
(2010) 07 AHC CK 0108
In the Allahabad High Court
Case No : C.M.W.P. No. 1910 of 1993

Ganeshi Lal

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11C, 9
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 194

Citation : (2011) 3 ADJ 186 : (2010) 5 AWC 5342

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Advocate : S.S. Chauhan, V.S. Chaudhary and Jeet Bahadur Singh, for the Appellant; V.K. Singh, M.N. Singh, K.B. Garg and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri S.S. Chauhan, learned Counsel for the Petitioner.

2. This writ petition is taken up in the revised list but none appears for contesting Respondents though names of counsel for the Respondents are printed in the cause list. No counter-affidavit has been filed till date either by Gaon Sabha or contesting Respondents.

3. The dispute relates to plot No. 323 of village Balal. Tehsil Bah, District Agra. Petitioner's claim is that plot in question was in possession of his ancestors since 1309 Fasli and in support of his contention he has filed Annexures 1, 2, 3 and 4. When consolidation operation commenced, an objection u/s 9 of U.P.C.H. Act (hereinafter referred to as the Act) was preferred stating aforesaid facts before the Consolidation Officer. The Consolidation Officer rejected the claim of the Petitioner on the ground that since Respondents No. 2 was widow therefore, she comes within the definition of disabled person and the Petitioner cannot claim Adivasi right on the basis of the fact that he has been recorded in 1359 fasli. The Consolidation Officer accordingly dismissed claim of the Petitioner. Claim made

by the Petitioner on the alternative ground of adverse possession was also not accepted by the Consolidation Officer. The Petitioner filed time barred appeal along with an application u/s 5 of the Limitation Act. The Settlement Officer Consolidation condoned the delay but confirmed the order of the Consolidation Officer vide order dated 5.6.1987. Revision filed against the said order also stood dismissed vide order dated 10.10.1992. The revisional court was also of the view that since Respondents No. 2 died issueless, therefore, land in question vests in Gaon Sabha. All the three orders are impugned in the instant writ petition.

4. Learned Counsel has challenged the orders on two grounds; firstly that Gaon Sabha cannot claim its right since it has not tried to stake its claim before the Consolidation Authorities. No objection was filed by Gaon Sabha at any stage and, therefore, order of the Deputy Director of Consolidation arriving at a conclusion that it is Gaon Sabha, who is sole claimant to the property, stands negated. Second ground of challenge is that certain documents and records which could not be filed before the Consolidation Officer, were preferred before the Settlement Officer Consolidation but he failed to take into consideration all those documents. The Deputy Director Consolidation has also mechanically rejected the question of adverse possession as well.

5. I have gone through entire record and also given careful consideration to the submissions made by learned Counsel. The authorities below have discarded contention of the Petitioner that forefathers of the Petitioner had perfected their rights by adverse possession. Contention that ancestor Devsukh had matured his right during life time of Ananta by adverse possession and, therefore, assuming that contesting Respondents No. 2 was widow of Ananta, he cannot claim any right whatsoever. I am not in agreement with the submission of learned Counsel since Respondents No. 2 Smt. Saraswati widow of Ananta cannot be excluded and contention of the Petitioner that his forefathers had perfected their rights by adverse possession, is without any basis. No doubt Smt. Saraswati died issueless even then submission by Sri Chauhan that procedure laid down u/s 194, U.P.Z.A. & L.R. Act was liable to be followed, is without any basis. Since Respondents No. 2 died issueless therefore, the disputed land will automatically vest in the State Government or Gaon Sabha in view of Section 11C of the U.P.C.H. Act, irrespective of the fact that Gaon Sabha contested or not.

6. Sri Chauhan has placed reliance on a decision of Lucknow Bench of this Court in the case of Brij Lal and Anr. v. State of U. P. and Ors. 1975 ALJ 684.

7. I have gone through this decision. The principle laid down regarding applicability of Section 11C of U.P.C.H Act that it is not retrospective and in case Gaon Sabha did not file any objection, appeal or revision, the land cannot vest in Gaon Sabha. The proceedings in the said case was pertaining to the year 1968, i.e., much before the amendment and Section 11C was enacted. However, in the present case Section 11C of the Act was inserted by U.P. Act No. 34 of 1974 and at the time when order of the Consolidation Officer was passed, amendment was very much effective. This Court has also adopted the same view in a recent

decision Dheeraj and Another Vs. Deputy Director of Consolidation and Others, It was held that u/s 11C of U.P.C.H. Act it is provided that CO., S.O.C., D.D.C. while hearing a case arrive at a conclusion that any land vests in the State or Gaon Sabha, then it shall be recorded in the name of Gaon Sabha or State even though no objections, appeal or revision has been filed by State or Gaon Sabha.

8. In view of facts and circumstances, I do not find any substance in the submissions made by counsel for Petitioner. The writ petition lacks merit and is accordingly dismissed.