

(2011) 11 AHC CK 0235

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65349 of 2011

Jaibunisha and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2011) 11 AHC CK 0235

Hon'ble Judges : Amreshwar Pratap Sahi, J

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.

The issue raised by the learned counsel for the petitioner is that he is the recorded tenure holder of the disputed land which he had acquired through a saledeed from the original tenure holder. The name of the original tenure holder in the records had been wrongly indicated and, as such, during Consolidation Operations, which had intervened, the matter was contested and ultimately the Settlement Officer Consolidation passed an order on 2.2.1993 holding that the name of the petitioners should be recorded as it had been left out due to a clerical mistake. This declaration was given by the Settlement Officer Consolidation in proceedings under the U.P. Consolidation of Land Holdings Act, 1953.

Learned counsel submits that before the said order could be incorporated, and after passing of the said order, the land had been wrongly recorded as Banjar/ Navin Parti in the consolidation records. In this intervening period the land came to be allotted by the Land Management Committee to the contesting respondents. This allotment was, therefore, illegal insofar as it related to the area of the disputed plot recorded in the name of the petitioners and obtained through a saledeed.

The said leases, which were executed in favour of respondents, were approved by the SubDivisional Officer on 4.4.1994. The petitioners filed an objection under

Section 198 (4) of the U.P. Zamindari Abolition & Land Reforms Act 1953 questioning the said grant of leases before the Collector. The Collector rejected the said objection and the revision filed against the same has also been dismissed.

While dismissing the claim of the petitioner, it has been recorded that the petitioners have come up before the authority after 17 years of the execution of the sale deed and, therefore, the petitioner cannot be granted any relief. It has further been indicated that since the relief claimed by the petitioner is of a declaratory nature, therefore, the proceedings under Section 198 (4) would not be entertainable and the petitioner may avail his remedy by way of declaration before the appropriate forum.

Aggrieved Sri Tripathi, learned counsel for the petitioner, submits that the aforesaid assumption on the basis whereof the claim has been rejected is erroneous inasmuch as the petitioner had promptly filed the claim for setting aside the leases and had also brought on record the final order passed by the Settlement Officer Consolidation. He contends that once the rights of the petitioner have been declared under the U.P. Consolidation of Land Holdings Act, there is no occasion for the petitioner now to file a declaratory suit or approach any other forum. He submits that this is a simple case of accepting the orders passed by the Consolidation Authorities, which have neither been challenged by the State nor by any authority or private persons and has become final. Prima facie, the matter requires scrutiny.

Issue notice to Respondent Nos. 7 to 15 returnable at an early date. Learned counsel for the Gaon Sabha and learned Standing Counsel have accepted notice on behalf of respondent Nos. 1 to 6. All the respondents may file their counteraffidavit within 3 weeks. Rejoinder affidavit may be filed within a week thereafter. List thereafter.

Until further orders of the Court, status quo with regard to the possession over the land in dispute shall be maintained and the parties are further directed not to alienate the same or create any third party rights thereon.