

(2015) 09 AHC CK 0133
In the Allahabad High Court
Case No : Writ-B. No. 53267 of 2015

Gokul	Vs	APPELLANT
Additional Collector (F/R) D.D.C., Lalitpur and Others		RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11A, 4, 42A, 42-A, 9

Citation : (2015) 129 RD 667

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

Bench : Single Bench

Advocate : D.N. Gupta, V.K. Gupta and S.S. Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri S.S. Gupta for the petitioner. The writ petition has been filed against the order of Assistant Consolidation Officer dated 17.4.1999, by which plot 562/3 (area 0.104 hectare) was directed to be recorded as "shamil jot khalian" on the basis of compromise between the recorded tenure holders, Settlement Officer, Consolidation dated 30.1.2015 and Deputy Director of Consolidation dated 8.5.2015 dismissing the appeal and the revision of the petitioner against the aforesaid order, arising out of proceedings under section 9-A of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute between the parties is in respect of area of plot No. 562 of village Ranga, pargana Madawara, district Latilpur. In basic consolidation record the land in dispute was recorded in the names of the petitioner and his co-sharers. In CH Form-2-A, plot No. 562/1 (area 0.050 hectare) was recorded in the names of Madhav Singh, Raj Rani, Sukh Singh, Samar Singh, Kalyanpurwali, Gokul, Bindu, Harnam Singh. Plot No. 562/2 (area 0.093 hectare) was recorded in the name of Madhav Singh and others and plot No. 562/3 (area 0.104 hectare) was recorded in the name of Gokul (the petitioner). However, on the spot the entire area 0.104 hectare was found as khalian and recorded as such in column 10 of CH Form-2-A. Before the Assistant Consolidation Officer the petitioner and his co-sharers

entered into a compromise on 17.1.1999 and on its basis Assistant Consolidation Officer by order dated 17.4.1999 has directed for recording the entire area of plot No. 562/3 as "Shamil Jot Khalihan".

3. In khata 265 of khatauni 1386F to 1391F, an area of 0.31 acre of plot No. 562 is recorded in the name of Gokul and an amaldaramad of the order of Assistant Consolidation Officer dated 17.4.1999, passed in Case 603 is made in it, in which in place of plot No. 562/3, plot No. 562/2 (area 0.104 hectare) as "shamil Jot khalihan" has been noted.

4. Gokul filed a time barred appeal (registered as Appeal No. 16) on 4.12.2014, praying therein to increase the area of plot No. 562/2 in his khata. In the memorandum of appeal, it has been stated that he was owner of plot No. 562/2 (area 0.31 acre) but the subordinate authorities have denoted subdivision of his plot as 562/3. The petitioner was in possession of entire area of plot 562/2 and also in possession of part of plot 562/3 and he is still in possession of entire area of it. The consolidation authorities without making any spot inspection and without obtaining any report in this respect arbitrarily passed the order dated 17.4.1999 in Case No. 603 which is liable to be set aside and the entire area of plot No. 562/2 is liable to be completed in his khata. The appeal was heard by Settlement Officer, Consolidation, who by order dated 30.1.2015, held that an area of 0.31 acre of plot 562 was recorded in khata 265 belonging to the petitioner and area of 0.104 hectare of plot No. 562/2 was directed to be recorded as "shamil Jot khalihan" and its fraction number has not been changed. There is no explanation of inordinate delay in filing the appeal. On these findings, he dismissed the appeal on the ground of limitation by order dated 30.1.2015. The petitioner filed a revision (registered as Revision No. 16) against the aforesaid order. The revision was dismissed by the Deputy Director of Consolidation by order dated 18.7.2015. Hence, this writ petition has been filed.

5. The Counsel for the petitioner submits that in khatauni an area of 0.31 acre of plot No. 562 was recorded in the name of the petitioner. The petitioner is still in possession over an area of 0.31 acre of plot No. 562/2 on the spot, which is recorded in khasra also. During partial an area 0.104 hectare of plot 562/3 was found as khalihan of the petitioner. Assistant Consolidation Officer directed for recording this area of 0.104 hectare of plot 562/3 as "shamil Jot khalihan" of the petitioner and his other co-sharers. Its amaldaramad has been illegally made as plot 562/2 in the khatauni of the petitioner. The petitioner is entitled for entire area of 0.31 acre of plot 562/2. The appeal has been wrongly dismissed on the ground of limitation although the petitioner has explained the delay and has stated that he had no knowledge about the impugned order and it is only on 30.10.2014, when the extract of record was taken, the petitioner came to know about the order. He also relied upon CH Form 2A, in which plot No. 562/2 area 0.31 acre was recorded in the name of the petitioner. The appeal as well as revision have been wrongly dismissed by the consolidation authorities. The orders of consolidation authorities are illegal and liable to be set aside.

6. I have considered the arguments of the Counsel for the petitioner and examined the record.

7. So far as CH Form 2A is concerned in column-5, an area 0.31 acre of plot No. 562/2 was recorded in the name of Gokul, while remaining columns of this Form against this entry are blank. Column-5 of CH Form-2-A is in respect of "number of khata khatauni of the revised annual register in CH Form 11 in red ink". As in the khatauni of the petitioner plot 562 (area 0.31 acre) has been mentioned as such same entry has been incorporated in column-5 of CH Form-2-A. At the time of partial, the petitioner was not found in exclusive possession over any part of plot No. 562/2 as such in column-4 CH Form-2-A, no entry has been made in favour of the petitioner. On the basis of entry in column-5 no right can be claimed.

8. At the time of partial plot No. 562/3 (area 0.104 hectare) was recorded in the name of Gokul in column-4 of CH Form-2-A. In column-10 of CH Form 2A, against this plot entire area of 0.104 hectare was found as khalian and noted as such. The petitioner had entered into compromise along with his other co-sharers on 17.4.1999 and agreed that this entire area of 0.104 hectare of plot No. 562/3 was common khalian of all the co-sharers and be recorded as "Shamil Jot Khalian". On the basis of this compromise Assistant Consolidation Officer by order dated 17.4.1999 directed for, recording plot 562/3 (area 0.104 hectare) as "Shamil Jot Khalian". The petitioner in his appeal has not denied of entering into compromise before Assistant Consolidation Officer nor challenged its validity in any manner. The appeal has been filed against the Order dated 17.4.1999 passed on the basis of compromise, without challenging the compromise. Thus the appeal and the revision have been rightly dismissed.

9. In the memorandum of appeal, the petitioner prayed for increasing area of plot 562/2 in his khata. The petitioner did not file any objection under section 9 of the Act, claiming for increasing of the area of plot 562/2 in his khata as such no such claim can be set up in the appeal for the first time on 4.12.2014, although village was notified under section 9 of the Act in the year 1999. The claim of the petitioner is barred under section 11A of the Act. In the entire appeal, except a bald allegation that he had been in possession of entire area of plot 562/2 and some part of plot 562/3, no evidence has been adduced to prove his case. Khasra, subsequent to consolidation operation cannot be a evidence to prove title and possession during consolidation operation as under the law title and possession has to be proved on the date of notification under section 4 of the Act. No relief can be granted as the petitioner as he did not file any objection in this respect under section 9 of the Act. The claim raised on the basis of entry in column-5 of CH Form 2A and khasra subsequent to consolidation is incorrect.

10. The Counsel for the petitioner pointed out that in the amaldaramad made in khatauni in place of plot No. 562/3, plot No. 562/2 has been noted. So far as amaldaramad is concerned, it has been made on the basis of the order of Assistant Consolidation Officer dated 17.4.1999 passed on the compromise. If

mere was any mistake in the amaldaramad, it can be corrected by the consolidation authorities. The petitioner may file an application under section 42A of the Act, before Consolidation Officer in this respect, which may be decided within a period of two months of filing of the application by Consolidation Officer after hearing the arguments of the parties. In view of the aforesaid discussions, the writ petition has no merit and is dismissed. The petitioner is given liberty to move application under section 42-A of the Act, for making necessary correction in the amaldaramd.