
(2011) 05 AHC CK 0339

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19003 of 2011

Jagnnath

APPELLANT

Vs

State of U.P and Others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 300A

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11C, 19A(2), 42A, 44A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132

Citation : (2011) 6 ADJ 89 : (2011) 5 AWC 4854

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This matter was adjourned on 25.5.2011 in order to enable the learned Standing counsel to file appropriate affidavits indicating therein as to in what manner the Petitioner's land could be restored. In order to cut short the narration of facts, the order passed on 25.5.2011 is extracted hereinbelow:

Heard learned Counsel for the Petitioner and learned Standing Counsel for the Respondent.

This matter arises out of a brazen act of executive haste for dislodging the Petitioner from the land which according to the Petitioner has been validly allotted to him in exchange of his original holding under the order of the Settlement Officer Consolidation dated 16th of July, 1987, a copy whereof has been filed as annexure-4 to the supplementary affidavit alongwith the amendment application dated 15.4.2011.

A perusal of the said order demonstrates that on an application moved by the then village Pradhan, the original holding of the Petitioner over plot Nos. 362, 365 and 366 were taken out and the Petitioner was accordingly allotted the disputed land. This was done in order to facilitate the construction of a public

road in public interest on the demand of the villagers. This demand was accepted by the Petitioner subject to land being allotted in lieu thereof. This arrangement was made in proceedings which have been described as a proceeding u/s 42-A of the U.P.C.H. Act, 1953, but which in effect amounts to an exercise of powers u/s 19-A(2) of the U.P.C.H. Act, 1953 read with Section 44-A of the Act. The Settlement Officer Consolidation passed the order keeping in view the larger public interest, but at the same time technically proceeded to make an allotment of land that fell within the definition of Section 132 of the U.P.Z.A. & L.R. Act. The said provision of Z.A. Act makes it clear that land defined therein cannot be subject matter of accrual of Bhumidhari rights.

In the instant case, the Petitioner never claimed accrual of Bhumidhari rights over pasture land, rather he was allotted land in lieu of his Bhumidhari, which was his own original holding and was subject matter of the order dated 16th of July, 1987. The said order passed by the Settlement Officer Consolidation became final and accordingly the Settlement records were corrected whereafter the Petitioner has continued in possession over the land. It appears that recently the Petitioner proceeded to utilize the said land by making improvements thereon by raising constructions, which was objected to by the Respondent authorities on the ground that the land is recorded as pasture land, and being public utility holding, the Petitioner cannot be permitted to raise any constructions thereon.

The Petitioner upon inquiry came to know that the Respondents were implementing a scheme known as Kanshi Ram Shahari Garib Awas Yojna over contiguous land and while proceeding to do so, they started interfering with the possession of the Petitioner. Consequently, the Petitioner filed writ petition No. 3538 of 2009, which was disposed of on 27th of January, 2009 directing the Sub-Divisional Officer, Shahganj to dispose of the representation of the Petitioner. As a consequence of the said direction the Sub-Divisional Officer, Shahganj passed an order on 12th of March, 2009 holding that the land is recorded in the name of the Petitioner yet the said land belongs to the category of pasture land and this entry made during consolidation operations does not appear to have been correctly made.

It is further observed that in case the Petitioner is aggrieved he can apply for demarcation of the said land.

The Petitioner thereafter approached the prescribed authority under the provisions of the Regulation of Building Operations Act, as the said land falls within the regulated area, for permission to raise constructions. The Prescribed Authority vide order dated 21st of December, 2010 granted permission and a copy thereof has been filed as Annexure-8 to the writ petition. When the Petitioner proceeded to raise constructions, the Respondents again interfered with the same and as such the present writ petition came to be filed praying for a mandamus that the Respondent authorities be directed not to interfere with the same.

The writ petition was reported on 29th of March, 2011 and presented on 30th of March, 2011 before a Division Bench of this Court. The Division Bench of this Court allowed one week time to the learned Standing Counsel appearing on behalf of the State-authorities to seek instructions on 1st of April, 2011.

After the filing of the writ petition two orders came to be passed which have been assailed through an amendment application being orders dated 6.4.2011 and 8.4.2011 by the Settlement Officer Consolidation and the Consolidation Officer respectively. These two orders were passed on an application moved by the State whereby the original order passed in favour of the Petitioner in the year 1987 has been recalled.

The amendment application was allowed and the relief prayed for was incorporated. The Division Bench vide order dated 15th of April, 2011 observed that in view of the subsequent orders having been passed the writ petition became cognizable by a learned Single Judge dealing with the jurisdiction of consolidation matters whereafter the matter was placed before this Court. The petition was heard and thereafter an order was passed on 16.4.2011, which is to the effect:

"Learned standing counsel has accepted notice on behalf of the Respondent Nos. 1 to 5, 8 and 9.

Issue notice to the Respondent Nos. 6 and 7. Steps be taken within a week.

The contention raised by the learned Counsel for the Petitioner is that the order passed on 16.7.1987 has been recalled on 6.4.2011 ex parte after filing of the present writ petition. It is also contended that the officers have acted hastily and mala fidely to non-suit the Petitioner and according to the orders passed by them the Petitioner has now been relegated to the position way back in 1987.

Prima facie the contention of the learned Counsel for the Petitioner appears to be correct as the proceedings are apparently in violation of principles of natural justice.

Until further orders of this Court the operation of the orders dated 6.4.2011 and 8.4.2011 shall remain stayed. The Respondents are further restrained from interfering with the possession of the Petitioner over the plot in dispute or demolishing any constructions standing thereon.

The Respondent Nos. 5 and 6 shall file their personal affidavits explaining as to why they have proceeded to issue directions to the Consolidation Officer for annulling the order passed in 1987 without adopting the due process of law. They shall be personally present in Court on 25.5.2011 alongwith the entire records relating to the case.

A copy of this order may be given to the learned standing counsel today free of cost for communicating to the officers concerned."

In response to the said interim order the Sub-Divisional Officer and the Tehsildar

of the area concerned are present in Court alongwith their personal affidavits. The affidavit recites that the Consolidation Authority had wrongly passed the said order in the year 1987, but so far as the raising of constructions is concerned the Petitioner has no vested right over the land as it is pasture land.

The Sub-Divisional Officer in paragraph 9 of his affidavit has also stated that the Petitioner got his name recorded over the land in dispute collusion with the consolidation authorities. He has also stated that he has not exercised any pressure on the Consolidation Officer or the Settlement Officer Consolidation to pass the orders dated 6.4.2011 and 8.4.2011. Further in paragraph 10 it has been stated that several other persons have been allotted pasture land in a similar fashion.

The aforesaid affidavits of the SDM and Tehsildar are absolutely silent about the fact that the Petitioner is not an encroacher and that he had been lawfully and validly allotted land under the UP. Consolidation of Holdings Act, 1953 in lieu of his original holding. The affidavits are silent as to how the Petitioner would be compensated if his holding is being taken away in the manner narrated herein-above.

In the opinion of the Court, the affidavits are simply designed to escape the liability and responsibility of the officers in restoring the land of the Petitioner and have instead after the filing of the writ petition, hastily obtained the orders dated 6.4.2011 and 8.4.2011.

It is also admitted by the learned Standing Counsel on instructions that the said orders have been passed without notice or opportunity to the Petitioner itself, therefore it is writ large that the executive in their arbitrary exercise of powers instead of providing a solution to this episode have proceeded to dislodge the Petitioner on all fronts in complete violation of the principles of natural justice and without compensating the Petitioner which also violates Article 300-A of the Constitution of India.

The Sub-Divisional Officer and Tehsildar who are present in Court shall within 24 hours file an affidavit in response to the aforesaid observations and explain as to how would the Petitioner be compensated in terms of equal land if at all the land already allotted to the Petitioner can be taken away in the manner in which it has been done under the impugned orders. Failure to file an affidavit or come out with a solution shall be seriously viewed as a misconduct and failure to discharge their duty vested in them under the statutory provisions. This will also amount to interference with the cause of justice.

Put up day after tomorrow for filing of the affidavits.

2. Today three affidavits have been filed by Sri Raj Kumar, the Settlement Officer Consolidation, Jaunpur, Sri Brij Mohan, the Tehsildar, Tehsil Shahganj, District Jaunpur and Sri A.K. Upadhayay, the Sub-Divisional Magistrate concerned which contain almost similar recitals in contents. In paragraph 7 of all the three

affidavits, it has been stated that the Petitioners according to the equivalent valuation of the land as claimed by the Petitioner can be restituted by allotment of land over Plot No. 293 M Area 0.055 Hectares. The said land is recorded as Navin Parti, the proposal, therefore, is to restitute the Petitioner over the said land. Further the stand taken by the learned Standing Counsel is that since the land which was allotted to the Petitioner in the year 1987 is of the category as described u/s 132 of the U.P. Z.A. & L.R. Act, therefore the same cannot be retained by the Petitioner. Sri A.L. Tripathi, learned Standing Counsel has relied on the judgment of this Court in the case of Iqbal Ahmad and Ors. v. Deputy Director of Consolidation, Deoria and Ors., 2005 (98) RD 580.

3. The stand of the State, therefore, in short is that if the Petitioner is being dislodged, he is being offered equivalent land to which he is entitled in law and, therefore, an order can be passed to that effect. The allotment which was made in the year 1987 vide order dated 16.7.1987 has been recalled on 6.4.2011 and a consequential order has been passed on 8.4.2011 which has been challenged by way of amendment as noted in the order dated 25.5.2011.

4. The Respondents have candidly admitted that the orders had been passed without giving notice or opportunity to the Petitioner. It is, therefore, clear that the order of recall was in violation of principles of natural justice. After almost 23 years, in the opinion of the Court this could not have been done and as such the orders dated 6.4.2011 and 8.4.2011 are hereby quashed.

5. The issue that remains to be decided is as to whether the allotment made in the year 1987 can be retained by the Petitioner. On this reliance is placed by Sri Namwar Singh, learned Counsel for the Petitioner on the decision of this Court in the case of Ram Kumar v. Zila Adhikari/D.D.C. Muzaffar, 2002 (93) RD 403 paragraph 11 to 16. Sri Singh submits that the allotment order of 1987 was done all in public interest and not in the individual interest of the Petitioner. On the contrary it was at the instance of Gaon Sabha and the members of the public at large who, were demanding a road to be constructed over the land of the Petitioner that the said exchange was brought about which has been described as a proceeding u/s 42-A. Needless to mention that the plots as then numbered were 363/2, 365 and 366 were recorded as Bhumidhari of the Petitioner.

It is these plots which came to be renumbered as 719 and 721 and a Chak road in between No. 720. An area of six decimals was therefore taken out of the holding of the Petitioner and he was relocated over Plot No. 62/11. There is no dispute that Plot No. 62/11 part of which was allotted to the Petitioner in 1987 is recorded as pasture land but was given in exchange for public utility in the manner aforesaid.

6. The question is as to whether this allotment can be legally sustained or not. A precise issue in relation to the allotment of land as defined u/s 132 came up for consideration in the case of Ram Kumar (Supra) and this Court categorically held that the provisions of Sub-section (2) of Section 19-A of the U.P. C.H. Act

empowers the Assistant Consolidation Officer to bring about such allotments including the land that falls within the definition of Section 132. In the instant case, even though the proceedings are captioned as a proceeding u/s 42-A the power to bring about such an adjustment can be located in the provisions as referred to in the judgment of Ram Kumar (Supra). Not only this, the Settlement Officer Consolidation can exercise powers of the Assistant Consolidation Officer in view of the provisions of Section 44-A. Accordingly, this Court is of the opinion that the proceedings dated 16 July 1987 can be sustained in view of the legal proposition as indicated above.

7. So far as the decision in the case of Iqbal Ahmed as relied upon by the learned Standing Counsel is concerned, the said decision is later in point of time and it does not take notice of the provisions of Section 19-A(2) nor was it concerned with any such disputed facts as involved in this case as is evident from the narration made hereinabove. Apart from this, the decision in the case of Iqbal Ahmad does not take notice of the judgment of Ram Kumar (Supra) and, therefore, the decision in the case of Iqbal Ahmad cannot be an authority or precedent for the purpose of the present case as relied upon by the learned Standing Counsel.

8. The error, therefore, which is sought to be pointed by the learned Standing Counsel stands saved under the legal provision stated hereinabove and more so on the peculiar facts of this case where the same is sought to be up turned after 23 years of the allotment.

9. Needless to mention that the Gaon Sabha or the Land Management Committee did not raise any objection to the claim of the Petitioner for the past 23 years and, therefore, the principles of Estoppel and Acquiescence will equally apply against the conduct of the Gaon Sabha and the State. Over and above this, it is evident that the Petitioner offered his land for another purpose, namely, the construction of a Chak Marg. The offer was, therefore, for public interest and not for any individual interest of the Petitioner. It is thereafter the exchange was brought about with the conscious consent of the Consolidation Authorities and Gaon Sabha. This consent will be presumed to have been given not only under the provisions referred to hereinabove but also in view of the responsibility and obligation cast on the Consolidation Authorities u/s 11-C of the Consolidation of Land Holdings Act. In my opinion, the Consolidation Authorities while protecting the interest of Gaon Sabha land has rightly implemented the exchange as offered by the Petitioner in response to the request made by the Gaon Sabha itself. In view of these peculiar facts and circumstances of the case as noted hereinabove, the proceedings at this stage cannot be allowed to be up turned at the instance of the Respondent authorities which would be wholly unjustified.

10. The alternative offer which has been made over Plot No. 293 M in the affidavits which have been filed today in the opinion of the Court is also not appropriate or equivalent, inasmuch as, the Petitioner is now being dislodged from a road side land to half a kilometer away to the Eastern side as is evident

from a perusal of the original Map that has been produced by the learned Standing Counsel before the Court. In such a situation, the offer even though made, does not appear to be an offer to restitute the Petitioner for the loss of his land as has been done under the impugned order. Not only this, the Petitioner had taken recourse to law and is not an encroacher after having applied under the U.P. Regulation of Buildings Operation Act, 1958. The Competent Authority passed an order under the 1958 Act permitting the Petitioner to raise construction and in response thereto the Petitioner has already raised part of the construction. In such a situation, the act of the Petitioner cannot be said to be unlawful.

11. The land once allotted to the Petitioner ceases to be public utility land, as he has surrendered his original holding for a public utility, namely, the construction of a road. This contractual transaction was transparent and there is no evidence to describe it as collusive or fraudulent. The larger interest of all the villagers was taken as the basis for such exchange and was not an outcome of any deceit or fraud. The Petitioner therefore cannot be a victim of the circumstances created by the Respondents, that too even after a lapse of more than 23 years of possession by the Petitioner.

12. The proceedings of 1987 are not coram-non-judice or patently without authority. Apart from other provisions the power u/s 19-A(2) read with Section 44-A were available for an expedient settlement. The land of the Petitioner was utilised for a public road and in lieu thereof an arrangement was made which has been in existence for the past more than two decades.

13. It is only after the filing of this petition that the Respondents suddenly woke up to get the order of 1987 set aside which in my opinion was an act of malice in law as it is admitted to the Respondents that it was in violation of principles of natural justice.

14. The Settlement Officer Consolidation while passing the impugned orders and its compliance by the Consolidation Officer have virtually reviewed the order dated 16th July, 1987. It is well known that a review would be permissible if there is any fraud, misrepresentation or mistake. The impugned orders have been passed after almost 23 years without there being any allegation of fraud or misrepresentation alleged to have been committed on the part of the Petitioner. The allegation in the affidavit is of collusion with the Consolidation Authorities. There is no material of any collusion whatsoever and on the contrary the proceedings dated 16th July, 1987 were free, fair and open at the instance of the Gaon Sabha through its Gram Pradhan. The wishes of the people for getting a Chak road constructed or a passage being made over the land of the Petitioner was accepted and the transaction was as transparent as a window pane. The Petitioner was allotted land against land. There was, therefore, neither any fraud or misrepresentation so as to warrant exercise by the Settlement Officer Consolidation to review the matter.

15. Coming to the question of mistake, as pointed out hereinabove, there was no error in the proceedings. Mere mention of a wrong Section does not denude the authority of its power as contemplated u/s 19-A(2) of the U.P.C.H. Act. The hasty decision without giving any opportunity to the Petitioner by the Settlement Officer Consolidation and Consolidation Officer appears to have been based on half baked legal advice. This in my opinion is clearly malice in law. The Petitioner after 23 years at least had a legitimate expectation to have been heard before being uprooted. The Petitioner is claiming retention of his own tenancy of the land over which he has absolute right. It is not the case of the Respondents that the Petitioner is an encroacher. In such a situation, this is not even a case of mistake so as to warrant exercise of the power of review by the Consolidation Authorities which was wholly unjustified after almost three decades.

16. The Sub-Divisional Officer in his letter dated 9.3.2011 had made a request to the Collector/Deputy Director of Consolidation to expunge the name of the Petitioner. This letter has been written by the Sub-Divisional Officer himself and, therefore, the explanation of innocence on his part cannot be accepted. It was not a case of demarcation and was a wrong suggestion made by the Sub-Divisional Officer.

17. The order dated 6.4.2011 passed by the Settlement Officer Consolidation condones the delay of 23 years without any cogent explanation. It is well settled that if delay has to be condoned then the other party has to be put to notice. Nonetheless, the reason given for condoning the delay is that the authorities suddenly came to know of the entries after 23 years. This cannot be believed, inasmuch as, the proceedings of consolidation culminated with the publication of Section 52 notification way back on 11.1.1992. The revenue records were therefore final and the authorities will be presumed to have every knowledge of the final records. The excuse set up by the authorities that they came to know about the revenue records suddenly in the year 2009 is, therefore, unbelievable and was a totally mischievous approach that amounts to an eye wash.

18. One thing that is noticeable is that the order of the Settlement Officer Consolidation dated 6.4.2011 whereby the order of 1987 has been recalled, nowhere recites that the order in favour of the Petitioner was a result of collusion, fraud or manipulation.

19. In the absence of any such finding, the Settlement Officer Consolidation had no power of review after 23 years that too even without giving any notice to the Petitioner.

20. Accordingly, the writ petition is allowed. The order dated 6.4.2011 and 8.4.2011 are hereby quashed. The Petitioner is entitled to retain his land over the plot under the Order dated 16.7.1987 which is hereby upheld. The Respondents are restrained from interfering in the possession of the Petitioner over the land in dispute in any manner whatsoever. The entries in favour of the Petitioner shall be restored forthwith and the revenue records shall be corrected

accordingly.

21. To the Court it appears that the entire action of the Respondent authorities is infested with not only malice in fact but malice in law. In view of the harassment that has been caused to the Petitioner, this Court finds it necessary to impose costs on account of the conduct of the Respondent authorities which is quantified as Rupees one thousand each on the Sub-Divisional Magistrate, the Tehsildar and the Settlement Officer Consolidation which shall be deducted from their salary and further an entry to that effect shall be made in their service record.