
(2011) 04 AHC CK 0487
In the Allahabad High Court
Case No : C.M.W.P. No. 1730 of 1974

Laxmi Narain (Dead)

APPELLANT

Vs

Ram Anjore (Dead) through L.Rs. and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Oudh Rent Act, 1886 — Section 107

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18

Citation : (2011) 5 ADJ 333 : (2011) 4 AWC 4151 : (2011) 113 RD 307

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—The Petitioner Laxmi Narain (since deceased) and now represented by his heirs, aggrieved by the order of the Consolidation Authorities has approached this Court praying for quashing the same on the ground that the Petitioner is entitled to be declared as the recorded tenure holder of the land in dispute and the orders of the Consolidation Authorities being erroneous, the same deserves to be set aside.

2. Before the Consolidation Officer, it is admitted that the plot in dispute was recorded in the name of the Petitioner. The Opposite Party Ram Anjor (Since deceased) and other Respondent Nos. 2 to 6 contested the aforesaid entry in favour of the Petitioner on the ground that the disputed plot was a grove/Sirdari of the opposite party No. 1 and opposite party Nos. 3 to 6 claimed plot No. 140/2, 140/1 and 140/3 as their grove and Abadi.

3. The Petitioner contested the claim of the opposite parties by filing evidence of possession in the shape of revenue records as evidence of title from prior to abolition of Zamindari to contend that it was the grove of the Petitioner and was a proprietary grove of his ancestors, therefore, the claim of the Respondents was erroneous.

4. A claim was also set up by the Petitioner that there was a house over the plot in dispute for which a rent note was executed in 1947. The Consolidation Officer by the order dated 30th January, 1973 allowed the objection of the Respondent Nos. 2 to 6 in relation to the claim of Abadi over the plot Nos. 140 and 140/3 and did not allow others claims.

5. Two appeals were filed one by opposite party No. 1 and one by the Petitioner. The opposite party No. 1 claimed the entire plot as his grove on the ground that his grand father had been given the land as a rent free grant by the predecessor in interest of the Petitioners which was recorded in the settlement of 1333 Fasli and since the Petitioners' fore-father did not take steps for the ejectment of the Respondent No. 1 or his father or grand father, the land stood settled in favour of the Respondent No. 1 as a Bhumidhar u/s 18 of the U.P.Z.A. & L.R. Act. The appeal filed by the Petitioner was dismissed and that of opposite party No. 1 was allowed.

6. Aggrieved by both these orders, the Petitioner filed a revision which was dismissed holding that the entries in favour of the Petitioner after 1346 Fasli do not appear to be correct and that the Respondent No. 1 had succeeded to establish that his grandfather was the holder of a rent free grant from predecessor in interest of the Petitioner. The Deputy Director of Consolidation, therefore, discarding the entries in favour of the Petitioner came to the conclusion that the Respondent No. 1 had prescribed his title.

7. It would be relevant to note that in appeal, the Settlement Officer, Consolidation held that part of the land being Abadi, the same vested in Gaon Sabha with which neither the Petitioner nor the Respondent Nos. 2 to 6 had any concern. The Respondent Nos. 2 to 6 did not file any revision or contested the matter any further. The Respondent Nos. 2 to 6, therefore, were satisfied with the orders passed by the Consolidation Authorities at the level of Settlement Officer, Consolidation and it can be presumed that they have given up their claim. They have even not filed any writ petition contesting the same before this Court.

8. The dispute, therefore, survives only between the Petitioner and the contesting opposite party No. 1. This petition was admitted on 18.4.1974 and an interim order was passed in favour of the Petitioner staying his dispossession.

9. Sri V.D. Ojha, learned Counsel for the Petitioner submits that the Petitioner had proved his possession as well as title with the entries from 1346 Fasli onwards. These facts have also been stated in the writ petition from paragraphs 11 to 13. A counter affidavit has been filed on behalf of the Respondents. It is further urged by Sri Ojha that since the land is recorded as grove then there was No. necessity to file any suit for ejectment as the Petitioner's forefathers being proprietors had lawful possession. Section 107 of the Oudh Rent Act has been relied upon by the Respondent No. 1 which has been referred to by the Deputy Director of Consolidation. It is urged that the land being a grove, the provisions

of Oudh Rent Act would not be applicable as it is admitted that the character of grove continued to exist even after abolition of Zamindari. He further submits that the Settlement Officer Consolidation committed a grave error by declaring part of the land as Abadi for which he had No. jurisdiction and about which there was No. support in law. He, therefore, submits that the impugned orders deserve to be set aside as the evidence relating to possession and title have not been read in correct prospective.

10. Sri A.N. Bhargava, learned Counsel for the Respondents contends that the Respondent was in possession and even otherwise his possession will be presumed to be a lawful possession. He further relied on a Full Bench decision in the case of Buddhhan Singh and Another Vs. Nabi Bux and Another, . to contend that the land was held by the Respondents as a rent free grant and the trees were planted by the grandfather of the Respondents, therefore, the Respondent No. 1 becomes a Bhumidhar in view of the provisions of Section 18 of the U.P.Z.A. & L.R. Act. He has urged that the Petitioner did not lead any evidence to demonstrate that the Respondent No. 1 or his forefather were ever ejected/vacated from the land and which continues in his possession. The finding recorded by the Consolidation Officer-and the other authorities, the Respondent No. 1 has perfected his title hence, the impugned orders do not deserve any interference.

11. Having heard learned Counsel for the parties, the Rent Free Grant is stated to be recorded in 1333 Fasli, the same has been described as "Khidmat Mafi". The contention of the Respondent No. 1 is that this having been given for rendering service to the Zamindar, the same stood settled in favour of the grandfather of the Respondent No. 1, who had also planted the trees on the land. He has, therefore, contented that the Respondents had perfected the possession over the land on the basis of such rent free grant. The contention raised by Sri Bhargava is that the Respondent will be presumed to be in lawful possession even if the entries after 1346 Fasli were in favour of the Petitioner.

12. In my opinion, the entries after 1346 fasli could not have been discarded by the Deputy Director of Consolidation. In order to get the benefit of Section 18 of the U.P.Z.A. & L.R. Act, it has to be conclusively established that a tenure holder was in possession and continued to hold the land as such on the date of vesting. This has to be by way of entries in 1356 Fasli and 1359 Fasli.

13. In the instant case, the Respondent is nowhere recorded to be either in possession either as a tenant or a proprietor of the land in dispute in 1359 Fasli. On the contrary all the entries are in favour of the Petitioner from 1346 Fasli onwards. Not only this, the Petitioner has also referred to the subsequent Khasras (record of possession) for 12 years, a copy of the same has been filed as Annexure-6 to the writ petition. This also demonstrates that the Petitioner continued to be in possession after abolition of Zamindari. There is No. finding either by the Consolidation Officer or by the Settlement Officer, Consolidation or by the Deputy Director of Consolidation about the actual possession of the

Respondent No. 1 between 1356 Fasli and 1359 Fasli. This crucial aspect, therefore, went against the Respondent No. 1. The presumption drawn by the Consolidation Authorities about the possession on the basis of rent free grant of 1333 Fasli is far fetched. Merely because the age of the trees was 50 years and not 35 years, the same does not in any way establishes that the Petitioners' forefather were not in possession or that the trees were planted as claimed by the Respondent. Their possession has been found in the revenue records of 1346 Fasli onwards. There is nothing to indicate that any possession was found in favour of the Respondent No. 1.

14. In such a situation, the burden was wrongly shifted by the Consolidation Authorities on the Petitioner when he had established his possession. Once the burden had been discharged by the Petitioner by leading cogent evidence of possession and title through the revenue records, the onus shifted on the Respondent No. 1 to have proved that the Petitioner were not in possession. There is No. evidence leading to the contrary except the oral statement of the opposite party No. 1. The documentary evidence which was in bulk in favour of the Petitioner from 1346 Fasli onwards, therefore, could not have been discarded and disbelieved repudiating the possession of the Petitioner over the grove land. In such a situation, the impugned order proceeds on erroneous assumptions of fact and law and are unsustainable. The Petitioner being the recorded tenure holder was entitled to continue as such and the Respondent could not have perfected his title u/s 18 as he did not hold the land in the relevant years as prescribed under the U.P.Z.A. & L.R. Act, 1950.

15. Having failed to establish his possession or his title, the declaration given by the Consolidation Courts is against law. The Full Bench decision relied upon by the learned Counsel for the Respondent does not come to his aid, inasmuch as, the same also holds that the ordinary meaning of held is possessed or occupied. The provisions of Section 107 of the Oudh Rent Act have been misconstrued by the Deputy Director of Consolidation and wrongly applied on the facts of the present case.

16. The writ petition deserves to be allowed. The impugned orders are hereby quashed. The Petitioner is entitled to get his name continued to be recorded as Bhumidhar of the land in dispute.

17. With the above observations, the writ petition is allowed.