

(1985) 12 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 749 of 1977

Krishna Shankar

APPELLANT

Vs

The Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-12-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240(A),
240(B), 240(C), 240(G), 240(Q)

Citation : (1985) 12 AHC CK 0018

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : R.S. Misra, R.P. Misra and R.K. Pandey, for the Appellant; S.C. and Shyam Narain, for the Respondent

Judgement

B.L. Yadav, J.—This petition Under Article 226 of the Constitution of India is directed against the order dated 24.01.1977 passed by the Deputy Director of Consolidation, Ballia in a revision u/s 48 of the U.P. Consolidation of Holdings Act, and the order dated 28.12.63 passed by the Assistant Settlement Officer (Consolidation) in proceedings u/s 9A(2) of the Act.

2. Plot Nos. 114/1, 115/1 and 116 etc. were in dispute. These plots were entered in the name of Rajendra Tewari, father of Respondent Nos. 3 and 4 as his sir Dari. The Petitioner tiled an objection u/s 9A(2) of the Act claiming bhumidhari rights, that these plots were mortgaged to the predecessor-in-interest of Respondent Nos. 5 to 10 and they have sub-let it to Rejoinder Tiwari, who was incorrectly entered as achieves and later on acquired siderite rights. Hence it was prayed that the entries in the name of Raiendra Tewari may be expunged and the name of the Petitioner may be entered as bhumidhar.

3. Respondent Nos. 3 and 4 contested the claim of the Petitioner alleging that their father was achieves and later on after the appointed date, acquired sir Dari

rights after the enforcement of U.P. Act No. 20 of 1954. It was further alleged that in the proceedings u/s 240(G) of the UP ZA and LR Act (for short the Act) the compensation roll was prepared in the name of the land holder, namely, the Petitioner and he did not file any objection after the notices were issued and published in his name and ZA Form 101, 110 and 112 etc. were prepared and compensation was paid. Hence the right of the land holder came to an end and the achieves became sirdar. It was prayed that the objection of the Petitioner is liable to be rejected and the basic years entries may continue.

4. The Consolidation Officer decided the case in favour of the Petitioner, whereas the Assistant Settlement Officer (Consolidation) and the Deputy Director of Consolidation decided the case against the Petitioner.

5. I have heard the learned Counsel for the parties. Learned Counsel for the Petitioner urged that earlier Civil Misc. Writ Petition No. 3350 of 1964 *Rajendra Tewari v. Deputy Director of Consolidation* (Annexure-4) was filed and decided by this Court. It was held that there was no decision in the proceedings u/s 240(G) of the UP ZA and LR Act and that finding by the judgment dated 26.09.69 became final and would be binding and cannot be challenged, that the compensation roll, if any, was prepared in the name of Baleswar, father of the Petitioner and at that time he was dead, hence tire finalization of compensation roll in the name of the dead person was an illegality and hence the proceedings u/s 240(G) of the Act would have no legal effect, nor they can determine the rights of the land holder nor the achieves can acquire sir Dari rights. He relied upon *Para v. D.D.C Gorakhpur* 1984 AWC 1034 (FB).

6. Learned Counsel for the Respondents on the other hand urged that the proceedings u/s 240 (G) became final and ZA Forms 110, 112 etc. were prepared in the name of Baleswar, father of the Petitioner and he was then alive and compensation was paid to him and *Rajendra Tewan* was recorded as achieves and later on became sirdar. In any case even assuming that Baleswar, father of the Petitioner was dead, it was for the Petitioner to make an application to set aside the order under 240 (G) proceedings before the start to the consolidation operation and in case he did not do so, it was not open for him now to get that order set aside. He further urged that when at the earlier stage the writ petition was decided by this Court, it was not held that proceedings u/s 240 (G) of the Act would have no effect. He relied on *Avdhesh Singh and Another Vs. Bikarma Ahir and Others*, and *Guddan v. Board of Revenue* 1971 RD 229.

7. The first point that falls for consideration is as to whether in the Writ Petition No. 3350 of 1964 decided on 26.09.69 any finding was recorded that the proceedings u/s 240 (G) of the Act had not become final and if not, can that finding operate as res judicature. Hon"ble M. H. Beg, J. as he then was on page 34 to the paper book (Annexure-4) has casually observed that apparently there was no decision given in those proceedings but that was not a finding rather he was discussing the observations made by the Settlement Officer (Consolidation) in the next paragraph. Thereafter he has discussed the observations and findings

recorded by the Deputy Director of Consolidation, against whose order that writ petition was filed. Hence it cannot be said that this was the finding or that point was finally decided. The petition was allowed and remanded for consideration of the evidence on record. Hence it cannot, therefore, be said that any finding was recorded about 240 (G) proceedings having become ineffective.

8. In *Para v. D.D.C, (FB) (Supra)*, the controversy was entirely different. In that case, earlier the writ petition was decided holding that the consolidation authorities had jurisdiction to decide the dispute between the parties in a civil suit for cancellation of the sale deed and later on it was challenged that the consolidation authorities have no jurisdiction rather the civil court alone could decide the dispute. In that context it was held that as earlier the suit for cancellation of the sale deed was abated and the writ petition was also finally decided under the impression that the petition was maintainable and the consolidation authorities have jurisdiction to decide that matter, it was held that at the later stage of the writ petition after remand it could not be held that the consolidation authorities have no jurisdiction. I am afraid that the facts of the present case are entirely different. The aforesaid case would not help the Petitioner.

9. I now turn to consider the next point as to whether the proceedings u/s 240 (G) of the Act became final or not ? And if so, its effect. Section 240A of the Act under Chapter IX-A empowers the State Government to declare by means of a notification published in the official gazette as from the date to be specified therein, the rights, title and interest of the land holder on the date immediately preceding the said date was held or deemed to be held by an achieves. Shall as from the beginning of the date so specified cease and vest, except as hereinafter provided, in the subsequent seconds of tire Chapter. Section 240B provides for the consequences that would ensue in the area in respect of which the notification u/s 240A has been published Section 240C provides that every land holder whose tights have been acquired, to be entitled to compensation. Section 240D authorizes the Compensation Officer to prepare the compensation statement for purposes of assessment and against payment of compensation for acquisition of rig us, title and interest of the land holder n the land referred u/s 240(G) of the Act. Section 240(Q) enacts that if any ob Section is to be filed by the land holder that would be decided in the manner prescribed. Section 240F enacts preliminary publication of the statement of compensation. Section 240K enacts about the payment of compensation and Section 240K(2) provides that the compensation shall be paid to the land holder whose name is entered in the final compensation statement and where the land holder dies before it is paid to him it shall be paid to his legal representative.

10 In the instant case ZA. Forms 101, 110 and 112 etc. were prepared in the name of Baleswar, father of the Petitioner and thereafter from the statement of Jagdish Narain Lai, Assistant Registrar, Kanoongo, (nnexure-f) it was clear that the land holder Baleswar was entered and when he was examined, no question

was put up on behalf of the Petitioner that Baleswar was dead and as provided by Section 240K(2) it is clear that if the compensation roll has been prepared in the name of the land holder who was dead, it shall be paid to his heirs. Years have rolled by after the finalization of compensation roll, but no objection was filed by the Petitioner, as son of the land holder, that those proceedings were illegal as his father was dead when the compensation roll was prepared in the name of his father.

11. I am of the opinion that the proceedings for preparation of the compensation statement became final and the rights of Baleswar, father of the Petitioner as land holder came to an end and Rajendra Twain, father of Respondent Nos. 3 and 4 as achieves became sirdar. It appears that after the commencement of consolidation proceedings the plea of the Petitioner about his father being dead is an after thought. In any view of the matter in case the Petitioner has any grievance against the finalization of the compensation roll or against the proceedings or order u/s 240(G), he should have made an application for setting aside or recalling that order or he should have challenged that order by filing a writ petition in this Court. But he did not do so. It is only when the notification u/s 4 of the Act was issued and he woke up and filed an objection stating that his father was dead. Even during the consolidation proceedings also the Petitioner did not file any restoration application in proceedings u/s 240(G) that these proceedings were against the dead person, hence they cannot be deemed to have become final.

12. I am satisfied on the basis of the evidence on record and the findings recorded by the Deputy Director of Consolidation and the Settlement Officer (Consolidation) that the compensation roll was not prepared in the name of the dead person. Further no evidence was led by the Petitioner to prove that his father was dead. The entry in the name of Rajendra Tewari continued for a number of years since prior to 1362 to 1371 Fails and the Petitioner prior to commencement of the consolidation proceedings, did not file any suit for adjustment of Rajendra Tewari recorded as Sirdar. The rights acquired by Rajendra Tewari as sirdar in proceedings u/s 240(G) or otherwise on account of his continuous possession cannot be questioned nor it can be held that he was incorrectly entered in the revenue papers. On page 49 of the paper book the Deputy Director of Consolidation has referred to the statement of Jagdish Narain Lai, Assistant Registrar Kampong to the effect that the payment of compensation was made to the Petitioner after issuing notice and complying with the procedure. From the evidence on record the Deputy Director of Consolidation was also satisfied that Baleswar, father of the Petitioner was not dead when the proceedings u/s 240(G) were in progress. The finality of those proceedings cannot be questioned now and it is too late now to challenge those proceedings. *Avdhesh Singh v. Vikrama* (Supra) is applicable on all fours.

13. There remains another aspect as to whether Rajendra Tamari was a sub-tenant of the mortgagee and if so, can he acquire achieves rights. But if the

status as achieves was sought to be challenged in the proceedings of consolidation, the proper procedure was to challenge it in the proceedings u/s 240(G) of the Act. But the Petitioner did not do so and in those proceedings Rajendra Tamari was recorded as achieves. In view of the finalization of Section 240(G) proceedings as also u/s 240B of the Act, he became sirdar. Hence it is iutile to consider that question now and it is not necessary to refer the case of Guddan v. The Board of Revenue (Supra).

14. In vie of the discussions made herein above, the petition lacks merit and is accordingly dismissed. There shall be no order as to costs.