

(1971) 01 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 486 of 1967

Madan Gopal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-01-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Act, 1927 — Section 18(4), 4

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 330

Citation : AIR 1971 All 350

Hon'ble Judges : O.P. Trivedi, J

Bench : Single Bench

Advocate : S. Rahman, for the Appellant; K.S. Verma, Chief Standing Counsel for Opposite Parties Nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

O.P. Trivedi, J.—This petition has been filed by Madan Gopal Singh under Article 226 of the Constitution of India. The material facts are these:

A notification was issued u/s 4 of the Indian Forest Act (hereinafter to be referred to as the Act) on 29-3-1954 by the State Government proposing to constitute lands in village Baghauwa, Pergana Balia, Tahsil Nighasan, District Kheri as reserved forest-The petitioner's father Jagat Ram claimed to be a sirdar of plots Nos. 21 and 15 comprising an area of 75.50 acres in the said village and he filed an objection u/s 6 of the Act on 3-7-1954 claiming sirdari rights over 75.50 acres in the said village. He challenged validity of the land sought to be constituted as a reserved forest. It was stated that from the demarcation map prepared by the Forest Department it appears that about half of the objector's land was included in the notification. On 24-4-1956 the claim of the petitioner's father was accepted by the Forest Settlement Officer and he was held to be a sirdar of 75.50 acres. But the Forest Settlement Officer did not enter into an adjudication of the precise area of plots Nos. 21 and 15 which was covered by the notification.

Annexure 2 of the writ petition is a copy of the order of the Forest Settlement Officer. Against this order the Forest Department filed an appeal u/s 17 of the Act which was allowed by the Deputy Commissioner on 12-4-1958 and the claim of the petitioner's father that he was sirdar of plots Nos. 21 and 15 was rejected. The said appeal was decided behind the back of the petitioner's father; on 16-12-60 petitioner's father filed a suit u/s 229-B of the U. P. Zamindari Abolition and Land Reforms Act (U. P. Act 1 of 1951) claiming a declaration that he continued to be a sirdar of 40 acres of land out of plot No. 21 on the basis that so much area was not covered by the notification issued u/s 4 of the Act. To that suit the State Government and the Gaon Samaj were impleaded as defendants. The suit was not contested by the defendants and proceeded ex parte. The Judicial Officer deciding the suit held that 40 acres of plot No. 21 was not included in the notification dated 29-3-1954 issued u/s 4 of the Act and declared him to be sirdar of that area by an order dated 3-5-1961 and the name of petitioner's father was recorded as sirdar over 40 acres of plot No. 21 of the said village but subsequently on 12-5-1963 in the same Khetauni 77 acres of plots Nos. 21 and 15 were recorded in the name of the Forest Department; whereupon the petitioner's father on 8-1-1964 applied for correction of Khetauni in accordance with the order of the Judicial Officer dated 3-5-1961. To that application the Forest Department was also impleaded as a defendant. This application was rejected by the Sub-Divisional Officer concerned on 15-10-1965 holding that the declaratory decree passed by the Judicial Officer u/s 229-B of U. P. Act 1 of 1951 was without jurisdiction, the Deputy Commissioner by his order of 12-4-1958 passed u/s 18 of the Act having already held that the petitioner's father did not possess sirdari rights. Annexure 7 is copy of the order of the Sub-Divisional Officer. This order was challenged by the petitioner and his brother opposite party No. 7 in a revision u/s 15 of the Land Revenue Act which was summarily dismissed by the Commissioner by an order (Annexure 8 of the writ petition) dated 16-11-1966. Thereupon a revision filed before the Board of Revenue was also rejected by it (vide Annexure 9 of the writ petition) by an order dated 20-12-1966. It is therefore prayed that the orders of the Board of Revenue, the Commissioner and the Sub-Divisional Officer, opposite parties 2, 3 and 4 contained in Annexures 7, 8 and 9 of the petition may be quashed by a writ of certiorari. It is further prayed that a writ in the nature of mandamus may be issued commanding opposite party No. 4 to re-decide correction of papers application according to law.

2. I have seen the affidavit accompanying the petition as also the counter-affidavit filed on behalf of the Divisional Forest Officer, opposite party No. 5 and heard the learned counsel for the petitioner and the Chief Standing Counsel. The above facts are not disputed by the opposite parties. The main submission in the petition is that the jurisdiction of the Revenue Court for granting a declaration to the petitioner's father u/s 229-B of U. P. Act 1 of 1951 was not barred by the order of the Deputy Commissioner u/s 18 of the Act dated 12-4-1958 and in view of the declaration by the Revenue Court in respect of 40 acres of plot No. 21 of

village Baghauwa the petitioner was entitled to apply for correction of papers in his favour in accordance with the decree of the Revenue Court. To my mind this is a valid submission. No doubt there is a provision contained in Section 18(4) of the Act which confers finality on an order passed in appeal under Section 18 of the Act subject only to revision by the State Government. Admittedly no revision was filed against the order of the Deputy Commissioner passed u/s 18 of the Act and therefore the order of the Deputy Commissioner passed in appeal became final. On account of the finality given to appellate orders u/s 18(4) of the Act having regard to Section 9 of the CPC there was an implied bar to the jurisdiction of the Civil Court, but the finality to the orders passed in appeal u/s 18 of the Act attaches only to such orders as are passed in respect of matters over which the officer passing an order under Sections 11 and 18 has jurisdiction. It is clear that u/s 11 of the Act the Forest Settlement Officer has jurisdiction to pass an order on the claim of a person only in respect of such land as is covered by the notification issued u/s 4 of the Act and it is equally clear that the Officer deciding the appeal u/s 18 of the Act also has jurisdiction only over such land as is covered by the said notification. It is significant that in the claim which was filed by the petitioner's father u/s 6 of the Act it was specifically urged that about half the area over which he claimed sirdari rights appeared covered by the notification and that the notification was unspecific. And yet neither the Forest Settlement Officer while deciding the claim u/s 11 of the Act nor the Deputy Commissioner deciding the appeal u/s 18 addressed themselves to the question which parts of plots Nos. 21 and 15 were covered by the notification or in other words to what extent the area comprised in plots Nos. 21 and 15 was covered by the notification. They seem to have confined themselves only to the question whether or not the petitioner's father possessed sirdari rights in plots Nos. 21 and 15. Therefore the Revenue Court had jurisdiction u/s 229-B of U. P. Act 1 of 1951 to give a declaration as sought for by the petitioner and opposite party No. 7 on the question of sirdari right, for if 40 acres of plot No. 21 were not covered by the notification u/s 4 of the Act. as held by the Judicial Officer, then the Deputy Commissioner would have no jurisdiction over that area u/s 18 of the Act and any order passed by him in respect of such area over which he had no jurisdiction would be non est with the result that the order of the Deputy Commissioner dated 12-4-1958 could be ignored by the Judicial Officer and in exercise of power given to him by Section 229-B of U. P. Act 1 of 1951 and a declaration could be given in respect of that area which was not covered by the notification and over which he had jurisdiction and the Deputy Commissioner had no jurisdiction u/s 18 of the Act. It is this aspect of the matter which appears to have been lost sight of by the Sub-Divisional Officer, opposite party No. 4, in the impugned order Annexure 7. Learned Chief Standing Counsel submitted in the first place that the decree passed by the Judicial Officer in favour of the petitioner u/s 229-B of U. P. Act 1 of 1951 was not binding on the Divisional Forest Officer, opposite party No. 5, because the Forest Department was not made a party defendant in the suit in the Revenue Court. This argument is to my mind devoid of merit because in asking for a declaratory decree from the

Revenue Court the petitioner's father was aggrieved from the notification issued by the State Government u/s 4 of the Act and therefore the latter was the necessary party. The Forest Department is bound by the decree passed by the Revenue Court because it is a department of the State Government.

3. Another submission of the learned Chief Standing Counsel was that the petitioner could file a suit for declaration against the impugned order of the Sub Divisional Officer only before the Civil Court and the Revenue Court was incompetent and had no jurisdiction in view of Section 9 of the CPC to pass a declaratory decree. This argument ignores the fact that the petitioner and opposite party No. 7 had prayed for declaration that they are sirdars of 40 acres of plot No. 21. To grant such a declaration u/s 229-B it is the Revenue Court which has the exclusive jurisdiction and the jurisdiction of the Civil Court is barred by Section 330 of U. P. Act 1 of 1951. In view of the terms in which the declaration was sought therefore the Civil Court had no jurisdiction to grant relief and this argument also must therefore fail. For the aforesaid reasons there is no escape from the conclusion that the declaration granted by the Judicial Officer to the effect that the petitioner and opposite party No. 7 were sirdars of 40 acres of plot No. 21 as the same was not covered by the notification issued u/s 4 was therefore valid and this declaration entitled the petitioner to claim correction of revenue records before the Sub Divisional Officer, opposite party No. 4 in the light of decision of the Revenue Court. It is therefore clear that the Sub Divisional Officer, opposite party No. 4 in rejecting the application of the petitioner for correction of revenue records failed to exercise jurisdiction which was vested in him under law. That order therefore is liable to be set aside by a writ of certiorari. In view of the conclusion that the declaration in respect of sirdari rights over 40 acres of plot No. 21 granted in favour of the petitioner and opposite party No. 7 by opposite party No. 5 was valid, it follows that to that extent the order of the Deputy Commissioner dated 12-4-1958 passed in the appeal of the State of Uttar Pradesh u/s 18 of the Act will stand modified and in order to grant an effective relief to the petitioner it will be necessary to so declare in these proceedings. It follows further from the conclusion reached above that the orders passed by the Commissioner, Lucknow Division on 16-11-1966 (Annexure 8) and by the Board of Revenue on 20-12-1966 (Annexure 9 of the writ petition) confirming the order of the Sub Divisional Officer dated 15-10-1965 (Annexure 7 of the writ petition) were also illegal as they disclosed failure to exercise jurisdiction vested under law.

4. Accordingly, I allow the petition and quash Annexures 7, 8 and 9 of the petition. Let certiorari issue accordingly. Issue also a Writ of mandamus directing opposite party No. 4 to re-decide the correction of papers application of the petitioner according to law. It is further declared that Annexures 7, 8 and 9 shall be deemed to stand modified in the light of Annexure 5 of the writ petition. No order as to costs.