
(2016) 02 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition B No. 34490 of 2015

Jitendra Singh

APPELLANT

Vs

Deputy Director of Consolidation And 4 Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52

Citation : (2016) 4 ADJ 514 : (2016) 3 AllWC 2900 : (2016) 131 RD 474 :
(2016) 1 RJ 825

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Sasmita Srivastava and M.C. Chaturvedi, Advocates, for the Appellant; C.S.C, Krishna Kr. Chaurasia and Ratnesh Nandan Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard Sri M.C. Chaturvedi, learned Senior Advocate for the petitioner, Sri K.K. Chaurasia, learned counsel for the respondent no. 5, Sri Brij Kumar Yadav for the Gaon Sabha, the respondent no. 6 and also Sri Ratnesh Nandan Singh, learned counsel for the respondent no. 7 and learned Standing Counsel for the State-respondents.

2. The instant writ petition has been filed challenging the orders dated 27.10.2014 and 15.05.2015 passed by the Consolidation Officer, Rambagh, Mirzapur in Case No. 64 under Rule 109-A of the U.P. Consolidation of Holding Rules.

3. The facts of the case briefly stated are that the petitioner claims on the basis of an allotment of the land in question by the Gaon Sabha in his favour on 16.09.1979. Since, at the time of allotment, the unit was under consolidation operations, the petitioner was ordered to be recorded over the land in question of the order of the Consolidation Officer dated 04.05.1983 under Section 12 of the

Act. A copy of this order is filed on record as Annexure-2 and its perusal reveals that the petitioner was ordered to be recorded as Bhumidhar on the basis of the patta in his favour.

4. It is also alleged that pursuant to this order, the name of the petitioner was entered in the Register Malikan but not in the khatauni.

5. The petitioner therefore filed writ petition no. 13291 of 2007, which was disposed of vide order dated 13.03.2007, observing that the petitioner may apply under Rule 109-A of the U.P. Consolidation of Holding Rules, 1954 for getting his name recorded on the basis of the order dated 04.05.1983. It was also provided that in case such an application was made, the concerned authority was to pass orders after verifying from the record and after obtaining necessary reports with regard to the correctness of the order dated 04.05.1983, which was the basis of the petitioner's claim.

6. It is alleged, that thereafter, the name of the petitioner was also incorporated in the khatauni. The khatauni of 1422 Fasli has been filed on record as Annexure-6, in support of this submission.

7. It is stated that on 09.06.2014 an application was filed by the respondent no. 5 for recall of the order dated 04.05.1983. This restoration application was accompanied by an application for condonation of delay. The recall application was filed alleging therein that the applicant was member of the scheduled caste and also a member of the Gaon Sabha in question and, therefore, entitled to file the same. It was also alleged that the land in question was reserved for a play ground and, therefore, the order passed in favour of the petitioner on 04.05.1983, was liable to be set aside.

8. It is contended that the Consolidation Officer by his order dated 27.10.2014 condoned the delay in filing of the restoration application, allowed the same and set aside the order dated 04.05.1983, on the basis of a letter by the local legislator and, therefore, the same was passed under political pressure. Moreover, this order was passed without hearing the petitioner and, therefore, it was ex parte. This order also directed that the land in question be recorded as Naveen Parti. A parwana was issued on 15.05.2015 to correct the revenue entries in pursuance of the orders dated 27.10.2014 and 12.02.2015 as regards khata no. 1044, plot no. 1431 area 1.4440 hectares and 1571M area 0.190 hectares.

9. It is these two orders dated 27.10.2014 and 15.05.2015, passed by the Consolidation Officer, which are impugned in the writ petition.

10. The contention of learned counsel for the petitioner is that the restoration application was filed after issuance of notification under Section 52 of the Act, closing consolidation operations in the unit and, therefore, the Consolidation Officer has no jurisdiction to entertain or pass orders on the restoration application.

11. The next submission is that the order has been passed upon a letter of the local legislator and is therefore the product of political interference.

12. Apart from being ex parte, as the same was passed without any notice or information to the petitioner and without affording him any opportunity of hearing, it is also submitted that since the orders impugned are ex parte, the existence of an alternative remedy is not a bar and this court can entertain the writ petition.

13. It is further be submitted that the order impugned had been passed relying upon an affidavit of the Ex. Pradhan who has subsequently filed an affidavit denying having filed the affidavit in support of the restoration application and that his alleged affidavit filed before the Consolidation Officer was a forged and fabricated one.

14. It is next contended that allowing the restoration application and setting aside the order dated 04.05.1983 passed in favour of the petitioner amounts to cancelling the lease in favour of the petitioner, which power the consolidation courts do not possess. It is lastly contended that the plot in question namely plot no. 1431 and 1571, are not reserved for a play ground but are agricultural plots being cultivated by the petitioner right from 1983. The land reserved for play ground is on plot no. 1074.

15. Sri K.K. Chaurasia, learned counsel for the respondent no. 5, who had filed recall application before the Consolidation Officer had submitted that it is not correct to say that the order of the Consolidation Officer, is ex parte. He submits that the Consolidation Officer had issued notice on the restoration application, which was served upon the petitioner by affixation on 30.06.2014 in the presence of two witnesses. A notice was also sent to him by Registered Post. It is further submitted that the order dated 04.05.1983, is a forged and fabricated order.

16. Relying upon paragraph 14 of the counter affidavit, he has submitted that the allegation that the order of the Consolidation Officer was passed on the basis of a letter of the local M.L.A. is incorrect as no such letter is to be found on the record of the proceedings before the Consolidation Officer. A question answer in this regard has also been filed as Annexure CA-7 to the counter affidavit. He submits that the order dated 27.10.2014, has been passed on the basis of reports which indicate that no record of any allotment by the Gaon Sabha in favour of the petitioner exists. A report of the Revenue Record Keeper to this effect is available on the record in the proceedings. He lastly submits that the question answer filed by the petitioner is also a got up document and that the petitioner has not annexed any document which would show that any lease was granted in his favour.

17. Sri Ratnesh Nandan Singh, who appears for the respondent no. 7 has contended that the respondent no. 5 had resorted to forgery. He filed an affidavit, purporting to be one sworn by the respondent no. 7 in support of the

recall application. When the respondent no. 7 came to know of this fact, he has sworn an affidavit denying his alleged affidavit and this clarificatory affidavit is Annexure 1 to the affidavit filed in support of the impleadment application. It has been alleged in this affidavit that the respondent no. 7 was, at the relevant time, a member of the Land Management Committee and that the Gaon Sabha, had passed a resolution for allotment of the land in question in favour of the petitioner. Thus, the respondent no. 7 is supporting the petitioner.

18. Since, the primary issue between the parties is as to whether or not the plots in question were allotted by the Gaon Sabha to the petitioner vide resolution dated 16.09.1979, the Court, after hearing the parties on 13.01.2016, passed an order directing the respondents to obtain instructions in the matter and to produce the original record of the allotment, in case, the same was in existence.

19. In pursuance of the order dated 13.01.2016, instructions received by the learned Standing Counsel were produced for perusal of this court and were taken on record. The instructions are to the effect that no file of any allotment regarding plot no. 1341 and 1571 of Village Khaira, Tappa-96, Pargana Kantit, Tehsil Sadar, District Mirzapur is found to be consigned to the record room.

20. After perusing the instructions, this court, vide order dated 25.01.2016, granted time to the petitioner to produce documentary evidence "which may prima facie indicate that there was a valid allotment made by the Gaon Sabha in favour of the petitioner." It would be relevant to note that no further documentary evidence has been filed by the petitioner despite several opportunities having been granted.

21. I have considered the submissions made, as also the facts and circumstances noticed above and have perused the record.

22. The basis of the petitioner's claim to the land in dispute is an alleged allotment made in his favour in 1979. It is also established on record that no record of any such allotment proceedings is to be found in the record room. The petitioner has not been able to produce any documentary evidence to show that a valid allotment was made in his favour. The only document filed by him on record, is an alleged resolution of the Gaon Sabha in this regard. It would be relevant to note that a resolution by itself is not enough to show that a valid allotment was, in fact, made. A resolution of the Gaon Sabha is forwarded to the Sub-Divisional Officer, who must approve the same before any allotment can be said to have been made. There is no evidence to show that any approval was granted by the Sub-Divisional Officer, nor the petitioner has been able to produce the original document of allotment in his favour. In the absence of these relevant documents and also on account of the fact that no file on any allotment proceeding regarding the plot in question is found to exist, the order passed by the Consolidation Officer, cannot be faulted with.

23. In this connection another glaring fact is that although the petitioner claims on the basis of an allotment made in his favour in 1979, the order of the

Consolidation Officer allegedly passed in his favour on 04.08.1983 directs that he be recorded as a bhumidhar. The petitioner could not have been ordered to be recorded as a bhumidhar on the basis of allotment of the Gaon Sabha in his favour. He could, at best, have been recorded as a bhumidhar with non transferable rights. The order dated 04.05.1983 passed by the Consolidation Officer, is therefore, manifestly illegal and has rightly been set aside.

24. It would also relevant to note that initially the Gaon Sabha was not impleaded as a party in the writ petition. When this observation was made in the course of an earlier hearing, an impleadment application was filed for impleading the Gaon Sabha. This impleadment application was allowed and the counsel representing the Gaon Sabha, Sri Brij Kumar Yadav, was required to obtain instructions in the matter. His instructions are also to the effect that no record of any allotment proceedings in favour of the petitioner is in existence.

25. From the above, it is clear that the petitioner, though claiming an alleged allotment by the Gaon Sabha in his favour, he has not been able to even prima facie, establish such an allotment. In the absence of any cogent evidence which may even prima facie lead to the conclusion that there was an allotment in favour of the petitioner, the impugned orders which direct that his name be expunged from the land in dispute and the same be recorded as Naveen Parli are eminently justified and for the same reason, I do not find any ground for interference.

26. Although, against the impugned order, the petitioner had an alternative remedy by means of an appeal before the Settlement Officer Consolidation and thereafter a revision before the Deputy Director of Consolidation, yet these alternative remedies were not availed on the ground that existence of such alternative remedy is not a complete bar as regards an order which has been passed without affording opportunity of hearing. The submission of learned counsel for the petitioner in this regard is in consonance with the law well settled in this regard. However, once this court finds that despite opportunity, learned counsel for the petitioner has not been able to even prima facie established an allotment in his favour by the Gaon Sabha. I also do not see any justification for remanding the matter for orders being passed after affording the petitioner opportunity of hearing and evidence.

27. The only other contention which requires consideration is as to whether a recall application, filed after the close of consolidation operations by issuance of notification under Section 52 of the U.P. Consolidation of Holdings Act, could be entertained. In this regard it may be noted that the restoration application, filed after the issuance of notification under Section 52, was accompanied by an application under Section 5 of the Limitation Act, for condonation of delay. Once, the Consolidation Officer condoned the delay, it would necessarily mean that the restoration application was filed within time and during the currency of consolidation operations. The submission of learned counsel for the petitioner in this regard is therefore without any merits.

28. Besides as already held herein above, the order dated 04.05.1983 passed by the Consolidation Officer was a patently illegal order granting bhumidhari rights to the petitioner when in fact he called only have been ordered to be recorded as a bhumidhar with non transferable rights, if the case setup by him was accepted. However, the case setup by the petitioner has been discarded for the reasons given above.

29. Accordingly and for the reasons given above, the writ petition is found to be wholly devoid of merits. It is therefore, dismissed.