
(1982) 12 AHC CK 0003
In the Allahabad High Court
Case No : Civil Misc. Writ No. 5434 of 1972

Jhurai and Others

APPELLANT

Vs

The Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 02-12-1982

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11A, 11C, 48, 9, 9A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172, 189, 190, 194

Citation : (1983) RD 90

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : R.R. Yadav and Anshuman Singh, for the Appellant; S.P. Singh, S.G. and K.B. Garg, S.R. Singh and R.A. Yadav, for the Respondent

Judgement

K.M. Dayal, J.—Heard the learned Counsel for the Petitioner Sri. Sakha Ram Singh for Gaon Sabha and Sri. Krishna Prasad for the State.

2. The proceedings in the present petition arise out of consolidation operations under the U.P. Consolidation of Holdings Act, 1953. Jhurai, Petitioner No. 1 was recorded as Bhumidhar in the basic year. He had executed a sale deed in favour of Petitioners Nos. 2, 3 and 4 prior to commencement of the proceedings. The Petitioners nos 2, 3 and 4 claimed mutation in place of the Petitioner No. 1. On commencement of consolidation operations, objection was filed by the Respondents Nos. 2 to 4 for mutation in their favour. Another set of objections was tiled by Respondents Nos. 4 to 7 claiming that the real tenure-holier, Jhurai, had expired about 25 years back and Petitioner No. 1 was an impostor and the sale-deed obtained by the Petitioners Nos. 2, 3 and 4 from him was fraudulent and illegal. They claimed that they were the collaterals of the deceased Jhurai who was the real tenure holder and were, thus, entitled to be mutated in his place.

3. The Consolidation Officer and the Settlement Officer (Consolidation) decided

the case in favour of the Petitioners Nos. 2, 3 and 4 and held that the Petitioner No. 1 was the real tenure-holder of the land and the Respondents Nos. 4 to 7 had no concern with the same. Before the Deputy Director (Consolidation) in revision u/s 48 of the Consolidation of Holdings Act, the same argument was made again. Though there was no objection or revision on behalf of the Gaon Sabha or the State of U.P., the Deputy Director Consolidation held that the revisionists i.e. the Respondents Nos. 4 to 7 had no concern with the land. He further gave a finding that the Petitioners Nos. 2 to 4 had also no right as according to him the Petitioner No. 1 was not the real tenure-holder and the real tenure-holder had expired 25 years ago. He consequently ordered the land to be recorded in the name of Gaon Sabha by his order dated 23-5-1972. The present petition has been filed against the same. Gaon Sabha has been impleaded as Respondent No. 8 and subsequently the State of U.P. has also been impleaded as Respondent No. 9. Respondent Nos. 4 to 7 did not file any counter affidavit. Gaon Sabha and the State of U.P. filed separate counter affidavits. Rejoinder affidavits have been filed by the Petitioners. Learned Counsel for the Petitioners raised two questions before me. The first argument of the learned Counsel was that in view of Section 11-A of the U.P. Consolidation of Holdings Act Gaon Sabha and the State Government were debarred from filing any objection or from contending that the land had vested in them on account of death of Jhurai who has been held to have died long ago according to the judgment of the Deputy Director (Consolidation). The second limb of his argument is that the Petitioner No. 1 was the real tenure-holder and the finding of the Deputy Director (Consolidation) that the Petitioner No. 1 was not the real tenure-holder, but an impostor, was not correct. The argument of the learned Counsel for the Gaon Sabha is that the Petitioners could not object to the order of the Deputy Director (Consolidation) passed in favour of Gaon Sabha. Section 11-C of the Consolidation of Holdings Act gave ample powers to consolidation authorities to pass orders in favour of Gaon Sabha as and when the occasion arose. The other argument of the learned Counsel was that even ignoring Section 11-C of the Act, the proceedings u/s 9 continued upto the stage of Section 48 and in those proceedings, the consolidation authorities had every right to pass orders in favour of Gaon Sabha notwithstanding Section 11-A. The learned Counsel argued that the proceedings that were before the Deputy Director (Consolidation) u/s 48 were a continuance of proceedings u/s 9 and 9-A and consequently Section 11-A could not bar the jurisdiction of the Deputy Director (Consolidation). In reply, the learned Counsel for the Petitioner argued that the Deputy Director Consolidation came into picture only at the stage of Section 48 which was much later than the stage of Section 11-A. The second argument was that Section 11-C was brought on the statute by Act No. 34 of 1974 and that the aforesaid Section was not retrospective. The other argument of the learned Counsel was that the rights u/s 194 of the U.P. Zamindari Abolition and Land Reforms Act were not the tenancy rights, but they were right to take possession of the land and unless that right was exercised by the Gaon Sabha, the Gaon Sabha did not have any right to have its name recorded over the land. The learned Counsel for the Petitioner

relied upon a case reported in Gram Sabha Kudra v. Noor Mohammad Khan 1975 RD 61 a Division Bench case of this Court. It was held in that case that in case Gaon Sabha did not file any objection u/s 9 it was debarred from raising any objection u/s 11-A or at any subsequent stage. It appears that the aforesaid case has been impliedly over-ruled by a Full Bench decision of our Court, in Amir Husain and Others Vs. The Deputy Director of Consolidation and Others, . It was held in that case that the case of Noor Mohammad and other cases were not approved by the Full Bench. That case consequently loses its weight. The other case relied upon by the learned Counsel for the Petitioner was Brij Lal v. State of U.P. 1977 RD 318. In that case a learned Single Judge of our Court held that Section 11-C was not retrospective. The matter about the retrospectivity of the aforesaid Section was also before the Full Bench of Amir Hussain (supra) but the Full Bench did not decide the question as the matter was decided on the first question referred to it. In the instant case, however, none of these cases are of much help to us. The rights of Gaon Sabha, if any, flow from Section 194 of the U.P. Zamindari Abolition and Land Reforms Act which reads as under:

The Land Management Committee shall be entitled to take possession-of and comprised in a holding or part thereof if-

(a) the land was held by a Bhumidhar and the interest of the bhumidhar in such land is extinguished under Clause (a) or Section 189;

(b) the land was held by a sirdar and the interest of the Sirdar in such land is extinguished under Clauses (a), (b), (c) or (e) of Section 190; or

(c)....

4. We are concerned with the Clauses (a) of Sections 189 and 190 of the Zamindari Abolition and Land Reforms Act which reads as under:

Section 189: The interest of a bhumidhar in his holding or any part thereof shall be extinguished-(a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act.

Section 190: Subject to the provisions of (Section 172), the interest of a Sirdar in a holding or any part thereof shall be extinguished-(a) When he dies leaving no heir entitled to inherit in accordance with the provisions of this Act.

5. A plain reading of Section 194 along with Sections 189 and 190 Clauses (a) makes it clear that the Gaon Sabha was entitled to take possession of land where the tenure holder had expired without leaving any heir under the provisions of U.P. Zamindari Abolition and Land Reforms Act. The right of Gaon Sabha is not that one of the tenure holder. It is a right of management and in that right it has been given a right of possession. There is no vesting as in case of escheat, in favour of State Government when it becomes entitled to the rights of a person dying without leaving any heir. Thus, the Gaon Sabha had a right to claim possession and to settle the land in accordance with the subsequent Sections of the Act. It could not have claimed a right of tenancy. The Deputy Director

(Consolidation) has not given any finding about the possession of any party to the litigation nor he has given any finding that the Gaon Sabha has taken possession u/s 194 of the U.P. Zamindari Abolition and Land Reforms Act. Under the circumstances the judgment and order of Deputy Director (Consolidation) relating to possession has to be quashed. He should record a finding on the actual possession on the spot and the entry on the basis of that finding shall continue. The rights of Gaon Sabha will arise when it takes action u/s 194 of the Act, which is the only right given to it under the aforesaid provisions. Had there been any provision under which the land would have been vested in Gaon Sabha, the result would have been otherwise.

6. In the result, the petition is allowed. The judgment and order passed by the Deputy Director of Consolidation is quashed and he is directed to decide the possession of the parties. So far as the question of title is concerned, the Deputy Director (Consolidation) may decide the same after giving an opportunity of hearing to Gaon Sabha and the State. If necessary, the Deputy Director (Consolidation) may remand the case for taking evidence. Parties are directed to bear their own costs.