
(2009) 09 AHC CK 0212
In the Allahabad High Court

Mohan Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 299B

Citation : (2010) 3 AWC 2686 : (2011) 112 RD 40

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri Jagdish Prasad Maurya, learned Counsel for the petitioners, Sri Nirmal Tiwari, learned Additional Chief Standing Counsel, Sri R. N. Gupta, learned Counsel for the respondent No. 3 and Sri Sudhir Kumar Misra and Sri Ratnesh Trivedi, learned Counsel for the respondent No. 4.

2. The undisputed facts of the present case are to the effect that the controversy involved in the present case relates to gata No. 666 and gata No. 669 situated in village Loukhia, Pargana Sri Nagar, Tehsil Lakhimpur, district Kheri (hereinafter referred the "land in dispute"), the same was recorded in the name of the Bhag Singh s/o Nihal Singh.

3. Bhag Singh on 4.7.1974 executed a sale deed in favour of Gurnam Singh and Smt. Purni, on the basis of the sale deed the land in dispute was mutated in the name of respondent Nos. 5 and 6 in revenue record by means of order dated 20.12.1981.

4. The present petitioner had purchased the land in question from respondent Nos. 5 and 6 by means of registered sale deed dated 28.3.1989 and 29.3.1989 after purchasing of the same petitioner had submitted an application for mutation of his name in the revenue record and the same was mutated on 6.9.1993.

5. Thereafter, the respondent No. 4 filed a suit for declaration and ejectment u/s 229B read with Section 209 of U.P. Z.A. and L.R. Act (hereinafter referred as "Act"), same was registered as Suit No. 193/72/80/16/12/150 before the S.D.O., Gola Gokaran Nath, district Kheri..

6. In the said suit, which was filed by respondent No. 4, the present petitioner was impleaded as respondent alongwith respondent Nos. 5 and 6.

7. The trial court by means of judgment and decree dated 17.9.1997 had cancelled the mutation in the name of the petitioner in respect to the land in dispute and further a direction was issued to the effect that if the Gaon Sabha wants that the land in dispute be vest in it then Gaon Sabha is free to file a separate suit for the said purpose.

8. Aggrieved by the judgment and decree dated 19.9.1997, the petitioner preferred an appeal before the Additional Commissioner, Lucknow Division, Lucknow and in the said appeal respondent Nos. 4 to 6 (to the writ petition) were also impleaded as opposite parties.

9. Additional Commissioner, Lucknow Division, Lucknow had allowed the appeal by order dated 30.11.1998 and set aside the judgment and decree dated 17.9.1997.

10. Aggrieved by the judgment and decree dated 30.11.1998 the respondent No. 4 had filed a Second Appeal No. 43 of 1998-99 (Kheri) before the Board of Revenue and the same was allowed by means of judgment and decree dated 19.5.2001, the same is challenge by the petitioner in the present writ petition before this Court.

11. Sri Sudhir Kumar Misra, learned Counsel for the respondent has raised a preliminary objection to the effect that the present writ petition filed by the petitioner is not maintainable as the same has been filed against the mutation order and in this regard he has relied on the following judgments:

1. Ram Bharose Lal v. State of U.P. and Ors. 1990 RD 72.
2. Bindeshwari Vs. Board of Revenue and Others,
3. Vishwanath Saraswat v. State of U.P. and Ors. 2005 RR 411.

12. In the rebuttal to the above said preliminary objection Sri Jagdish Prasad Maurya, learned Counsel for the petitioner submits that he has not filed the present writ petition against the mutation order but against the order passed in the proceedings u/s 229B of the Act.

13. After hearing the learned Counsel for the parties on the preliminary objection and going through the record of the present case, preliminary objection raised by the learned Counsel for the respondent is unsustainable and has got no force as in the present case the order under challenge is passed by the Board of Revenue (respondent No. 1) in a second appeal which arises out of proceeding u/s 229B

of the Act. Thus, the present writ petition filed by the petitioners is maintainable under Article 226 of the Constitution of India.

14. Further, the judgment which are cited by the learned Counsel for the respondent, *Ram Bharose Lal v. State of U.P. and Ors.* 1990 RD 72; *Bindeshwari v. Board of Revenue and Ors.* 2002 (20) LCD 206 and *Vishwanath Saraswat v. State of U.P. and Ors.* 2005 RR 411, are concerned, in the said judgments the law as laid down by this Court are to the effect that writ petitioner cannot be entertained against the order passed" in mutation proceeding"s u/s 34 of U.P. Land Revenue Act, 1901 but in the present case, the petitioner has challenged the order passed in respect to the proceedings arising out of Section 229B of the Act accordingly preliminary objection raised by the learned Counsel for the respondent has no force and the same is rejected.

15. Learned Counsel for the petitioners in support of his case has submitted the following arguments on the basis of the pleadings, as taken by the petitioners in his writ petition which are as follows:

(a) that the second appeal filed by the respondent is not maintainable because they had not challenged the judgment and decree dated 17.9.1997, passed by the trial court; and

(b) the judgment and decree dated 19.5.2000, passed in Second Appeal No. 43 of 1998-99 by respondent No. 1 is illegal and unsustainable as the same is contrary facts of the case, and are perverse, in support of this argument he relied upon the case of *Smt. Rani Devi (dead) by L.Rs. v. Sri 108 Pujoyapad Advait Panch Parmeshwar Panchayati Akharabara Udaseen* 2009 (27) LCD 281.

16. So far as the first submission contention of the learned Counsel for the petitioner is concerned in this regard, admittedly the suit was filed by respondent No. 4 u/s 229B of the Act and the same was decreed by means of judgment and order dated 17.9.1997 and thereafter the petitioner had challenged the same by way of first appeal before the Additional Commissioner, Lucknow Division, Lucknow in which he had impleaded the respondent No. 4 as opposite party after hearing the parties in the first appeal, the Additional Commissioner, Lucknow Division, Lucknow had allowed the same by judgment and decree dated 30.11.1998. As such the respondent No. 4 is the necessary and proper party in respect to the dispute involved in the present case and he comes within the definition of the "person aggrieved" by the judgment and decree passed by the Additional Commissioner, Lucknow Division, Lucknow dated 30.11.1998 as such the second appeal filed by respondent No. 4 before the Board of Revenue against the said judgment is maintainable under law so objection raised by the learned Counsel for the petitioner in this regard are wholly misconceived, incorrect and wrong accordingly rejected having no force.

17. Next arguments advanced by the learned Counsel for the petitioner that the judgment and decree passed by the Board of Revenue (respondent No. 1) dated 19.5.2001 is contrary to the facts of the case, thus arbitrary and liable to be set

aside, has also got no force as in the present case the petitioner has purchased the land in question by means of sale deed dated 28.3.1989 and 29.3.1989 from respondent Nos. 4 and 5, which is subject-matter of the dispute in the litigation in question.

18. From the perusal of the record, the trial court as well as Board of Revenue after considering the facts and circumstances had given a categorical findings in their Judgments to the effect that the land, which was purchased by the petitioner from the respondent Nos. 5 and 6, is in contravention to the provision of Section 154 of the Act, which is quoted hereinbelow:

154. Restriction on transfer by a bhumidhar.-(1) Save as provided in Sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.

Explanation.-For the removal of doubt it is hereby declared that in this sub-section the expression "person" shall include and be deemed to have included on June 15, 1976 a "Co-operative Society":

Provided that where the transferee is a Co-operative Society, the land held by it having been pooled by its members under Clause (a) of Sub-section (1) of Section 77 of the Uttar Pradesh Co-operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it.

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in Sub-section (1) if it is of the opinion that such transfer is in favour of a registered Co-operative Society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

Further, as no permission had been taken as per the provision of Section 154 of the Act before the sale deed is executed in favour of the petitioner so the transaction in question is in contravention to the provisions of Sections 166 and 167 of the Act, which is quoted hereinbelow:

166. Every transfer made in contravention of the provisions of this Act shall be void.

167. (1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely:

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall,

with effect from the said date, be deemed to have vested in the State Government free from all encumbrance; and

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under Sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.

19. In view of provision of Section 154 of the Act read with Section 166 of the Act the sale deeds dated 28.3.1989 and 29.3.1989 executed by respondent Nos. 5 and 6 in favour of the petitioner in respect to the land in dispute are void, once the sale deeds are void then the petitioner has neither any legal right nor locus on the land in question and the consequence as provided in the Section 167 of the Act will automatically come into operation.

It is well-settled principle of law that if a finding of fact are recorded by a court below on the basis of the documentary evidence and material on record this Court while exercising its power of judicial review under Article 226 of the Constitution of India can set aside the same only, if the same are contrary to the facts on record and arbitrary in nature.

20. In the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , the Supreme Court has held as follows:

Finding of fact cannot be challenged in a proceeding on the ground that the relevant and material evidence was insufficient to sustain the finding and that adequate or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction of the Tribunal.

21. In the case of State of West Bengal Vs. Atul Krishna Shaw and Another, the Supreme Court has observed:

That of quasi-judicial Tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding on the High Court. By the process of judicial review, the High Court cannot appreciate the evidence and record its own findings of fact.

22. In the present case, the petitioners failed to point out any reasons or circumstances under which findings of fact recorded by the trial court and the Board of Revenue in this regard are contrary to the facts of the present case and are arbitrary. As such the submission made by the learned Counsel in this regard are rejected and the petitioner cannot derive any benefit from the judgment of Smt. Rani Devi (dead) by LRs. v. Sri 108 Puhyapadadvait Panch Parmeshwar

Panchayatiakharabara Udaseen 2009 (27) LCD 281.

23. When the above said submissions which were advanced by the learned Counsel for the petitioner on the basis of pleadings taken by him in the writ petition are rejected having no force then at this stage, learned Counsel for the petitioner made an oral arguments to the effect that while deciding the second appeal Board of Revenue (respondent No. 1) had not framed the substantial question of law and in this regard, he relied on Sub-section (4) of Section 331 of the Act, which is quoted hereinbelow:

A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under Sub-section (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

24. In support of his oral argument he relied on the following judgment : V. Ramaswamy v. Ramachandran and Anr. 2009 AIR SCW 4335 : 2009 (3) AWC 2556 (SC) and Subramaniaswamy Temple, Ratnagiri v. V. Kanna Gounder (dead) through L.Rs. 2009 (27) LCD 517 : 2008 (4) AWC 3459 , where the Apex Court held that:

The High Court, while exercising its jurisdiction u/s 100 of the Code of Civil Procedure, was required to formulate a substantial question of law which might have arisen for its consideration. No question of law was framed far less any substantial question of law relating to identification of the property. The High Court, therefore, in our opinion completely misdirected itself in passing the impugned judgment.

25. Petitioner's counsel was asked to refer the pleading in the writ petition in support of his oral arguments but learned Counsel for the petitioner could not point out a single paragraph in the writ petition where the petitioner has taken the said plea that while deciding the second appeal the Board of Revenue should have framed the substantial question of law as per the provisions of Sub-section (4) of Section 331 of the U.P. Z. A. and L. R. Act. In view of the above discussion as there is no specific pleadings in this regard in the writ petition thereby challenging the Judgment passed by the Board of Revenue on the said ground the oral argument raised by the learned Counsel for the petitioner cannot be entertained as per the law as laid down by the Apex Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, has held that:

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ

petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable.

26. This Court in the case of Madhav Singh, Jahir Singh and Ravendra Singh Vs. The Deputy Director of Consolidation and Others, , where it was held that:

Petitioner counsel was asked to refer the pleading in the writ petition in support of his oral arguments but learned Counsel for petitioner could not point out a single paragraph in the writ petition where the petitioner has challenged the findings of Deputy Director of Consolidation that Will in favour of contesting opposite parties is proved.

27. However, in view of law as laid down by the Hon"ble Supreme Court in the case of v. Ramaswamy (supra) and Subramaniaswamy Temple, Ratnagtri (supra) and keeping in view the provisions of Section 331 (4) of the U.P. Z. A. and L. R. Act, read with Section 100, C.P.C. which provides that while deciding the second appeal Board of Revenue has to frame the substantial question of law and as the same had not been done in the present case, in these circumstances the judgment and order dated 19.5.2001, passed by the opposite party No. 1 is set aside and the matter is remanded back to the Board of Revenue to decide the same after framing substantial question of law expeditiously say within a period of six months from the date of production of certified copy of this order before him in view of the observation made hereinabove.

28. Accordingly, writ petition is allowed.

No order as to cost.