

(2014) 01 AHC CK 0259
In the Allahabad High Court
Case No : W.P. No. 40813 of 2013

Dina Nath

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(4)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19A(2), 3(2), 48(3), 9, 9A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117A

Citation : (2014) 124 RD 519

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Namwar Singh and Sanjiv Singh, Advocate for the Appellant; Anuj Kumar, S.R. Yadav and S.M.A. Abdy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Namwar Singh, for the petitioners and Sri S.M.A. Abdy, for the contesting respondent-2. The writ petition has been filed against the orders of Deputy Director of Consolidation (respondent-1) dated 9.4.1991, 28.10.1994 and 2.6.2006, passed in reference, arising out of chak allotment proceedings u/s 48(3) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute between the parties is in respect of allotment of chak on plot 872 of village Dattipur, pargana Bhadohi, district Sant Ravidas Nagar, Bhadohi. The consolidation operation in the village was started by notification dated 29.4.1982. The village was published u/s 9 of the Act on 30.9.1984. In basic consolidation records, plot 872 was recorded as "usar" land. Subsequently, Provisional Consolidation Scheme was framed. In chak allotment proceedings, one Buddhu filed a revision (registered as Revision No. 777/400) against order of Settlement Officer Consolidation dated 7.12.1986. Deputy Director of Consolidation by order dated 24.11.1988 dismissed the revision but found that in

the chak of Murlidhar (respondent-2) (chak holder 185) there is double allotment of plots 848 and 849, due to which, there was deficiency of valuation of Rs. 45.00, which was liable to be corrected and the land of valuation of Rs. 45.00 was liable to be allotted in his chak. On these findings Deputy Director of Consolidation directed for allotting valuation of Rs. 15.33 on plots 357 and 380 and valuation of Rs. 29.67 on plots 204, 209 and 392, in the chak of respondent-2.

3. Murlidhar (respondent-2) filed an application for recall of the order dated 24.11.1988, stating therein that due to allotment of deficient valuation to him on plots 357 and 380 and on plots 204, 209 and 392, number of his chaks have become three as such he prayed that valuation of plots 204, 209 and 392 be allotted on plot 872, which was adjacent to plots 357 and 380. In this application Pradhan gave his consent for allotment of plot 872 (which was at that time recorded as "usar" land and out of consolidation area) after determining its valuation. Deputy Director of Consolidation by order dated 9.4.1991 found the demand of respondent-2 as genuine as such he allowed the application of respondent-2 and directed Consolidation Officer to submit a reference for allotment of the valuation of plots 204, 209 and 392, in the chak of respondent-2 on plot 872. In compliance of the order dated 9.4.1991, Consolidation Officer by order dated 23.2.1993 determined valuation of plot 872 at the rate of 20 paisa, prepared a reference for allotment of plot 872/1 (area 1-9-0 bigha) in the chak of respondent-2 and submitted before Deputy Director of Consolidation for approval.

4. Bhukhal (husband of Smt. Kalawati Devi) (fathers of the petitioners) filed an objection dated 23.3.1994, in the reference, stating therein that some area of plot 872/1 was in the shape of pit and remaining area was being used by the villagers as khaliyan and pasture etc. The land was the public utility land and out of consolidation area and is being illegally allotted to respondent-2 in collusion with Pradhan. Similar objections were also filed by Madhri, Lalta, Harish Chandra, Rajram, Ram Lal, Lalu and Shyam Lal of the village. Deputy Director of Consolidation by order dated 28.10.1994, rejected the objections of Bhukhal and others and accepted reference.

5. Smt. Kalawati Devi filed a time barred objection u/s 9A of the Act, claiming that Land Management Committee allotted plots 259, 360, 425 and 872 through patta dated 14.3.1968 to her and since the date of allotment, she was in possession over it. The Consolidation Officer, by order dated 12.2.1997, allowed the objection of Smt. Kalawati Devi. Murlidhar (respondents) filed an appeal (registered as Appeal No. 1785) from the aforesaid order, which has been dismissed by Settlement Officer Consolidation by order dated 6.12.1997. Murlidhar (respondent-2) filed a revision (registered as Revision No. III) against the aforesaid order, which has been allowed by Deputy Director of Consolidation by order dated 3.7.2002 and order of Settlement Officer Consolidation, dated 6.12.1997, was set aside and the matter was remanded to Settlement Officer

Consolidation for deciding the appeal afresh. After remand, the appeal was allowed by the order dated 27.1.2005 by Settlement Officer Consolidation and order of Consolidation Officer dated 12.2.1997 was set aside. The petitioners filed an application for recall of the order dated 27.1.2005, which has been rejected by order dated 25.7.2006. The petitioners filed revisions against the aforesaid orders, which were allowed by order dated 22.9.2008 and the matter was again remanded to Settlement Officer Consolidation for deciding the appeal afresh. An application for recall of the order dated 22.9.2008 was filed. In which, an application for transfer of the case was filed which was allowed by District Deputy Director of Consolidation by order dated 26.8.2009.

6. The petitioners filed Writ-B No. 47176 of 2009 against the order dated 26.8.2009. The writ petition was decided by this Court by judgment dated 8.9.2009, in which it was held that there was no explanation that although the patta was allegedly executed on 14.3.1968 but no step has been taken for mutation of the name on its basis within reasonable time. Highly time barred objection on its basis was filed in the year 1997. Ram Roop, Chairman of the Land Management Committee, who executed the patta, was father-in-law of Smt. Kalawati Devi. On the finding that the alleged patta was a suspicious document, the Collector was directed to examine validity of the patta. The order of this Court has been challenged in the Supreme Court by the petitioners in SLP No. 4398 of 2010, which has been dismissed by order dated 29.3.2010, imposing a cost of Rs. 50,000/- upon the petitioners.

7. After order of the writ petition, District Deputy Director of Consolidation by order dated 19.7.2010, allowed the Revision No. 220/65 of 2008-09 and remanded the matter to Settlement Officer Consolidation to decide the appeal afresh. Thereafter, Settlement Officer, Consolidation by order dated 25.6.2012 held that patta of Smt. Kalawati Devi dated 14.3.1968 was forged and the appeal was allowed and order of Consolidation Officer was set aside and the name of Smt. Kalawati Devi was directed to be deleted from the land in dispute.

8. In pursuance of the order of this Court dated 8.9.2009, the Collector initiated a proceedings (registered as Case No. 278) for cancellation of the patta dated 14.3.1968, which has been allowed by order dated 29.6.2012 and the patta in favour of Smt. Kalawati Devi dated 14.3.1968 was canceled. The petitioners filed a revision (registered as Revision No. 171/108 of 2012) from the order dated 29.6.2012, which was got dismissed as withdrawn by them by order dated 18.9.2013. Bhukhal (fathers of the petitioners) filed another revision (registered as Revision No. 6 of 2012-13) before Board of Revenue, U.P. at Allahabad, against the order dated 23.6.2012 in which operation of the order dated 29.6.2012 has been stayed by the order dated 1.11.2012 by Board of Revenue, U.P.

9. In the meantime, Smt. Kalawati Devi filed an application dated 4.9.1997 for recall of order dated 28.10.1994, along with delay condonation application. The recall application was heard by Deputy Director of Consolidation, who by order

dated 2.6.2003 held that no ground has been shown for recall of the order dated 28.10.1994, as such restoration application was rejected. Hence, this writ petition has been filed.

10. The Counsel for the petitioners submitted that Consolidation Authorities have no jurisdiction to cancel the patta as held by Full Bench of this Court in Similesh Kumar Vs. Gaon Sabha Uskar Ghaziapur and Others, The order of Collector dated 29.06.2012, cancelling the patta has been stayed by Board of Revenue U.P. The mother of the petitioners was tenure holder of plot 872 but Deputy Director of Consolidation has illegally determined valuation of this plot in the reference proceedings without any notice to the mother of the petitioners, although plot 872 was out of consolidation area. No one filed any objection for determination of its valuation u/s 9 of the Act, Deputy Director of Consolidation has illegally determined its valuation in the reference arising out of chak allotment proceedings although the land in dispute was "usar" land and cannot be included in consolidation area as provided u/s 3(2) of the Act. Although the order dated 28.10.1994 was ex parte against the mother of the petitioners but Deputy Director of Consolidation has illegally rejected the restoration application. Deputy Director of Consolidation in collusion with the respondents determined valuation of plot 872 at the rate of 20 paisa and allotted in the chak of respondent-2, giving undue advantage to him. The orders of Deputy Director of Consolidation is illegal and liable to be set aside.

11. In reply to the aforesaid arguments, the Counsel for the respondent submitted that the alleged patta in favour of the mother of the petitioners has been canceled by the Collector, by order dated 29.6.2012. The petitioners filed a revision (registered as Revision No. 171/108 of 2012) from the order dated 29.6.2012, which was got dismissed as withdrawn by order dated 18.9.2013, without any liberty to challenge the order. The order of Consolidation Officer dated 12.2.1997 by which name of Smt. Kalawati Devi was recorded over the land in dispute has also been set aside by Settlement Officer, Consolidation by order dated 25.6.2012. Thus at present the petitioners have no locus standi to file the writ petition, challenging the order of allotment of plot 872 in the chak of respondent-2. The alleged patta dated 14.03.1968 is a forged and fabricated document, which has been executed by the grand father of the petitioners in favour of their mother. The patta has not seen the light of the day for about 20 years. The father of the petitioners himself filed objection dated 22.3.1994, in which nothing has been said about the patta, rather it has been said that the land in dispute was used by the villagers as khaliyan and pasture land. The Supreme Court while dismissing SLP of the petitioners imposed a cost of Rs. 50,000/- upon them due to their fraudulent conduct. In view of section 174 of U.P. Act No. 1 of 1951, the petitioners would inherit the properties of their mother and their father was not an heir of Smt. Kalawati Devi, revision filed by the father of the petitioners before Board of Revenue, U.P. was not maintainable as he has no locus standi and order passed in it, is illegal and without jurisdiction. In view of the provisions of section 19A(2) of the Act, the

consolidation authorities were competent to allot any land of Gaon Sabha as held by this Court *Raj Kumar v. Ziladhikari and others* 2002 (93) RD 403.

12. I have considered the arguments of Counsel for the parties and examined the record. First point raised by the Counsel for the petitioners about the jurisdiction of consolidation authorities to examine the validity of the patta. Supreme Court in *U.P. State Sugar Corporation Ltd. Vs. Dy. Director of Consolidation and Others*, distinguished the Full Bench decision of this Court in *Similesh Kumar Vs. Gaon Sabha Uskar Ghaziapur and Others*, and held that if a document is void and is, therefore, liable to be ignored by the Courts, would not affect the jurisdiction of the Consolidation Courts and they would be within their jurisdiction in adjudicating upon that document so as to finally decide the rights of the parties. The order of Consolidation Officer dated 12.2.1997, directing for mutation of the name of the petitioners has also been set aside by order of Settlement Officer Consolidation dated 25.6.2012 holding that patta dated 14.3.1968 was forged. The alleged patta in favour of the mother of the petitioners has been canceled by the Collector, by order dated 29.6.2012 in the proceedings u/s 198(4) of UP Act No. 1 of 1951. The petitioners filed a revision (registered as Revision No. 171/108 of 2012) from the order dated 29.6.2012, was got dismissed as withdrawn by them by order dated 18.9.2013, without any liberty to challenge the order. At present, the petitioners have no locus standi to maintain this writ petition. The Consolidation Authorities have jurisdiction to decide the right and title of a tenure holder in the land. In case title is claimed on the basis of patta, then it is well within the jurisdiction of Consolidation Authorities to examine the validity of patta.

13. Next argument raised by the Counsel for the petitioners is that the land in dispute was "usar" land and not included in consolidation area and in view of provisions of section 3(2), the land cannot be included in consolidation area. This argument is not liable to be accepted. In view of provisions of section 19A(2) of the Act, which has an overriding effect, any land of Gaon Sabha can be allotted in chak of the tenure holder. Section 19A(2) is quoted below:--

"19-A. Preparation of Provisional Consolidation Scheme by the Assistant Consolidation Officer.--(1).....

(2) Notwithstanding anything contained in this Act, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or any other law for the time being in force, it shall be lawful for the Assistant Consolidation Officer, where in his opinion it is necessary or expedient so to do, to allot to a tenure-holder, after determining its valuation, any land belonging to the State Government, or any land vested in the Gaon Sabha, or any other local authority, as a result of notification issued u/s 117 or 117A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950:

Provided that where any such land is used for a public purpose, it shall be allotted only after the Assistant Consolidation Officer has declared in writing that

it is proposed to transfer the rights of the public as well as of all individuals in or over that land to any other land specified in the declaration and earmarked for that purpose the provisional Consolidation Scheme."

This Court in *Raj Kumar v. Ziladhikari and others* 2002 (93) RD 403, *Fateh Singh v. D.D.C. and others* 2004 (96) RD 559, *Shiv Mangal Singh Vs. Deputy Director of Consolidation and Others*, *Munendra Vishwas Vs. State of U.P. and Others*, held that in view of the provisions of section 19A(2) of the Act, the Consolidation Authorities were competent to allot any land of Gaon Sabha, which was not within consolidation area.

14. So far as the arguments of the Counsel for the petitioners that valuation of plot No. 872 was determined without giving any opportunity of hearing to mother of the petitioners is concerned, in this respect it is stated that although it is alleged that patta was granted to the mother of the petitioners in the year 1968 but the patta did not see light of the day for about 19 years. The objection of the mother of the petitioners u/s 9 was filed in the year 1997. Prior to this objection, father of the petitioners, himself filed an objection before Deputy Director of Consolidation on 23.3.1994 in which he had stated that the land was being used by the villagers as khalihan and pasture land. Thus, at the time of passing of the orders dated 9.4.1991 and 28.10.1994 there was nothing on the record to show that the mother of the petitioners was either in possession over the land in dispute or her name was recorded in the record. In the circumstances no notice was required to be given to her. Pradhan had already given consent for allotment of the land in the chak of respondent-2.

15. So far as pendency of the revision filed by Bhukhal before Board of Revenue, U.P. and stay order granted in it, is concerned, in view of section 174 of U.P. Act No. 1 of 1951, the petitioners will inherit their mother and not Bhukhal who is husband of Smt. Kalawati Devi. As such, Bhukhal has no locus standi to file any revision against the order of Collector dated 29.6.2012. As the revision of the petitioners was dismissed as withdrawn by order dated 18.9.2013, their remedy to challenge the order dated 29.6.2012 is barred under Order XXIII, Rule 1(4) C.P.C. In view of the aforesaid discussion, the orders of Deputy Director of Consolidation do not suffer from any illegality. The writ petition has no merit and is dismissed.