
(2010) 11 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 4587 of 1975

Harendra Nath Tripathi and Others

APPELLANT

Vs

Pherai and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 48, 9A(2)

Uttar Pradesh Land Revenue Act, 1901 — Section 52

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19

Citation : (2011) 112 RD 770

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—This petition under Article 226 of the Constitution of India, has been filed for quashing the orders dated 17th January, 1975 and 13th July, 1973 passed by the Deputy Director of Consolidation, Basti and the Settlement Officer Consolidation, Khalilabad, Basti (Annexure Nos. 5 and 4 respectively) and to maintain the order of the Consolidation Officer dated 24th February, 1973.

2. The dispute relates to plot No. 203/1 area 1-5-15 situate in village Tiwaripur, Pargana Bansi Purab, Teshil Bansi District Basti (hereinafter referred to as plot in dispute). In the basic year records it was recorded in the name of the Petitioner Nos. 1 and 2 and the husbands of Petitioner Nos. 3 and 4. Respondent Nos. 1 to 3 filed objections u/s 9A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the CH Act) inter alia on the ground that they were the daughter's sons of Smt. Sonkali Respondent No. 4; the plot in dispute was recorded as occupancy tenancy in the name of husband of Smt. Sonkali; after death of her husband it was recorded in the name of Smt. Sonkali in the records of 1356 and 1359 F; upon abolition of zamindari Smt. Sonkali came to be recorded as Sirdar under the provisions of Section 19 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the ZA Act); on her

death they would inherit to her estate. On these set of facts Respondent Nos. 1 to 3 prayed that the name of the Petitioners be expunged from the revenue records and their names may be recorded.

3. The Petitioners filed their written statement and claimed that prior to the date of vesting, Smt. Sonkali who was recorded as non-occupancy tenancy had surrendered the plot in dispute in favour of the then zamindar, (the predecessor in interest of the Petitioners) and as such the plot in dispute became the Khudkasht of the zamindars. Further in a correction of papers case prior to the date of vesting the matter had been referred to the Nyaya Panchayat where Smt Sonkali had given a statement in their favour and based on the same the Nyaya Panchayat passed an order dated 9.7.1950 for deleting the name of Smt. Sonkali and recording the name of the Petitioners. In the circumstances it was submitted that objection of Respondent Nos. 1 to 3 were liable to be dismissed.

4. Both parties led evidence before the Consolidation Officer. The Consolidation Officer by order dated 24th February, 1973 relying upon the decision of the Nyaya Panchayat dated 9.7.1950 dismissed the objections filed by the Respondent Nos. 1 to 3. The appeal filed by Respondent Nos. 1 to 3, u/s 11(1) of the CH Act, was allowed by the Settlement Officer Consolidation vide order dated 13th July, 1973. The following findings were recorded by the Settlement Officer Consolidation.

(i) Smt. Sonkali was recorded Dakhilkar in 1356 and 1359 F Khatauni.

(ii) Smt. Sonkali came to be recorded as Sirdar after the abolition of Zamindari.

(iii) The order of Nyaya Panchayat was prior to abolition of Zamindari and had not been given effect to in the revenue records for a period of more than six years, even after the abolition of Zamindari.

(iv) The Nyaya Panchayat had no authority to decide the title as such the order of Nyaya Panchayat could not be relied upon.

(v) The Respondents No. 1 to 3 had led both oral and documentary evidence to prove their possession over the plot in dispute and that they had been paying the land revenue.

(vi) The Petitioners did not lead any evidence to establish their possession or that the Respondents No. 1 to 3 were not the heirs of Smt. Sonkali.

5. The Petitioners filed revision u/s 48 of the CH Act which has been dismissed by the Deputy Director of Consolidation vide order dated 17th January, 1975. The Deputy Director of Consolidation after examining the material on record affirmed the finding of the Settlement Officer Consolidation. It is against the aforementioned two orders passed by the Appellate and the Revisional Courts that the present writ petition has been filed. Pleadings have been exchanged which have been perused by me.

6. I have heard Sri D.P. Srivastava, learned Counsel for the Petitioner. Despite

the fact that the matter has been taken-up in the revised call no one appeared for the Respondents.

7. Learned Counsel for the Petitioner has submitted that the orders passed by the Settlement Officer Consolidation and the Deputy Director of Consolidation are bad in law. Once the compromise had been arrived at before the Nyaya Panchayat, the claim set-up by the heirs of Smt. Sonkali could not be legally sustained. Further Smt. Sonkali having surrendered the plot in dispute in favour of the then zamindars and subsequently having admitted the said fact of surrender, it was not upon for her heirs to dispute the said surrender. The Respondents No. 1 to 3 had failed to establish that they were the heirs of Smt. Sonkali.

He has further referred to 12 documents filed along with the rejoinder affidavit in support of his case. These documents would be referred to at a subsequent stage. Based on these documents the submission is that the Petitioners were in possession as Kudhkasht and therefore, the findings recorded to the contrary are bad in law. According to him the Petitioners would be deemed to be Sirdar on the basis of the said revenue entries.

He has relied upon the following two decisions.

- (i) Wali Mohammad (Deceased) by Lrs Vs. Ram Surat and Others,
- (ii) Udai (dead) Ram Lakhan (dead) Karedin and Ors. v. Dy. Director of Consolidation, Varanasi and Ors. 1990 RD 91

8. Having considered the submissions, I now proceed to deal with each of the arguments. The Nyaya Panchayat is not a statutory body entitled or conferred with any jurisdiction to decide cases relating to immovable property. It is not a Court within the meaning of definition of Court as provided in the Code of Civil Procedure. The only reference of Nyaya Panchayat is under the U.P. Panchayat Raj Act, 1947 where the Nyaya Panchayat has been conferred with the jurisdiction to decide only petty cases and not title disputes. Section 64 of the U.P. Panchayat Raj Act provides for the Constitution and the powers of the Nyaya Panchayat. Under the tenancy laws existing at the relevant time, it was the U.P. Tenancy Act, 1939 which was prevailing. Under the said Act there is no provision for the constitution of a Nyaya Panchayat and that the corrections of papers case could have been filed only under the provisions of the U.P. Tenancy Act or the U.P. Land Revenue Act, 1901. Both these Acts do not provide for a constitution of a Nyaya Panchayat. Thus, any order passed by Nyaya Panchayat with regard to agricultural land even on concession would be without jurisdiction. Thus, no reliance could be placed on the decision of the Nyaya Panchayat dated 9.7.1950 and the said decision would be inadmissible in evidence.

9. Respondent No. 1 has appeared as a witness. His statement has been annexed with the petition in which he has stated that Smt. Sonkali was his maternal grand mother (Nani). No evidence had been filed by the Petitioners to show that they

ever objected to the Respondent Nos. 1 to 3 being maternal grand sons of Smt. Sonkali. Neither the written statement nor the statement of the witnesses who had appeared on behalf of the Petitioners has been filed either with the writ petition or with the rejoinder affidavit. Thus, apparently the ground raised in this petition that Respondent Nos. 1 to 3 are not related to or that they are not the heirs of Smt. Sonkali does not appears to have been raised before the Consolidation Officer. No such issue had been framed nor the Petitioners had ever raised an objection with regard to non-framing of such an issue. Even the grounds of revision have not been filed. It could thus be safely concluded that the Petitioners never objected to the Respondents being the maternal grand sons or the heirs of Smt. Sonkali.

10. From the evidence filed along with the rejoinder affidavit, Annexure Nos. 1 to 6 relates to request for copies of applications for inspection of record of certain cases decided in the year 1973 and 1975 which are on the files of the Consolidation Officer and the Deputy Director of Consolidation. The answer given is that these file have been weeded out on 23.11.1996. Further one application is for inspection of Khatauni of 1362 to 1368 F of village Tiwaripur for which the answer is that they have been weeded out on 13th January, 2000. All these applications have been moved in the year 2003. No explanation has been given why inspection was sought for at such a late stage of the said records. If the Petitioners had been sleeping over the matter for more than 28 years i.e. 1975 till 2003, they cannot claim any benefit because of the non availability of such records. Annexure Nos. 7 and 8 are Khatauni of 1356 F and 1359 F in which Smt. Sonkali is recorded over plot in dispute as Dakhilkar in Clause VI (1) and the Petitioners or their predecessor in interest have been recorded in the Khewat. Annexure 9 is Khewat of 1358 and 1361 in which Petitioners are recorded. Annexure 10 is Khasra of 1359 F in which Smt. Sonkali is recorded and in the remarks column it is mentioned as Kushkasht of Kishun Dutt. Annexure 11 is the proceedings of the Consolidation Committee relating to CH Form 29 and Annexure 12 is the question answer mentioning the date of notification u/s 52 of the Act. From a perusal of the documents filed above the Petitioners cannot derive any advantage. Once Smt. Sonkali was recorded in 1359 F in the Khasra and subsequently after the abolition of zamindari also continued to be recorded as Sirdar and the Petitioners having failed to take appropriate action within time for either ejectment or for declaration, they cannot claim any rights now.

11. In the opinion of the Court none of the documents filed along with the rejoinder affidavit are of any help to the Petitioners.

12. The authorities relied upon by the Petitioners are with respect to the rights which may be conferred u/s 20 of the ZA Act which clearly lays down that the rights are to be given as per the entries existing at the time of the date of vesting. Both the authorities Wali Mohammad (Supra) and Udai (supra) are thus of no help to the Petitioners.

13. In view of the above discussion, the petition lacks merit and it is accordingly

dismissed.

14. There shall however be no order as to costs.