
(2011) 03 AHC CK 0026
In the Allahabad High Court
Case No : Writ Petition No. 4157 (Cons.) of 1984

Ghasitey

APPELLANT

Vs

D.D.C. and others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9(1)

Citation : (2011) 6 ADJ 6373 : (2012) 115 RD 54

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard learned counsel for the parties.

2. The dispute in the instant writ petition relates to plots Nos. 546/10,457/54 and 458/41 of village Mirpur Qasba, Pargana and district Bahraich. According to the petitioner, he is recorded in Part II of the khatauni as a tenant of class-9 over the said plots and was found in possession of these plots in partial chakbandi also. The name of Putti Lal, who is father of the petitioner was recorded as tenant of class-9 from 1372 fasli and after his death, the name of the petitioner was substituted in Part II of khatanui and since then his name is intact in the record.

3. During consolidation operation in the area, the petitioner filed objections on 26.11.1979. u/s 9(1) of the U. P. Consolidation of Holdings Act with the request that since he had been In continuous adverse possession over the said plots in dispute against the khatedars for the last 20 years, he be recorded as bhumidhar of those plots. Similar other tenants of class-9 of other plots of the said khata also filed their objections. All the disputes relating to the plots of the said khata No. 492 were registered in the office of the Consolidation Officer, Bahraich. The Consolidation Officer admitted the claim of adverse possession vide order dated 22.12.1980. Against the said judgment opposite party Nos. 2 and 3 filed appeals

but the same were dismissed by a common judgment and order dated 1.3.1982. Consequently, the opposite parties Nos. 2 and 3 filed revisions before the Deputy Director Consolidation, Gonda. The revision filed against the petitioner was registered as Revision No. 1389/528/287. The Deputy Director Consolidation after hearing the parties and appreciating the materials on record allowed all the revisions including that against the petitioner and set aside the orders of the Consolidation Officer and Settlement Officer (Consolidation).

4. It has been argued that the findings of the Settlement Officer (Consolidation) regarding continuous adverse possession of the petitioner over the plots in dispute was not only based on the entries of class-9 tenant but also on the basis of entries of continuous possession in the respective khasra and rent receipts produced by the petitioner. Therefore, the Deputy Director has committed an illegality apparent on the face of the record in basing his judgment on the entries of class-9 tenant on Form P.A. 10 only and ignored other cogent evidence. Apart from the documentary evidence, there was oral testimony, which had supported the petitioner's case including the compromise made with Bhaggan and Kalloo conclusively prove the case of adverse possession of the petitioner over the plots in dispute since 1367 fasli but the Deputy Director of Consolidation apparently has acted illegally in not considering other evidence at all.

5. Counsel for the petitioner has also contended that the Deputy Director of Consolidation fell into deep pit of error in not considering the fact that Sukha Singh, Charan Singh and Jeet Singh sons of Bhuri Singh and Smt. Sheetla Devi were recorded tenant whereas opposite parties Nos. 2 and 3 are sons of Ganda Singh, and they were having no locus to challenge bhumidhari claim of the petitioner.

6. On behalf of opposite parties Nos. 2 and 3. it has been submitted that the plots in question originally belong to Kapoorthala Estate, Bahraich. who has given these plots to Sukha Singh and Jeet Singh (private respondents) and their names are also recorded in khasra and khatauni. Petitioner was engaged for ploughing and taking care of the plots as both of them were in Government service. Similarly, late Smt. Nand Rani had given her plots to the contesting respondents for ploughing and cultivation. Therefore, the Deputy Director of Consolidation after appreciating all these materials on record, which were wrongly ignored by the Consolidation Officer, came to the conclusion that the entries were not made in the revenue record as per law and the petitioner has failed to establish the lawful procedure adopted in this regard. It has also been argued that the petitioner in connivance with the revenue authorities fraudulently got his name recorded as a tenant of class-9 over the plots No. 456, 457 and 458.

7. Khatauni being a record of title, name of only such persons can be entered in it. who have title over the land. Entry in the khatauni cannot be made by the Lekhpal for the first time at his own instance. Such an entry can be made for the first time by the Lekhpal only on the authority of an order to that effect of a competent court or a revenue authority under the U. P. Land Revenue Act. Para

A-60 of the U.P. Land Records Manual provides that the khasra shall be prepared in form P-3 given thereunder. Para A-80 provides that the Lekhpal while on partial in the village shall keep with him a book or memorandum of facts of possession in cases of the Chapter mentioned in para A-72 (ii) and A-72 (iii). Para A-81 provides that the Lekhpal shall inform the Chairman, the Land Management Committee and all tenure holders of the village including the persons concerned with the entries made in the memorandum delivered to the Supervisor Qanungo. Para A-102C provides that the entries shall be valid, if they are made in accordance with the provisions of the Land Records Manual.

8. It is clear from para 102C of the Land Records Manual that the entries will have no evidentiary value, if they are not made in accordance with the provisions of Land Records Manual. In a case where a person is claiming adverse possession against the recorded tenure holder and he denies that he had not received any P.A.-10 or he had no knowledge of the entries made in the revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure holder was duly given notice in prescribed form P.A.-10. Para A-81 itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman. Land Management Committee as well as from the recorded tenure holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure holder had knowledge of such adverse possession.

9. I have gone through the impugned order, other materials on record and examined the submissions made by the counsel. The Revisional Authority has recorded a clear cut finding that the entries in respect of the plots made in class-9 by the Naib Tehsildar are not in consonance with the provisions of law. The Naib Tehsildar has no authority to pass an order with regard to P.A.-10. On the basis of unlawful entries, the Consolidation Officer and Settlement Officer committed error in conferring bhumidhari rights to the petitioner. The revisional court has also observed that the petitioner has failed to establish that orders on P.A.-10 were passed in accordance with the provisions of Land Revenue Rules. Further, it also failed to establish that copy of P.A.-10 was ever actually served upon the actual tenure holder as required under law.

10. In view of the aforesaid discussions, I find no infirmity and illegality in the impugned judgment, which is based on correct appreciation of facts and law.

Accordingly, the writ petition is dismissed.