
(1990) 10 AHC CK 0054

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13618 of 1985

Mohd. Raza

APPELLANT

Vs

Deputy Director of Consolidation and Another

RESPONDENT

Date of Decision : 01-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(2), 48, 9(1), 9(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 210

Citation : (1990) 1 AWC 605 : (1990) RD 165

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

Bench : Single Bench

Advocate : W.H. Khan, for the Appellant; R.C. Gupta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—By the present writ petition under Article 226 of the Constitution of India the order dated 15-7-85, passed by the Deputy Director of Consolidation, Banda, u/s 48 of the U.P. Consolidation of Holdings Act (for short "the Act") is sought to be quashed by a writ of certiorari.

2. The factual position is that in the basic year Petitioner was entered over the plots in dispute and is in possession for the last 20 years. After the extracts from the records were issued as provided u/s 9(1) of the Act, Respondent No. 2, the main tenant filed an objection u/s 9(2) of the Act within 21 days before the Asstt Consolidation Officer disputing the correctness of the entries in favour of the Petitioner and alleging that the entries of the Petitioner were fictitious and forged and were prepared against the provisions of law and in fact Respondent No. 2 was a Sirdar and now Bhumidhar of the land in dispute and in the remarks column the entries of the name of the Petitioner were not made in accordance with law nor he has any knowledge about the entries being made in favour of the Petitioner as Sirdar, and that the name of the Petitioner may be expunged from

the revenue record and that of Respondent No. 2 may be entered as Sirdar/ Bhumidhar.

3. The Petitioner on the other hand filed an objection that the entries in the remark column made in their favour are correct and in accordance with the law. The Petitioner was in continuous possession for more than the prescribed period and no suit for ejectment was filed u/s 209 (Two hundred and Nine) of the U.P. Zamindari Abolition and Land Reforms Act, and he has right u/s 210 of the Act and the objection of Respondent No. 2 deserves to be dismissed and the basic year entries in the name of Petitioner may be maintained.

4. The Consolidation Officer by his order dated 14-7-79 (Annexure-I) rejected the claim of the Petitioner but his appeal u/s 11(2) of the Act was allowed by the Settlement Officer Consolidation by the order dated 9-10-79 (Annexure-II) and the revision of the Respondent No. 2, u/s 48 of the Act was allowed by the impugned order and the order passed by the Settlement Officer Consolidation was set aside. Against this order dated 15-7-85 the present writ petition has been filed.

5. Learned Counsel for the Petitioner has urged that the entries in the revenue papers were prepared in the name of the Petitioner in accordance with law, particularly in accordance with the procedure provided under paragraphs A-80, A-81 and 423(5) of the U.P. Land Records Manual and that oral evidence led by the Petitioner was not considered hence the impugned order cannot be sustained as there was manifest error apparent on the face of the record. Reliance was placed on Mahabir v. Deputy Director of Consolidation 1974 URC 674 ; Paras Nath v. Wajiul Hasan, Unreported Revenue Cases 615 (DB); Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, and Bramhanand Rai and Another Vs. Dy. Director of Consolidation, Ghazipur and Others, .

6. Learned Counsel for Respondent No. 2 on the other hand urged that it has been held under the impugned order that the remark column entries, in favour of the Petitioner, the claimants of right u/s 210 of the U.P. Zamindari Abolition and Land Reforms Act were not made after following the procedure prescribed and the triplicate P.A. 10 notices as required by the provisions of Para A-80 and A-81 and Para 423(5) of the U.P. Land Records Manual (as they stood on the relevant date), were not served on the main tenant, the Respondent No. 2, before passing the order dated 4-3-62 directing the entries in Varg 9 to be made in favour of the Petitioner. In view of the procedure under Paras A-80 and A-81 read with para 423(5) it is obvious that the Supervisor Kanungo shall proceed to make entries in class 9 of the triennial Khatauni and sign and date the same. The Lekhpal shall prepare extracts of the entries to the Khatauni made by the Supervisor Kanungo and deliver them to the recorded tenure holder or tenure-holders, Chairman and the Land Management Committee and also to the person or persons ordered to be recorded in class 9 of the Khatauni. This procedure was not followed hence the entries in Varg 9 in favour of the Petitioner has no evidentiary value or could be said that those entries exist in favour of the Petitioner and such entries, if

any, having been prepared against the provisions of law would not confer any right on the Petitioner or they can extinguish the right of Respondent No. 2.

7. As regards the consideration of oral evidence by the Deputy Director of Consolidation it was urged that the material oral evidence consisting of Mohd. Raza the Petitioner and that of Respondent No. 2 Akbar have been considered by the Deputy Director of Consolidation as is obvious from the discussion made in the last but one paragraph of the impugned judgment (Annexure-III to the writ petition) and the cases were relied upon including Bramhanand Rai and Anr. v. Deputy Director of Consolidation, Ghazipur and Ors. (DB) (Supra) in which reliance was placed on the earlier Division Bench Case of Paras Nath v. Wajiul Hasan 1974 URC 615, it was observed that in that case the Deputy Director of Consolidation did not appear to have considered oral evidence at all in that event interference can be made.

8. In Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, the relevant ratio is:

If it appears that a court of fact has in substance based its findings on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established.

8. Similarly in Mahabir v. Deputy Director of Consolidation 1974 URC 614, the ratio laid down was that when the Deputy Director of Consolidation has ignored the material oral evidence in the case, his order cannot be sustained. In the present case the material oral evidence has earlier been considered by considering the statement of the Petitioner and Respondent No. 2. Hence it cannot be said that the material oral evidence had been ignored and, therefore, even in accordance with the dictum laid down in the Cases relied upon by the learned Counsel for the Petitioner it cannot be said that the Deputy Director of Consolidation in the present case has ignored the oral evidence or any material evidence. Reliance was placed on Ram Sakal v. State of U.P. 1987 RD 264, Ganga Ram v. D.D.C. 1982 RD 1, Srinath v. Dy. Director of Consolidation 1983 RD 53, and Sheo Shanker v. Deputy Director of Consolidation, Allahabad, Camp at Basti 1984 AWC 257. For the proposition that in case the entries in the remark column under Varg 9, have not been prepared in view of paras A-80 and A-81 and para 423 (5) of the U.P. Land Records Manual (as the provisions stood on the relevant date) no reliance can be placed on such entries nor those entries can confer any rights on the Petitioner and also on the point that non referring of the oral evidence would not be sufficient ground for interference by this Court.

9. Having heard counsel for the parties the principal questions for determination are as to whether the entries if prepared not in accordance with the provisions of para A-80, A-81 and para 423 (5) of the Land Records Manual and if no notice were served on the main tenant, can such entries confer any right in favour of

the Petitioner and whether on the basis of such entries the right of the main tenant can come to an end. The second question is that where statements made by some of the witnesses have been considered, can it be said that oral evidence has not been considered at all, or on that basis can the impugned judgment be said to be erroneous so as to quash it.

10. In the instant case as discussed by the Deputy Director of Consolidation the Petitioner has admitted in his statement that the notices in P.A. 10 were sent to Akbar, the main tenant the Respondent No. 2, but he did not furnish them before the court. His statement has been considered. After considering the relevant procedure for issuance of P.A. 10 notice and service of the same on the main tenant, it has been held that notice as required by para A-80, A-81 and para 423 (5) of the U.P. Land Records Manual were not served on the main tenant and Varg 9 entries were prepared without following procedure prescribed by law. I am of the opinion that it has correctly been held by the Deputy Director of Consolidation that such entries have not been prepared in accordance with law, such entries which are not prepared in accordance with the law can have no evidentiary value.

11. In *Shiva Shanker v. Deputy Director of Consolidation*, 1984 AWC 257 (supra) it has been considered in detail by Hon"ble brother S.D. Agarwala, J. that in view of the provisions of para A-81 after preparing form P. A. 10, the said extracts shall be issued to the person/persons recorded in columns 3, 4 and 5 of the said Form (the main tenant) or to their heirs, if the person or persons concerned have died, obtaining their signature in the copy of the list retained by him. Another copy of the same has to be sent to the Supervisor Kanoongo who shall have to ensure that extracts have been issued in all the cases and signature of recipient obtained. In case the procedure provided have not been followed even though para A-102-C has been deleted in 1965, nevertheless Varg 9 entries cannot be treated as a valid piece of evidence to establish adverse possession, in the absence of evidence to show that form P. A. 10 had been issued and an entry had been made in the column about the issuance of such a form. I respectfully agree with those observations.

12. As regards the cases relied upon by the learned Counsel for the Petitioner suffice to say that in *Mahabir v. D.D.C*, 1974 URC 674 (supra) it was observed that in case the Deputy Director of Consolidation has ignored the material oral evidence his order cannot be sustained. It was observed that the material oral evidence of the Petitioner and Respondent No. 2 have been considered by the Deputy Director of Consolidation, so far as the same was to decide the controversy involved.

13. In *Paras Nath v. Wajiul Hasan*, 1974 URC 615 (DB) also ruled that in case the Deputy Director of Consolidation does not appear to have considered oral evidence whereas in the present case the statement of Petitioner and Respondent No. 2 have already been considered by the Deputy Director of Consolidation. Similarly in the Full Bench of *Nanha and Another Vs. Deputy*

Director of Consolidation, Kanpur and Others, , it was ruled that in case a court erroneously ignores a vital plea or material evidence which affects the result manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. In the present case the material oral evidence of Petitioner and Respondent No. 2 having been considered it cannot be said that the material evidence was not considered. This may be a different aspect that the statement of the some other witnesses was not considered I am of the view that it is not necessary that the entire evidence must have been considered. It is only the material evidence having bearing to the point involved, which requires consideration. The Division Bench case of Bramhanand Rai and Another Vs. Dy. Director of Consolidation, Ghazipur and Others, also affirmed the observations in the Full Bench case of Nanha v. D.D.C, Mahabir v. D. D. C, and Paras Nath v. Wajiul Hasan (supra) and ultimately it was ruled that none of the three consolidation authorities have considered oral evidence of the Petitioners which was of great evidentiary value. In the present case the Deputy Director of Consolidation has considered the material oral evidence of Petitioner and Respondent No. 2 hence it cannot be said that the material oral evidence had been ignored.

14. The other case in Srinath v. D.D.C, 1983 RD 53, it was held that the procedure under para A-80 and A-81 of the U. P. Land Records Manual not having been followed on the relevant date such entries cannot be relied upon and also no mention of the oral evidence which was not material would not be sufficient ground for interference in writ jurisdiction.

15. In Ganga Ram v. D.D.C. decided by Hon. K. N. Misra, J. (supra) it was held that the right of adverse possession cannot be acquired on the basis of such entries in which P.A. 10 notice were not served on the recorded tenure holder.

Similarly in Ram Sakal v. State of U.P., 1987 RD 264 it was held that entries, if not made in the revenue record in accordance with the procedure prescribed under law cannot confer any right in case P.A. 10 notice were not issued and served on the main tenant whose rights are short to be extinguished by the trespasser.

16. In view of the discussions made above I am of the view that the entries in the revenue papers in favour of the Petitioner were not prepared by following the procedure prescribed under para A-80, A-81 and para 423(5) of the U.P. Land Records Manual and P.A. 10 notice were not served on the main tenant Respondent No. 2. Such entries were of no evidentiary value and would not confer any right to the Petitioner nor they can be of any assistance leading to the extinguishment of the right of the tenure-holder, the Respondent No. 2. As regards the oral evidence of Petitioner, the person claiming right u/s 210 of the U.P. Zamindari Abolition and Land Reforms Act, and the statement of Respondent No. 2 the person who was main tenant and whose rights were tried to be proved to have come to an end u/s 210 have been considered. It cannot be said that the Deputy Director of Consolidation has overlooked or failed to consider the material

oral evidence on the record. I accordingly do not find any substance in the submission of the learned Counsel for the Petitioner and the objection of Respondent No. 2 u/s 9(2) of the Act was correctly allowed. There has been no ground made out for interference in the impugned order under Article 226 of the Constitution of India.

17. Applying priori and posteriori reasonings I am of the view that the impugned order does not suffer from any error much less the error apparent on the face of the record. The petition accordingly fails and is dismissed. In the circumstances of the case there shall be no order as to costs.