
(2004) 03 AHC CK 0093
In the Allahabad High Court
Case No : Second Appeal No. 33 of 1978

Gaon Sabha-Tappal Tehsil Khair District Aligarh and Another APPELLANT
Vs
Satya Deo Sharma and Others RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 127B, 4, 6, 9
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 114

Citation : (2004) 2 AWC 1735 : (2004) 96 RD 413 : (2004) 1 RD 413

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : V.K. Gupta, M.K. Gupta, V.K. Singh and Mahtab Alam, for the Appellant; B.B. Paul, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This is defendants' appeal. It arises out of Original Suit No. 40 of 1976 filed by the respondents (hereinafter referred to as the plaintiffs) for declaration that the plaintiffs are the owners in possession of Plot No. 3838 area 11 Biswas in village Tappal and necessary correction to be made in the revenue record by deleting the revenue entry in favour of Ram Leela Maidan.

2. The suit was instituted on the pleas, inter alia, that the father of the plaintiffs purchased the aforesaid plot in a public auction held on 22.5.1935 and he became the owner of the said piece of land. It was earlier recorded as Nazool land and was put to auction by the State of U. P. Their father Sri Sukhram Sharma by a registered Izazatnaina dated 22.6.1938 permitted the Committee Ram Leela, Tappal, to organise annual Ramleela over 11 Biswas of land and the Ramleela Committee has been organising Ramleela since then. No right of ownership has been accrued to Ramleela Committee by holding Ramleela being the licensee of the plaintiffs. However, the plaintiffs have got constructed "Thorne" (Singhasan). One Murari Lal has purchased the other part of the

property. The disputed plot was abadi of the plaintiffs' father before abolition of Zamindari and after his death it continued to be abadi of the plaintiffs. But the defendants got their name of Ramleela Maidan entered in the revenue record without any basis. Hence the present suit.

3. The suit was contested by the present appellants (hereinafter referred to as defendants) on number of pleas by filing separate written statement. It was pleaded that land in suit was never recorded as abadi land even before the abolition of Zamindari the right, title and interest, if any, of the plaintiffs have come to an end over the disputed portion of land after abolition of Zamindari. It was recorded as banjar in the revenue records after the abolition of Zamindari. No construction was in existence before abolition of Zamindari and the disputed land is being used from time immemorial more than 60 years for holding Ramleela without any interruption and the public of Kasba Tappal have acquired the customary rights to hold Ramleela there on. The construction on the disputed land were raised for the purposes of Ramleela festival by the defendant appellant No. 2 after taking necessary permission from the Sub-Divisional Officer and Gram Sabha. In place of Kachcha Singhasan a Pakka Singhasan and Kothari have been constructed by the defendant appellant No. 2.

4. The plea of estoppel and acquiescence were also raised. The relief for declaration as claimed in the plaint was disputed by the defendants. The parties led evidence in support of their respective cases. The trial court by its judgment and decree dated 12.7.1977 dismissed the suit on the finding that from the Revenue records it is clear that the disputed land was recorded as Banjar and the banjar land vests in the Gram Sabha. The findings have been recorded by the trial court on Issue Nos. 1 and 2. It has come to the conclusion that Izazatnama was given by the plaintiffs father. But the said Izazatnama will not affect the rights of the Gram Sabha. On the issue Nos. 5 and 6 it was held that the suit is not barred by Section 41 of Specific Relief Act or by estoppel and acquiescence. This decree of the trial court has been set aside by the court below in civil appeal No. 242 of 1977 by judgment dated 15.11.1977. Aggrieved against the aforesaid decree present appeal has been filed by the defendants namely Gram Sabha and Sri Satya Narain Sharma, President of Ramleela Committee, Tappal. The above appeal was admitted by this Court on 2.11.1978 but substantial question of law were not framed at that time.

5. At the time, of hearing of appeal an amendment application was filed by the learned counsel for the appellants proposing following substantial questions of law involved in the case :

(i) WHETHER in the facts and circumstances of the present case the lower appellate court was justified in extending the benefit of Section 9 of the U. P. Z. A. and L. R. Act without recording a finding that the constructions were made by the plaintiffs and also in absence of any pleading to that effect?

(ii) WHETHER lower appellate court was justified in not considering the

alternative case of customary right of the defendant appellant even when a specific plea to that effect has been taken in the written statement and an ambiguous issue has also been framed by the trial court?

(iii) WHETHER the defendants had acquired right on the basis of a grant pursuant to which permanent construction have been made making the grant irrevocable?

6. The case was adjourned on 25.2.2004 to enable the learned counsel for the respondent to argue the case in the light of the proposed question of law. It was heard on 26.2.2004. At the time of final hearing learned counsel for the respondents raised a preliminary objection on the ground that the present appeal is liable to be thrown out as it was not filed by a panel lawyer of Gram Sabha. Reliance was placed on Section 127B of Zamindari Abolition and Land Reforms Act. This provision authorises the State Government to appoint panel lawyer on such terms and conditions and in such manner as may be prescribed in respect of cases of Gaon Sabha to appear, plead and act without any written authority on behalf of any Gaon Sabha of the area, for which he is appointed, before any Court in any suit or other cases, by or against the Gaon Sabha. The reference was also made to Rule 114 of the Rules framed under U. P. Z. A. and L. R. Act. Rule 114 (1) (g) provides that for the conduct of suit, application and other proceedings including objections, appeal, revision, writ and special appeals by or against the Gaon Sabha, a panel of lawyers shall be appointed by the Collector of the district for the High Court each at Allahabad and its Bench at Lucknow. He argued with all force at his command that indisputably the present appeal was not initially presented by the Gaon Sabha panel lawyer in the High Court. Therefore, it should be thrown out at the very threshold. Reliance was placed on the following judgments :

(1) Gram Samaj v. Deputy Director Consolidation 1969 RD 356.

This Court held that proceedings taken under U. P. Consolidation of Holdings Act arises from the provisions of U. P. Z. A. and L. R. Act and hence commencement or defence of such suit or proceeding shall also be governed by Gaon Sabha Manual. Para 128 of Gaon Sabha Manual lays down how the Land Management Committee can sue and defend and it was held that the same is mandatory.

(2) Babu Ram Verma v. Sub-Divisional Officer 1996 (3) UPLBEC 2028 ; and

(3) Gram Panchayat v. Collector, Unnao 1997 (3) AWC 1665.

In the last case it was held that even if it is assumed that initially writ petition was not filed by a person duly authorised in accordance with Gaon Sabha Manual and later on petition has been filed by a person, defect, if any, stood cured. This Court has considered the earlier judgment given in the case of Babu Ram Verma (supra).

7. I have given a thoughtful consideration to the preliminary objection raised by Sri B.B. Paul, learned counsel for the plaintiff. The factual matrix of the case is that the present appeal is on behalf of Gaon Sabha as well as by the President of

Ramleela Committee. The defects pointed out by Sri Paul with respect to non-maintainability of the appeal through a private counsel stood cured as Sri V.K. Singh, a panel lawyer of Gaon Sabha, has filed his Vakalatnama during the course of hearing of the appeal itself. Apart from the above learned counsel for the plaintiffs could not point out an illegality or irregularity so far as right of the President of Ramleela Committee to maintain the appeal is concerned. Ramleela Committee was a party in the suit as one of the defendants and is an aggrieved party as the decree is also against it. A glance of the plaint shows that cause of action for filing the suit is that in the Revenue records the name of Ramleela Committee has been entered into in place of the name of Gaon Sabha. This change of entry, according to the plaintiffs is illegal. The objection raised by the counsel for the plaintiffs is in the nature of technical objection. The defects pointed out by him stands cured by filing the Vakalatnama by a panel lawyer.

8. Learned counsel for the appellants has also filed the resolution dated 1.5.1993 of the Gaon Sabha and the permission granted by the District Magistrate, Aligarh. The said permission is dated 25.9.2003. The District Magistrate has authorised Gram Pradhan to engage a private counsel along with the counsel on the panel subject to the rider that the fees of private counsel shall not be borne out from the Gaon Sabha fund and the said counsel has no right to enter into compromise. An attempt was made by the plaintiffs counsel that appellant No. 2 is acting mala fide and got passed the resolution and obtained permission from the District Magistrate to grab the plaintiff's property. He submitted that the appellant No. 2 was granted Izazatnama to hold annual Ramleela for few days and it does not confer any title on its Committee. Taking into consideration the fact that the decree was passed against the Gram Sabha by the court below, the Gram Sabha and the District Magistrate have permitted to press the appeal and I see no justifiable reason to dismiss the appeal at this threshold without going into its merit. The plea of mala fide in obtaining necessary permission is wholly irrelevant. In this proceeding this Court is not required to adjudicate upon these issues. The property of the Gaon Sabha is a public property. It is the duty of the Court to protect public property. I find no merit in the preliminary objection raised by the learned counsel for the plaintiffs and proceed to decide the appeal on merit. The appeal was heard on merits also. A feeble attempt was made by the learned counsel for the plaintiffs that as initially no substantial question of law were framed ; therefore, appeal should be dismissed summarily. However, he could not dispute the proposition that substantial question of law can be framed before the start of hearing of the appeal, as a matter of fact they were framed before the start of the final hearing of the appeal in the present case, as indicated in the earlier part of the judgment.

9. On merits, the facts are not much in dispute. It is not disputed that the land in question was purchased in public auction by the plaintiffs father. It is also not in dispute that the defendant appellant No. 2 Ramleela Committee has been holding annual Ramleela since the date of Izazatnama granted by the father of the plaintiffs. The vital question which arises for determination, as submitted by Sri

R.N. Singh, senior advocate, assisted by Sri. M.K. Gupta, advocate is that on the plaint allegation the suit is liable to be dismissed. The declaration prayed for cannot be granted in view of abolition of Zamindari in the State of Uttar Pradesh. There is no pleading claiming any right, title or interest in the light of Section 9 of U. P. Z. A. and L. R. Act.

10. In contra, Sri Paul, learned counsel for the respondents supported the judgment under appeal on the ground that the title of the plaintiffs is not in dispute. The father of the plaintiffs Sukhram purchased the property by means of sale certificate (Exhibit-1) dated 22.5.1935 under Order XXI, Rule 94 of the CPC and he granted Izazatnama on 26.6.1938, Exhibit-13 in favour of the public of village Tappal to hold Ramleela over the property in question. Elaborating his argument he submitted that holding of Ramleela is for about a period of fortnight affair in a year and it will not confer any right, title or interest on appellant No. 2 and the Gaon Sabha is unnecessarily questioning the plaintiffs' right, title and interest.

11. Heard learned counsel for the parties and given thoughtful consideration to their respective submissions. First, substantial question of law, as suggested by the learned counsel for the appellants, is as to whether the court below was justified in extending the benefit of Section 9 of U. P. Z. A. and L. R. Act (hereinafter referred to as the Act) without recording any finding that constructions were made by the plaintiffs and also in absence of any specific pleadings to that effect. To answer this question, it is necessary to have a look to the anatomy of the Act. The Act had for its primary object, as testified by its preamble the extinction of intermediary right viz., Zamindaris and the likes. The foundational provision, to very title deed of the State as observed by Apex Court in the case of Maharaj Singh Vs. State of Uttar Pradesh and Others, is Section 4 of the Act and it has examined Sections 4 and 6 of the Act and has held that after abolition of Zamindari entire State within the area as covered by notification u/s 4 of the Act vests in the State Government, free from all encumbrances. The consequences of vesting of the Estate in the State has been provided u/s 6 of the Act. In para 12 of the said judgment the ultimate conclusion has been recorded by it, which reads as follows :

"12. The Estate first vest in the State. The fulfilment of the purpose of the Act the setting in which the cornerstone for the statutory edifice is laid and the categorical language used, especially free from all encumbrances, leave no doubt in our minds, nor was it disputed before us, that this initial vesting is absolute and inaugurate the scheme of abolition. The consequences of vesting articulated by Section 6 only underscore this conclusion."

It was held that by virtue of Section 4, right, title and interest of all intermediaries in every State including Hats, bazar and Mela stood terminated. Secondly, this whole bundle of interest came to be vested in the State free from all encumbrances, the time of vesting being absolute. Thirdly one and only one species of property in Hats, bazar and Mela was expressly excluded from the

total vesting of Estate in the State viz., such as had been held on land on which Section 18 (1) (a) to (c) applies.

12. After clarifying the above position of law let us have a glance to the plaintiff's learned counsel for both the parties read out the plaint in extenso. The substance of the plaintiff's allegations are that "the father of the plaintiffs Sukhram purchased the property in question in public auction vide Exhibit-1 and granted leave and licence to the public of village Tappal to hold annual Ramleela. The defendants in collusion got the name struck off the Gram Sabha in the revenue record and replaced it in favour of Ramleela Committee. This is whole allegation made in the plaint. Sri R.N. Singh learned counsel for the appellants is right in his submission that there is no plea of settling of the land in question in favour of the plaintiffs u/s 9 of the Act. Section 9 of the Act is in the nature of an exception. At this place it is apt to quote Section 9 of the Act, which reads as under :

"9. Private wells, trees and buildings to be settled with the existing owners or occupiers thereof.--All wells, trees and buildings, situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

13. The court below by placing wrong interpretation on Section 9 in para 15 of its judgment has held that "Singhasan" and "Chabutra" existing on the suit land at the time of enforcement of the Act did not vest in Gaon Sabha in view of provision to Section 9 of the Act. This interpretation on Section 9 of the court below, is in the teeth of the verdict of Supreme Court in the case of Maharaj Singh (supra). The appellate court without entering into the discussion and interpretation of the relevant provisions of the Act, such as Sections 4, 6 and 9 of the Act came to the conclusion that the construction existing on the suit land did not vest in Gaon Sabha in view of provisions of Section 9 of the Act. On the correct interpretation of Section 9 along with Sections 4 and 6 of the Act it is established beyond doubt that after the date of vesting entire Estate vests in the State Government free from all encumbrances. After vesting of the Estate in the State Government there would be settlement by legal fiction of law by the State Government in favour of intermediary or tenant or other person of such wells, trees and buildings situate within the limits of State belonging to or held by such intermediary or tenant or other person on the date of vesting. The lower appellate court has approached the issue with wrong legal angle.

14. The consequence of abolition of Zamindari is that right, title and, interest of the plaintiffs have also come to an end after abolition of Zamindari. Reverting to the factual aspect of the case the trial court with the help of revenue records such as Khasra of 1366 F, Exhibit A-4, Khasra of 1378F, Exhibit A-5 and Khatauni

of 1378F to 1380F, Exhibit-AI, has come to the conclusion that the suit property has been recorded as Banjar in the revenue record, after abolition of Zamindari.

15. Learned counsel for the respondents could not dispute that banjar land belonging to Gaon Sabha. To put it differently, the plaintiffs have lost their title after the abolition of Zamindari which they had on the date of vesting. Therefore, their title deed, i.e., sale certificate has lost its efficacy after the date of vesting. They can succeed only on the basis of any other right, if any, possessed by them. They have to plead the other right and prove them. This part of the judgment of the trial court escaped notice by the first appellate court while reversing the decree of the trial court. The learned counsel for the respondents could not show me any document on record that the land in dispute was ever recorded in any revenue record in favour of the plaintiffs, after abolition of zamindari. The revenue record such as Khatauni of 1346F, Exhibits 2 and 3 and 1369F, Exhibit-4 do show the plaintiffs' title prior to abolition of zamindari but not afterwards. The plaintiffs have utterly failed to file any documentary evidence to show their right, title or interest over the disputed land after abolition of Zamindari, i.e., after 1.7.1952. The upshot of the above discussion is that the conclusion as drawn by the appellate court in para 15 of the judgment that Gaon Sabha did not become owner of the suit land is wrong. The said finding is vitiated as the suit land is recorded as Banjar land in revenue record. The judgment of the appellate court is legally incorrect and substantial question of law, as framed is involved.

16. There being no pleading by the plaintiffs claiming benefit of Section 9 of the Act which is in the nature of exception to the consequence of vesting under Sections 4 and 6 of the Act, the court below was not justified in extending its benefits to the plaintiff respondents.

17. There is another aspect of the case also. In the last sentence in para 5 of the plaint only this much has been stated that Singhasan was got constructed by them. This is only pleading regarding construction. The lower appellate court discussed the evidence of the parties in para 14 of the judgment. It noted the statement of Sri Satya Dev Sharma, P.W. 1 who stated that Chabutra was constructed by his father and that recently some ten or eleven years ago one Singhasan was got constructed by him. From this statement the court below has recorded ultimately findings in Para 15 of the judgment, which reads as under :

"From the evidence, discussed above, it follows that Singhasan and Chabutra existed on the suit land at the time Zamindari Abolition and Land Reforms Act came into force."

Obviously the above finding of the court below is perverse and cannot be sustained. There is no pleadings regarding construction of any chabutra, as noted above in the plaint. The statement of P.W. 1 is with respect of Singhasan constructed by him some ten or eleven years ago. By no stretch of imagination it will go prior to the date of vesting. The mistake in appreciation of evidence committed by the court below is quite apparent, from the record and cannot be

approved in second appeal.

18. Sri Paul, learned counsel for the respondent with all force at his command submitted that the lower appellate court has recorded a finding that Gaon Sabha is unnecessarily trying to assume and usurp the property rights in the said land and the Gaon Sabha does not come into picture and it is taking advantage of wrong entry of the revenue record and it forced the plaintiffs to enter into this wrong litigation. He submitted that in view of these findings and the facts that the land was purchased by the plaintiffs' father and the defendant No. 3 is holding Ramleela under leave and licence of the plaintiffs since it granted by them, may continue to hold Ramleela under the authority of the plaintiffs and necessary correction may be made in revenue records. It is not possible for me to accept the said submission. The title of the plaintiffs over the disputed land has been vested in the State Government by virtue of Sections 4 and 6 of the Act. The vesting is firmly established in view of the facts that the suit land is being continuously recorded after the date of vesting, in the revenue record as banjar land which indisputably vests in the Gaon Sabha under Land Records Manual. After the commencement of the Act all rights title and interest vests in the State Government and there is consequential divesting of interest of the person concerned.

19. It has been held by Supreme Court in the case of Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, , that after abolition of Zamindari new right such as bhumidhar, sirdar and Assami have been created. New rights cannot be followed as substituted security. It is not the same rights which a person had in the Estate before vesting of new rights u/s 18 and whole property rights in Sir and khudkast land and intermediary grove land has already vested u/s 6 of the Act in the State. No provision of law could be placed before me by the learned counsel for the respondents which may have saved plaintiffs rights, title and interest over the disputed land.

20. In view of the above, the judgment and decree of the court below is set aside and that of the trial court is restored. However, I may add few words by way of clarification. Indisputably Ramleela is being held on the land in dispute since very long time by the people for the people and of the people of village Tappal. The appellant No. 2, Ramleela Committee shall continue to hold Ramleela under the leave and license granted by the Gaon Sabha and will not in any manner raise any Pakka construction in the nature of shop etc. over the disputed land. The land shall be utilized for the purposes of holding Ramleela only and for no other purpose by the Ramleela Committee. The Ramleela Committee shall have no right to transfer or alienate the property in dispute, in any manner what so ever. Holding of Ramleela and taking out Moharram processions, etc. are part of the rich heritage of our composite culture and is also one of the fundamental duties as enshrined under Article 51A of the Constitution of India.

21. In the result, appeal succeeds and is allowed. The judgment and decree of the court below is set aside and the suit stands dismissed. There will be however,

no order as to costs.