

(1996) 12 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1704 of 1976

Gorakhnath

APPELLANT

Vs

Dy. Director of Consolidation, Deoria & Ors.

RESPONDENT

Date of Decision : 21-12-1996

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 14, 209

Citation : (1996) 12 AHC CK 0072

Hon'ble Judges : Shitla Prasad Srivastava, J

Final Decision : Allowed

Judgement

Shitla Prasad Srivastava, J.—This petition, under Article 226 of the Constitution of India, has been filed by the petitioner for quashing of the orders passed by the Dy Director of Consolidation, Settlement Officer, Consolidation and Consolidation Officer, respondent Nos. 1,2 and 3 respectively.

2. The brief facts for the purpose of present writ petition are that during consolidation proceedings dispute arose in respect of plot No. 548 area .77 acres. It is stated by the petitioner that his father Ram Baran was Khudkasht holder of the plot in dispute. He mortgaged it to Firangi father of Balbhadra and Bharat on 2551912 and put him in possession. The mortgage was redeemed on 2641946 and possession over the plot in dispute was delivered to the petitioner by Balbhadra and Bharat. The petitioner after the zamindari abolition became the bhumidhar as he was Khudkasht holder prior to the enforcement of the zamindari abolition. It is further stated that till 1366 fasli the plot in dispute was recorded as property of the gaon sabha, respondent No. 4 in revenue record without any notice to the petitioner and incorrect entries continued till the consolidation operation started in the village. In the basic year Khatauni the plot in dispute was recorded in the name of Balbhadra and Bharat, who were the original mortgagees in class 4.

3. Two sets of objection were filed under Section 9 (2) of the U.P. Consolidation of Holdings Act disputing the correctness of the entries made in the basic year

record. The petitioner filed objection claiming bhumidhari right in the land in dispute on the ground that his father was the Khudkasht holder of the plot in dispute, he mortgaged it to the father of Balbhadra and Bharat, Firangi on 2551912; the petitioner redeemed the mortgage in question on 2641946, therefore, the names of Balbhadra and Bharat are wrongly entered in the revenue record. It was also stated that the gaon sabha has no concern with this land.

4. Another objection was filed by Balbhadra and Bharat, who claimed tenancy right on the ground that their father Firangi was Khudkasht holder before the abolition of zamindari. They disputed the right of the petitioner and the gaon sabha. The Consolidation Officer rejected the objection of the petitioner and held that the gaon sabha is the owner of the property in question. Appeals were filed against the order of the Consolidation Officer, one by the petitioner and other by Balbhadra and Bharat. The Assistant Settlement Officer, Consolidation dismissed both the appeals on 811975 and directed that the entries of class 4 in favour of Balbhadra and Bharat be expunged. The petitioner alone filed revision against the order of the Assistant Settlement Officer, Consolidation before the Dy Director of Consolidation. The Dy Director of Consolidation dismissed the revision on 2691975. The petitioner has challenged the three orders through this writ petition.

5. A counteraffidavit has been filed by one Doodh Nath Singh, who is the Secretary of the Land Management Committee. In the counteraffidavit it is stated that the land in dispute is the property of the gaon sabha and it is not the Khudkasht of the petitioner. Mortgage is also denied. It is stated that Balbhadra was recorded as trespasser. From 1362 fasli the land is throughout recorded as the property of the gaon sabha. It was never the tenancy of the petitioner. It is also stated that the finding recorded by the three consolidation authorities are correct finding.

6. In the rejoinder affidavit the contents of the counteraffidavit have been denied and the facts stated in the writ petition have been reiterated. Learned counsel for the petitioner vehemently urged that when the property was mortgaged by his father and it was khudkasht of his father then it could not vest in the gaon sabha after zamindari abolition came into force. His further submission is that mere entries in the relevant revenue record since 1366 Fasli could not confer any right on the gaon sabha.

7. Heard learned counsel for the petitioner and perused the record.

8. From a perusal of the judgment of the Consolidation Officer it is apparent that he has considered the revenue record and found that the name of the petitioner was recorded in Khasra 1364 to 1375 fasli. He has considered the Khasra of 1364 to 1375 fasli and found that the name of the petitioner was recorded in remark column in 1368 fasli but observed that no title is mentioned there. He has also considered the order dated 8121958 passed in Case No. 37 from the Court of the

Sub Divisional Officer and Khasra of 1374 fasli. He has also considered Khatauni of 1324 fasli on the point of mortgage. But the Consolidation Officer held that the possession of the petitioner is not found earlier hence he has not proved his title. While deciding issue No. 3 the Consolidation Officer held that Balbhadra had appeared as witness and tried to prove his possession. Bharat had also appeared as a witness and stated that their names were recorded as mortgagees but the Consolidation Officer has held that it does not prove any title. While deciding issue No. 3 it has been held by the Consolidation Officer that the Gaon Sabha has not produce any evidence, hence the case of the gaon sabha is also not proved and directed ultimately that objection of the petitioner and Bharat should be rejected and the names of Bharat and others if it so existed on record shall continue. The appellate Court also considered the entries. He has held that the gaon sabha's name has correctly been entered therefore, while dismissing the appeal directed that the name of the Balbhadra will be expunged from plot No. 548 and the name of the gaon sabha shall remain as it is. The Dy Director of Consolidation dismissed the revision. From a perusal of the judgment it is clear that none of the three consolidation authorities have considered the relevant provisions of the U.P. Zamindari Abolition and Land Reform Act nor they have considered the effect of the mortgage which was subsequently redeemed. If the property was Khudkasht of the petitioner's father and it was mortgaged in favour of Firangi and subsequently the mortgage was redeemed, therefore, petitioner's father after zamindari was abolished shall be deemed to be bhumidhar of the plot in question as has been held in AIR 1975 Allahabad page 295, Balwant and others v. The Dy Director of Consolidation and others. As the relevant law has not been considered by the consolidation authorities I think that it is a fit case in which writ petition should be allowed and the judgment and decree passed by the Dy Director of Consolidation may be set aside and the case may be remanded back to the Dy Director of Consolidation to decide it afresh in accordance with law.

9. Accordingly the writ petition is allowed. The judgment of the Dy Director of Consolidation dated 25/9/1975 is hereby set aside and the case is being sent back to the Dy Director of Consolidation with a direction to restore the revision to its original number and decide the same in accordance with law.