be Adhivasi u/s 3 of Uttar Pradesh Land Reforms (Supplementary) Act, 1952, i.e. Act No. 31 of 1952 which came into force on 7-11-1952. As Kanhai could not become Adhivasi in his life time and died before the date of vesting, i.e. 1-7-1952, his heirs, namely Ganpat and after his death, the present Petitioner could not inherit Adhivasi rights. In support of this

contention reliance has been placed on case Kapil Dev Kunwar v. Anant Moniya 1967 RD 334 and several other judgment of Board of Revenue taking the same view.

7. Learned Counsel for the Respondents has further submitted that as Kanhai was mentioned as sub-tenant, he could not be treated as recorded occupant and no rights could accrue in his favour u/s 20(b)(i) of the Act. Learned Counsel has relied on a Full Bench case of Basudeo v. Board of Revenue 1974 ALJ 706. Learned Counsel has further submitted that as the sub-tenancy rights were surrendered by Kanhai which had been believed by the two authorities below, no Adhivasi rights could accrue. So far as possession is concerned, finding has been recorded by Settlement Officer of Consolidation as well as by the Deputy Director of Consolidation that Kanhai and after his death Ganpat were not in possession of the land in dispute. The findings on surrender and on possession are findings of fact which cannot be questioned in the present writ petition. Shri Sankatha Rai has relied on the judgment of this Court in case Phagu v. Sita Ram 1963 RD 111 in support of his contention that if the person described in subtenant has surrendered his rights, he is not entitled to claim Adhivasi rights afterwards on passing of Zamindari Abolition Act. Shri Rai has further submitted that even if it is found that Kanhai became Adhivasi and his rights were inherited, no proceedings were initiated for taking back possession after surrender. The suit filed in 1960 by Ganpat was highly time-barred and for this reason also the claim of Petitioner cannot be accepted.

8. In reply, Shri G.N. Verma has submitted that an entry of subtenant could be treated as entry of recorded occupant for claiming Adhivasi rights and he has relied on a case of Hon"ble Supreme Court, Chaudhari Amba Prasad v. Board of Revenue 1964 RD 303 and on case Udai (dead) (through Lrs.), Ram Kishan (dead) (through Lrs.) and others Vs. Deputy Director of Consolidation, Varanasi and others, . Shri Verma has further submitted that U.P. Zamindari Abolition and Land Reforms Act came into force on 26-1-1951 and Kanhai become Adhivasi on enforcement of the Act itself before his death which took place on 19-12-1951. On 1-7-1952 only the Zamindari was got abolished by Notification u/s 4. As Kanhai had become Adhivasi in his life time, his Adhivasi rights could be lawfully inherited by Ganpat and after him by the present Petitioner u/s 231 (2) of the Act. Shri Verma has submitted that the suit filed by Ganpat in the year 1960 was well within time for regaining possession as sirdari rights accrued on 20-10-1954 under UP. Act No. 20 of 1954 and the limitation of six years was available for filing suit u/s 209. This suit could be filed up to 30-6-1961. It has been submitted that claim of the Petitioner has been illegally rejected by the consolidation authorities.

9. I have thoroughly considered the submissions made by Learned Counsel for parties and perused the record and in my opinion, firstly it has to be seen as to whether Kanhai could become Adhivasi u/s 20 of the Act or u/s 3 of the Supplementary Act of 1952, only then Petitioner can succeed and claim rights

through Kanhai. It is not disputed that Kanhai died on 19-12-1951, i.e. before the date of vesting which is 1-7-1952. Shri GN. Verma, however, submitted that as the Act by virtue of Sub-section (3) of Section 1 came into force at once i.e. on 26-1-1951, Section 20 also came into force on the same day and Kanhai became Adhivasi. It was not dependant on the Notification being issued by the State of Uttar Pradesh u/s 4 of the Act and as Kanhai became Adhivasi, his rights could be inherited by Ganpat and after him by the Petitioner u/s 171 by virtue of Section 231(2) of the Act.

10. For considering the question of law involved it would be proper to reproduce Sections 1(3) and (4) of the Act.

Section 1(3) of U.P. Act No. 1 of 1951 reads as under:

(3) It shall come into force at once except in the areas mentioned in Clauses (a) to (f) of Sub-section (1) of Section 2, where it shall, subject to any exception or modification under Sub-section (1) of Section 2, come into force on such date as the State Government may by notification published in the Gazette appoint and different dates may be appointed for different areas and different provisions of this Act.

Section 4 of the Act reads as under:

Section 4. Vesting of estates in the State--(I) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that as from a date to be specified, all estates situate in the Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided in the State free from all encumbrances.

11. A perusal of the aforesaid two provisions will show that it is true that the Act came into force on 26-1-1951. Then, only Section 4 could be applicable. Sections 4 and 20 both fall under Chapter II of this Act which deals with the abolition of Zamindari and vesting of the estates in the State of Uttar Pradesh. In my opinion, Section 20 could not be applied nor under it any rights could be claimed without a Notification u/s 4 of the Act as both Clauses (a) and (b) of Section 20 contemplate about the date of vesting which could be notified only u/s 4 of the Act. In records of right of 1356 F. Lalji was recorded under Clause IV as Sharah Muwaiyan, i.e. permanent tenant. The word "estate" has been defined u/s 3(8) of the Act, which includes permanent tenants. The scheme and object of the Act could not be given effect to without vesting of the estates in the State of Uttar Pradesh as a consequence of the Notification issued u/s 4 of the Act. The contention of Shri G.N. Verma that Section 20 came into force on 26-1-1951 for claiming Adhivasi rights is thus not correct. As Kanhai died on 19-12-1951, i.e. before the date of vesting, he could not become Adhivasi either u/s 20 of the Act or u/s 3 of Supplementary Act of 1952 on the basis of possession. This Court examined this aspect in case Kapildeo Kunwar v. Anant Noniva 1967 RD 334, and held that the person who died before 1-7-1952 with effect from which date

Adhivasi rights came into existence, his heirs who were neither recorded occupants in 1356 Fasli nor were they in possession in 1359 F. could not claim Adhivasi rights. There is no provision either u/s 20 of the Act or Section 3 of the Supplementary Act of 1952 that even the heirs of an occupant or a person in cultivatory possession would acquire Adhivasi rights. So far as Section 231 (2) is concerned, it could be applied only when Kanhai could become Adhivasi on 1-7-1952. As Kanhai died much before the date of vesting, he could not be Adhivasi and his rights could not be inherited by Ganpat and after him by the Petitioner by virtue of Section 231(2) of the Act. In the case Ram Deo v. Dy. Director of Consolidation 1987 AWC 216, relied on by the Petitioner this question has not been thoroughly examined. The learned Judge has himself observed that it is not necessary to decide the controversy as it was not raised nor an objection was taken in proceedings u/s 240(g) of the Act in earlier proceedings. The observations are thus only casual and as obiter. I fully agree with the view taken by this Court in case of Kapildeo Kunwar v. Anant Noniva. The view taken in the case of Kapildeo Kunwar v. Anant Noniva has been consistently followed by this Court as well as by the Board of Revenue from the very beginning and for over 30 years this has been the law in the State in respect of Adhivasi rights. The claim of the Petitioner is liable to be repelled on this short ground. However, I further find that both the Settlement Officer of Consolidation as well as the Deputy Director of Consolidation have recorded a finding of fact that Kanhai had surrendered so far plots No. 71, 116 and 148 and concerned and in view of the fact that sub-tenancy rights were surrendered, the Petitioner cannot be allowed to claim Adhivasi rights through Kanhai after surrender which also took place on 20-5-1951, i.e. before the date of vesting. So far as the other three plots Nos. 72, 73 and 77 are concerned in Khasra of 1359 Fasli, these plots have been shown along with plot No. 71, 116 and 148 which were surrendered by Kanhai, which has been believed by the Consolidation authorities on the basis of the material on record. I do not find anything on which basis the finding can be assailed before this Court. There was no pleading or evidence showing any fresh contract of sub-tenancy regarding the six plots in dispute, after surrender of afore-mentioned three plots. The entry was thus rightly disbelieved by the authorities below. So far as possession is concerned, both the Settlement Officer of Consolidation and the Dy. Director on the basis of the evidence on record have found that after surrender Lal Ji was in possession in 1359 F. and Kanhai was not in possession, which was necessary for claiming Adhivasi rights u/s 3 of the Supplementary Act of 1952. Both these findings being findings of fact, cannot be questioned in these proceedings.

12. For the reasons recorded above, in my opinion this writ petition has no force and is liable to be dismissed. The writ petition is accordingly dismissed. However there will be no order as to costs.