

(1986) 08 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8450 of 1971

Laxmi Narain

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 48, 9A(2)

Citation : (1986) RD 410

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

Bench : Single Bench

Advocate : D.N. Misra and S.N. Misra, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—This petition Under Article 226 of the Constitution of India is directed against the order dated 19-11-70 passed by the Deputy Director of Consolidation, Gyanpur, Varanasi, reacting the revision of the Petitioner, and the order dated 21st June, 1968, passed by the Assistant Settlement Officer, Jaunpur Camp at Gyanpur, allowing the appeal filed by Respondent No. 3 etc. against the Petitioner.

2. Plot No. 15/1 area 0-9-0 was in dispute. In the basic year this plot was recorded in the name of the Petitioner as his bhumidhari whereas on the spot Respondent Nos. 6 & 7 were recorded as sub-tenants.

3. An objection u/s 9A(2) of the U.P. Consolidation of Holdings Act was filed by the Petitioner claiming bhumidhari rights and alleging that Respondent Nos. 6 and 7 or their father had never been sub-tenants, but their names were fictitiously recorded and the same may be expunged.

4. The claim of the Petitioner was Contested by Respondent Nos. 6 & 7 who claimed sirdari rights on the basis of entry in revenue records pertaining to 1357 Fasli (which was equal to 1356-F in other districts of U. P.) and that the Petitioner

was not bhumidhar.

5. The Consolidation Officer " decided the case in favour of the Petitioner. But the appeal preferred by Respondent Nos. 6 and 7 has been allowed and the Petitioner's revision u/s 48 of the U.P. Consolidation of Holdings Act was dismissed. The impugned orders passed in the appeal and revision have been challenged by means of the present writ petition.

6. Sri Satya Narain Misra appearing for the Petitioner urged that Respondent Nos. 6 and 7 or their father cannot become adhivasi or sirdar over plot No. 15/1 as they were not recorded occupant as required by Section 20(b) of the UP ZA and LR Act (for short the Act). It was further urged that the entry of sub-tenant in the name of Respondent Nos. 6 and 7 was not made according to law as required by the relevant provisions of the U.P. Land Records Manual On the basis of entry or status as sub-tenant if the Respondent Nos. 6 and 7 wanted to acquire any right, they should have proved the factum of sub-tenancy. But the same has not been done and consequently the impugned orders are manifestly erroneous. Reliance was placed on Basdeo v. Board of Revenue 1974 ALJ 706 and Pulloo and Another Vs. Dy. Director of Consolidation, U.P. and Another, .

7. No body appeared on behalf of the contesting Respondents inspite of the notices having been sufficiently served on them.

8. Having heard the learned Counsel for the Petitioner, I am of the view that the impugned orders cannot be sustained. In case Respondent Nos. 6 and 7 wanted to avail of the entry of sub-tenancy in 1357 Fasli or their status as subtenants in respect of the plot in dispute, to take the benefit of Section 20(a) of the Act, they should have proved the factum of sub-tenancy or the contract of sub-tenancy by leading cogent evidence. Just by being recorded as " subtenant ", the factum of sub-tenancy cannot be assumed or proved. The Respondent Nos. 6 and 7 etc. have done nothing nor led any evidence to prove the factum of sub-tenancy. Consequently, the contesting Respondents cannot get benefit of the provisions of Section 20(a). It does not, however, appear that Respondent Nos. 6 and 7 pleaded any benefit out of the factum of subtenancy.

9. The next point for determination is whether Respondent Nos. 6 and 7 being recorded as sub-tenants in 1357 Fasli could be said to take the advantage of the provisions of Section 20(b) of the Act and whether Respondent Nos. 6 and 7 can acquire Adhivasi/Sirdari rights on the basis of that entry as sub-tenants. But the legal requirement is that in order to acquire Adhivasi/Sirdari rights u/s 20(b), one has to be recorded as an occupant. The question is whether the entry as sub-tenant in 1357 Fasli can be said to be an entry of recorded occupant.

10. As regards the legal effect of the entry as sub-tenant in 1357 Fasli in Varanasi district (which was equivalent to entry of 1356F in other parts of this State), it has been consistently held in a number of cases including in a Full Bench case of this Court in Basdeo v. Board of Revenue (Supra), by the Supreme Court in Sonawati and Others Vs. Sri Ram and Another, and a Division Bench of

this Court in Pulloo v. Dy. Director of Consolidation (Supra), following the Full Bench case of Basdeo v. Board of Revenue (Supra), that an entry of 1356-F (i. e. 1357F) for acquiring Adhivasi rights u/s 20(b) of the Act has to be made in accordance with the procedure prescribed under the U.P. Land Records Manual. In other words the entry of a recorded occupant as contemplated by Section 20(b) of the Act has to be made in red ink as required by Para 87 and other relevant paragraphs of the U.P. Land Records Manual (vide page 468), para 4 of Smt. Sonawatis Case (Supra). In the instant case it has not been proved nor any evidence has been led by the contesting Respondents that the entries as an occupant in 1357F were made as required by the aforesaid provisions of law. Further entries in 1357F were not made as a recorded occupant rather it was as a sub-tenant. Such entry, even if made, cannot be deemed to be an entry as recorded occupant as required by Section 20(b) of the Act. AS the relevant entries in the name of contesting Respondents as occupants were not made in accordance with law and the contesting Respondents failed to prove the factum of sub-tenancy, they cannot accordingly acquire Adhivasi/Sirdari rights either u/s 20(b) or Section 20(a) of the Act. As a result thereof, the impugned orders cannot be sustained.

11. In the result, the petition is allowed. The impugned orders dated 19-11-70 and 21-6-08 are hereby quashed. Since nobody appeared on behalf of the contesting Respondents, there shall be no order as to costs.