

(2012) 08 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40838 of 2012

Lalji (Since Deceased) and Others

APPELLANT

Vs

Shamsuddin Khan and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 54

Citation : (2012) 08 AHC CK 0118

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.

Heard Sri Yogesh Kumar Saxena, learned counsel for petitioners and learned Standing Counsel on behalf of respondents no. 2 & 3. Notice need not be issued to the respondent no. 1, in view of the order being passed herein.

This writ petition is directed against the order dated 09.07.2001 passed by the Record Officer Sonebhadra in Appeal No.608/677/689/406 under Section 210 of the U.P. Land Revenue Act (Samshuddin Khan Vs. Lalji) as also the order dated 11.07.2012 passed by the Board of Revenue in Revision No.146/LR/200001 (Lalji Vs. Samshuddin Khan).

According to Sri Yogesh Kumar Saxena, learned counsel for the petitioners, the petitioner no. 1, Lalji (since deceased) now through his legal representatives had initiated proceedings being Case No.6836 (Lalji Vs. Shamsuddin & others) before the Assistant Record Officer, Obra, Sonebhadra, wherein by the order dated 27.04.1992 the land in question comprised in Gata No. 532 area 0.025 hectares has been declared as abadi and recorded under Column 6 (2). He states that the respondent no.1, Shamsuddin Khan filed an appeal against the said order being Appeal No.608/677/689/406 (Shamsuddin Khan Vs. Lalji) wherein the Appellate Court by the impugned order dated 09.07.2001 has set aside the order dated 27.04.1992 of the Assistant Record Officer and directed that the land in question

should continue to be recorded as bhoomidhari land. Learned counsel for the petitioners has submitted that feeling aggrieved the petitioners filed Revision No.146/LR/200001 (Lalji Vs. Shamsuddin Khan) wherein the Revisional Court has dismissed the revision of the petitioners by the impugned order dated 11.07.2012.

According to the learned counsel for the petitioners the Assistant Record Officer, Obra, Sonebhadra, had rightly passed the order dated 27.04.1992 whereby he has specifically recorded that abadi is existing over the land in question and therefore, it should be recorded as abadi in revenue records. For the said purpose, he has placed reliance on the provisions of Section 54 of the U.P. Land Revenue Act and submits that in view of the said provisions, a summary inquiry can be conducted by the Assistant Record Officer and if it is found that the land in dispute belongs to the State Government or a Local Authority, he can cause an unauthorized occupant to be evicted from the land in question. Basing his submission on aforesaid provision he states that the Assistant Record Officer has got jurisdiction to adjudicate the application made by the petitioners with respect to the land in question and having jurisdiction the Assistant Record Officer has recorded a finding of fact that there is abadi existing over the land in question since last many years and therefore, he has rightly corrected the revenue records by revising earlier entry which was shown as bhoomidhari in 1372 F.

Learned counsel for the petitioners after justifying the order of the Assistant Record Officer has assailed the appellate order by saying that the appellate authority has illegally accepted and allowed the appeal of the respondent no. 1, Shamsuddin Khan by recording that the Assistant Record Officer has no jurisdiction to convert bhoomidhari land into abadi. He submits that the revisional court has also committed similar error in rejecting the revision of the petitioners.

Learned counsel for the petitioners has then relied upon a decision of the Hon"ble Supreme Court in the case of "Banwasi Seva Ashram Vs. State of U.P. & others" reported in 1986(4) SCC 753 for submitting that the petitioner is also a tribal and is in occupation of the land in question where his house is situate and, therefore, he cannot be deprived of his means of livelihood and residence by evicting him from the land in question.

Having considered the submissions of learned counsel for the petitioners and perused the record, the first question which requires to be considered in this writ petition and on the submissions of learned counsel for the petitioners is whether the order dated 27.04.1992 passed in Case No.6836 (Lalji Vs. Shamsuddin Khan) by the Assistant Record Officer, Obra, Sonebhadra, is an order passed within his jurisdiction.

The provisions of Section 54(6) and (7) of the U.P. Land Revenue Act are quoted hereunder:

"54 (6) The record of all cases which cannot be disposed of by the NaibTehsildar

by conciliation as required by subsection (5), shall be forwarded to the Assistant Records Officer who shall dispose of the same, in accordance with the provisions of Sections 40, 41 or 43, as the case may be, and where the dispute involves a question of title, he shall decide the same after a summary inquiry.

(7) Where after the summary inquiry undersubsection (6), the Assistant Record Officer is satisfied that the land in dispute belongs to the State Government or a local authority, he shall cause the person in unauthorized occupation of such land to be evicted and may, for that purpose use or cause to be used such force as may be necessary."

Section 54 of the Act relates to revision of map and records by the Record Officer. Subsection (6) provides that the Assistant Record Officer upon a matter being forwarded to him by the NaibTehsildar shall dispose of the same in accordance with the provisions of Sections 40, 41 or 43 of the U.P. Land Revenue Act and where the dispute involves a question of title he shall decide the same after a summary inquiry. SubSection (7) provides that after summary inquiry under subSection (6), where the Record Officer is satisfied that the land in dispute belongs to the State Government or a Local Authority and any person is in unauthorized occupation of such land, he shall direct eviction of such an unauthorized occupant.

Section 40 of the U.P. Land Revenue Act provides for settlement of disputes as to entries in the annual register. It is the Tehsildar who is competent to decide a dispute on the basis of possession. Section 41 of the Act relates to settlement of boundary disputes. Here the Collector is the authority and his decision is either based on survey maps or actual possession. Section 43 of the Act relates to disputes regarding revenue or rent payable by a tenure holder. The dispute regarding revenue or rent cannot be decided by the Collector but he has to only record as payable in the annual register.

From the aforesaid provisions of Section 54 of the U.P. Land Revenue Act it appears that the same relates to revision of maps and records and correction of clerical mistakes or errors which appear in an annual register. Such clerical mistakes or errors can be corrected by the Assistant Record Officer when the matter is referred to him by the NaibTehsildar and he can conduct a summary inquiry for the said purpose. In the present case, the provision of Section 54 of the U.P. Land Revenue Act has no relevance at all. The reason being that the order dated 27.04.1992 passed by the Assistant Record Officer was an order converting bhoomidhari land into abadi land and recording it under Column 6(2). Clearly, in the garb of correcting clerical mistakes or errors, the Assistant Record Officer could not change the very nature and identity of the land even if on facts it was conclusively found that there was abadi existing over the land in dispute.

The dispute under Section 40 and 41 of the Act relates to entries in the annual register regarding possession. They do not provide for change of nature and identity of the land. An entry can be made in the annual register regarding

possession of a tenure holder upon the dispute being decided under Section 40 and 41 of the Act but the nature of the land or its identity already recorded cannot be decided under Section 40 and 41 of the Act. These Sections relate to possession of a tenure holder visavis another person claiming to be entered in the annual register.

The Assistant Record Officer can only exercise his jurisdiction for correcting clerical mistakes or errors in the map and record under the U.P. Land Revenue Act, which is not for the purpose of changing the nature and identity of land from bhoomidhari to abadi. What has been done by the Assistant Record Officer in the order dated 27.04.1992 is that he has converted a land which is entered in the revenue records till 1372 F as bhoomidhari land into abadi land and recorded it under Column 6(2). The submission of Mr. Saxena that there is no dispute that the abadi is situate over the land in question, cannot be of any help to him because even if abadi has been made over bhoomidhari land, the relevant provisions of Chapter VIII of the U.P. Zamindari and Land Reforms Act have to be complied with for the purpose of converting and recording bhoomidhari land into abadi land. The Assistant Record Officer is not an authority competent to record such change in the garb of correcting clerical mistakes or errors. A finding of fact has been recorded by the Assistant Record Officer that the land in question was entered in the name of Shamsuddin Khan and others as Sankramaniya Bhoomidhar upto 1372 F. Therefore, he has exercised a jurisdiction which he did not have for converting and recording bhoomidhari land into abadi.

On an appeal filed by the respondent no.1, Shamsuddin Khan the Appellate Authority namely the Record Officer, Sonbhadra has recorded that the order of Assistant Record Officer was illegal and he could not exercise jurisdiction to change the nature and identity of land by converting the bhoomidhari land into abadi and recording it in column 6(2) and has held that the Assistant Record Officer has passed the order beyond his jurisdiction.

In revision filed by the petitioners, the Revisional Court has approved the view taken by the appellate court and has held that the Assistant Record Officer could not exercise jurisdiction for converting and recording bhoomidhari land into abadi.

The submission of learned counsel for the petitioners with respect to applicability of Section 54 of the U.P. Land Revenue Act are misplaced. These are not simplicitor proceedings for correction of map or records. The proceedings initiated by the petitioners were for converting and recording bhoomidhari land as abadi and the order passed by the Assistant Record Officer has actually converted bhoomidhari land into abadi and recorded it as such which jurisdiction he did not have under Section 54 of the U.P. Land Revenue Act or any other statutory provision.

Insofar as the submission of learned counsel for petitioners based on the case of Banwasi Seva Ashram (Supra) is concerned, that is not the subject matter of controversy in these proceedings. Admittedly, Lalji (deceased) now substituted

through his legal representatives had filed an application being Case No.6836 for converting bhoomidhari land into abadi and for recording it in the revenue records. If the land in question was erroneously recorded as bhoomidhari upto 1372 F, then it could have been a case of correction of record but the circumstances in the present case indicate that prior to 1372 F land in question was always recorded as bhoomidhari land and constructions were subsequently raised there upon. Mere making construction over bhoomidhari land does not change the nature and identity of the land in the revenue records till the change is permitted in accordance with law.

There is exhaustive procedure provided under the U.P. Zamindari Abolition and Land Reforms Act for such purpose and in case such procedure has not been followed for converting bhoomidhari land into abadi, then only in view of constructions subsequently made thereupon, the Assistant Record Officer in exercise of his jurisdiction under Section 54 of the U.P. Land Revenue Act cannot direct such conversion of land by correcting revenue entries in the garb of clerical mistakes or errors.

In the present case the proceedings are not for eviction of the petitioners. The proceedings have been initiated by the petitioners for converting bhoomidhari land into abadi land therefore, insofar as the benefits if any to which the petitioners may be entitled in view of the judgment of the Apex Court in Banwasi Seva Ashram (Supra) are concerned, they are not subject matter of these proceedings nor any notice for eviction of the petitioners has been given to the petitioners nor it is subject matter of the orders impugned in this writ petition. Therefore, the second submission of learned counsel for the petitioners is also quite misconceived. In case petitioners are sought to be evicted at a later date and they claim benefit of the judgment in the case of Banwasi Seva Ashram (Supra), they will always be at liberty to initiate appropriate proceedings in accordance with law for protection of their rights, if any.

There is no merit in the writ petition. No interference in the impugned orders is required. The writ petition is dismissed.

No order is passed as to costs.