(1968) 02 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3370 of 1965

Dalel Singh APPELLANT

Vs

The Board of Revenue, U.P. At Allahabad and othres RESPONDENT

Date of Decision : 20-02-1968

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

Citation : (1968) 38 AWR 314

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; B.D. Madhyan for opp. party, for the Respondent

Final Decision : Allowed

Judgement

M.H. Beg, J.—The Petitioner seeks a writ of certiorari to quash the judgment and decree dated 26-6- 1965 passed by the Board of Revenue, U.P., opposite party No. 1, allowing a second appeal filed by Bhikkan alias Bhikku opposite party No. 3.

2. The abovementioned Bhikkan was Plaintiff in a suit u/s 202 UPZA and LR Act filed in the Court of the Assistant Collector, First Class, Sikandarbad, Bulandshahr, which was decreed on 7-6-1962. The Assistant Collector had proceeded on the assumption that the entry in C.H. Form 25 of the rights of the Plaintiff as bhumidhar and Defendant as asami of plot No. 299 in place of plot No. 425, of which the Defendant Petitioner Dalel Singh was in possession, was conclusive declaration of rights of parties. The Assistant Collector equated the allotment order in C.H. Form No. 25 with an entry in the record of rights prepared u/s 27(1) of the UP Consolidation of Holdings Act and thought that he need not explore the respective claims of the parties beyond examining what was contained in C.H. Form 25. Hence, the suit was easily decreed.

3. The Petitioner Defendant then appealed to the Additional Commissioner who

examined the facts more carefully and allowed the Petitioner''s appeal. He observed that the Plaintiff Bhikkan had declined to give any proof of the liability of the Defendant to ejectment except a statement in Form 25 of the UP Consolidation of Holdings Act. After that, the Additional Commissioner went into the question of possession and held that the Petitioner Dalel Singh appears to have taken possession of plot No. 425 in 158F and that he retained possession of it inspite of a decree u/s 180 UP Tenancy Act obtained by Bhikkan. The Additional Commissioner also referred to two civil suits, one numbered 517/51 for the realisation of Rs. 300/- as price of Jawar which was dismissed on the ground that the crop had been sown by Dalel Singh, and another, numbered 416/55 in which Bhikkan had claimed that Dalel Singh Petitioner had taken forcible possession of the plot after 18-6-1954. In the second civil suit, a revenue court to which the question was referred, had held, by an order dated 21-9-1957, that the Petitioner Dalel Singh had acquired the rights of a Sirdar. The Civil Court accepted this finding and dismissed the suit of Bhikkan. On appeal, the appellate court dismissed the suit on the ground of want of jurisdiction to evict an asami. After this, came the consolidation proceedings in the course of which the name of Bhikkan was removed from plot No. 425 and the name of Dalel Singh Petitioner was recorded as sirdar. According to the Additional Commissioner this entry of the Petitioner as "sirdar" continued for over three years, but at the "winding up" operations the Consolidation Officer on 1-9-1959, made an order u/s 38(2) of the UPCH Act, entering the Petitioner as an asami and Bhikkan as the bhumidhar of the plot. The Additional Commissioner''s judgment indicates that there was some endorsement made in CH Form No. 25 showing a sudden inexplicable change. In other words, the entry was not there originally, but some change was made u/s 38(2) of the Act, which existed until 27-11--1958 for correcting patent or arithmetical errors only, so as to alter what was entered in CH Form 25 originally. Unfortunately, no judgment of the revenue courts explains how this took place or could take place u/s 38(2).

4. The Additional Commissioner held that even if the entry in consolidation operations was conclusive, no suit under the provisions of Section 202 of the UP ZA and LR Act lay as the Petitioner had acquired rights by lapse of time. The Additional Commissioner relied upon the view taken by this Court in the case of Unchan Singh v. Board of Revenue 1962 AWR 26. Evidently, the Additional Commissioner was of opinion that the Petitioner had acquired new rights by adverse possession which had to be investigated by the revenue courts irrespective of the mere entry in CH. Form 25 which did not conclude matters. It is true that Unchan Singh''s case (supra) relied upon by the Additional Commissioner did not deal with a case in which any proceedings under the C.H. Act had taken place. Therefore, it could be distinguished on facts. In consolidation proceedings, the rights in a plot are often transferred to another plot allotted in accordance with the provisions of the Act. In this process of transfer of rights even erroneous decisions may bind parties affected and thus transform the character of these rights.

5. The provisions of Section 11-A of the UP Consolidation of Holdings Act as well as of Section 49 of the Act show that a question which might and ought to have been raised in consolidation proceedings will not be allowed to be raised subsequently. Section 11-A is confined to questions arising in consolidation proceedings, but Section 49 goes further. Reliance was placed on behalf of Bhikkan on two cases for the proposition that rights either adjudicated upon or which ought to have been raised and adjudicated upon in consolidation proceedings cannot be put forward even subsequent to the consolidation proceedings. These two cases are: Khushar v. Ahmad Khan 1962 AWR 391 and Ram Lal v. Assistant Collector Sadabad 1966 AWR 140. But, for such a bar to operate against a defence to a suit u/s 202 of ZA and LR Act there have to be necessary findings on questions raised by the party pleading the bar of an ''estoppel by record''.

6. The view taken by the Additional Commissioner could have been reversed by the Board of Revenue on a question of law if the Board of Revenue had arrived at the finding, from materials on record, that the Petitioner had opportunities of contesting entries made or that the dispute arising in the revenue courts was covered by some "estoppel on record" because a dispute which might and ought to have been raised was not raised in the consolidation proceedings. The meaning of such on "estoppel by record" has been explained in Sita v. State 1967 AWR 731 FB.

7. I, however, find that the Board of Revenue has really allowed the appeal on the ground that an entry of asami right made by the consolidation authorities is "not open to rebuttal". The view taken by the Board of Revenue was that entries of bhumidhari and asami rights in CH Form 25 conclude questions of right and preclude revenue courts from looking beyond. Upon this patently erroneous view, the Board of Revenue did not consider the suspicious circumstances, mentioned by the Additional Commissioner, surrounding the sudden unexplained entry in C.H. Form 25. I find that there is not even a finding given by the Board of Revenue that there was any entry of the rights of the parties in the record of rights mentioned in Section 27(1) of the Act. If there was such an entry, it is difficult; to understand why it was not proved. Even if it had been proved, such entries are not conclusive on questions of right as held by this Court in two cases dealing with the position before the amendment of Section 27 in 1965. These cases are: Thakur Sant Bux Singh v. S.C. Singh, D.D.C. Lucknow 1965 AWR 416 and Husain Abbas v. Brij Lal 1965 RD 406. The view adopted by the Board of Revenue patently collides with the law declared by this Court on this matter.

8. The Board of Revenue not only presumed that there was an entry in the record of rights, merely from the production of a C.H. Form 25, the legality and genuineness of which could be doubted seriously if the observations made about it by the Additional Commissioner are correct, but also presumed that the Petitioner had all the opportunities to object in proceedings Under Sections 11/12 and 20/21 of the Act and had not objected at all to entries made inspite of full

knowledge of the entries against the Petitioner. All this was pure conjecture without production of relevant documents containing entries. From the Board''s judgment, it is apparent that a whole series of assumptions were made solely from dubious entries in C.H. Form No. 25. The Board of Revenue commented on steps which are taken in consolidation proceedings without giving findings about what actually took place in consolidation proceedings in this case on questions of rights which are disputed between the parties. It is obvious that presumptions cannot be carried so far on matters which should and can be easily proved. The Board of Revenue could have remanded the case for further evidence, or, if the parties could make out a case for it, taken further evidence to arrive at satisfactory conclusions about the steps taken and entries made at different stages of consolidation proceedings with regard to the plot in question. It seems to me that the Board of Revenue has erred apparently in presuming that all steps were taken, proceedings were duly undergone, and that entries were duly made in favour of Bhikkan upto the stage of preparation of a record of rights u/s 27(1) of the Act, from some alterations made suddenly at some stage, it is not even found at what precise stage this was done, under the provisions of Section 38(2) in C.H. Form No. 25.

9. It may be pointed out that entries in C.H. Form No. 25 are made from previous entries which have been confirmed and become final and are published u/s 23 read with Rule 50. They are made u/s 25, read with Rule 52, and not u/s 38(2) at all. C.H. Form 25 is, in fact, the allotment order prepared in accordance with what had taken place earlier. If entries made in C.H. Form 25 were corrected u/s 38(2) it meant that there was some obvious error. But, according to the findings given by the Additional Commissioner, the entries made at previous stages of consolidation proceedings showed that the Petitioner was a sirdar and these entries stood for four years, from 18-8-1955 to 1-9-1959 when a change was made for some unexplained reason. In my opinion, the Board of Revenue could not presume that such an entry u/s 38(2) was legally authorised and proper without setting aside the findings of the Addl. Commissioner and civil its own finding''s which would atleast make the particular entries in C.H. Form 25, which were supposed to decide questions of right conclusively, proper and legal. Only a "correction", bringing an erroneously prepared document in line with entries in previously prepared documents could be legally authorised u/s 38(2) and not sudden departures from entries in documents prepared at previous stages of consolidation proceedings. If the Addl. Commissioner''s findings are correct the entries in question in C.H. Form 25 made u/s 38(2) were obviously without jurisdiction as they were sudden departures and not corrections.

10. I, therefore, hereby issue a writ of certiorari and quash the judgment and decree of the Board of Revenue passed in the Second Appeal between Bhikkan alias Bhikku and Dalel Singh Petitioner. The result is that the second appeal is now pending again before the Board of Revenue which may proceed to hear and decide it in accordance with law, after giving necessary findings, as indicated

above. The parties will bear their own costs.