

(2017) 01 AHC CK 0288
In the Allahabad High Court
Case No : Misc. Single No. 2792 of 2003

Johar Ali

APPELLANT

Vs

Sub Div. Officer/S.D.M. Lalganj

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 110-A(2)

Citation : (2017) 134 RD 838

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Anurag Narain, Anil Misra and Mukteshwar Mishra, Advocates, for the Petitioners; C.S.C. and Yogendra Nath Yadav, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Rajan Roy, J.—Heard learned counsel for the parties.

2. By means of this writ petition, the petitioners have challenged an order dated 12.05.2003 passed by the S.D.O./S.D.M., Lalganj recalling an order dated 31.01.1966 passed under Section 229-B of the U.P.Z.A. & L.R. Act on the ground that the said order was passed ex-parte without hearing the Gaon Sabha that too based on a compromise filed by the plaintiff, fraudulently, as the land was recorded in the name of Gaon Sabha as Banjar, relying upon a decision of the Supreme Court reported in RD 1991 Page 109 that an order obtained by fraud is a nullity and also who has obtained it need not even be heard.

3. The contention of learned counsel for the petitioners herein is that the order could not have been recalled after almost 34 years that too when in the consolidation proceedings initiated in the year 1970 the objections of the private respondents under Section 9 of the U.P. Consolidation of Holdings Act, 1953, after being allowed by the C.O. vide his order dated 17.08.1972, was rejected in appeal filed by the petitioners vide order dated 14.09.1972 passed under Section 11(1) thereof allowing the same in favour of the petitioners and the revision of

the private respondents under Section 48 before the D.D.C. was dismissed for want of prosecution on 16.11.2009, specially as, the order dated 14.09.1972 was not even disclosed by the respondents while seeking a recall.

4. Shri M.E. Khan, learned Additional Chief Standing Counsel appearing for the State on the other hand contends that the title in respect of a land recorded in favour of the Gaon Sabha could not have been declared in favour of the petitioners in a Suit under Section 229-B based on alleged compromise with the Pradhan, without hearing the Gaon Sabha and without there being any prior approval as contemplated under Rule 110A (2) of the U.P.Z.A. & L.R. Rules, 1952 read with paragraph 120 of the Gaon Sabha Manual. He also contended that being a case of fraud, as observed by the S.D.M., he was justified in recalling the same and the allegation of delay was absolutely in consequential.

5. Repeated queries were put to the learned counsel for the petitioners as under which principle or provision of law a land recorded in favour of the Gaon Sabha could have been declared to be belonging to the petitioners in a Suit under Section 229-B of the Act, 1950 based on a compromise when the Gaon Sabha was not even heard, the learned counsel was not able to present any law on this issue, but, only said that the matter having attained finality in the consolidation proceedings the order passed under Section 229-B merged in the orders passed therein, which to the understanding of the Court is misconceived. True it is, that delay is a relevant factor to be considered in such matters, however, when a finding of fraud has been recorded and rightly so as it is at least fraud on law, as, a land belonging to the Gaon Sabha and recorded as a Banjar could not have been settled in favour of the petitioners in a declaratory suit under Section 229-B, without hearing the Gaon Sabha and without there being prior approval of the competent authority under Rule 110A (2) of the Rules, 1952 read with paragraph 120 of the Gaon Sabha Manual, which learned counsel for the petitioners was not able to satisfactorily reply and rebut.

6. In this scenario delay by itself can not be made a ground for interfering with the order which restores the proceedings under Section 229-B, wherein, the petitioners along with respondents shall have full opportunity to raise their claims for adjudication.

7. In these circumstances, the writ petition is dismissed. The Court below is directed to conclude the proceedings under Section 229-B of the Act, 1950 as per law within a period of six months from the date a certified copy of this order is furnished to it.

8. Till the conclusion of the proceedings, the status quo as exists today in respect of the land in question, only as regards to its possession, shall be maintained, and the parties shall not create any third party interest in respect of the same.

9. It is made clear that the Court below shall adjudicate the issues uninfluenced by any observations made herein above as these have been made only for the purposes of these proceedings which shall have no effect on the merits.

10. The petitioner as also Shri M.E. Khan, learned Additional Chief Standing Counsel shall communicate a certified copy of this decision to the Court concerned with expedition.

Let a copy of this order be given to the learned counsel for the parties within 24 hours on payment of usual charges, if possible.