
(2011) 02 AHC CK 0086
In the Allahabad High Court
Case No : Writ C No. 24035 of 1993

Mumtaz Ali and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Forest Act, 1927 — Section 11(2), 20, 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 131A, 132

Citation : (2011) 02 AHC CK 0086

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—In spite of sufficient service, no one has appeared on behalf of Respondent No. 4. Heard learned Counsel for the Petitioners and learned standing counsel for Respondents No. 1, 2 & 3.

2. This writ petition arises out of proceedings under Forest Act relating to land situate in Tehsil Robertsganj which was initially in District Mirzapur but now it is part of District Sonbhadra. Due to peculiar position of Tehsil Duddhi and Robertsganj, Supreme Court in the authority reported in Banwasi Seva Ashram Vs. State of U.P. and Others, issued special directions regarding determination of rights of the private claimants over the land covered by notification u/s 4, Forest Act. Reference to the directions issued by the Supreme Court has also been made in this writ petition. Matter relates to two plots bearing No. 80-ka and No. 82-ka area 16 biswa and 2 bigha 8 biswas respectively situate in village Asna Bandh Pargana Agori, Tehsil Robertsganj, District Sonbhadra.

3. Sri Tahir Ali, Respondent No. 4 filed objections before Forest Settlement Officer (FSO), which were registered as Case No. 1985 of 1992. FSO decided the matter in favour of Respondent No. 4 on 25.04.1989. The said order was set aside by A.D.J., Ogra through order dated 24.04.1992 and matter was remanded

to the FSO. After remand the matter was decided by FSO on 30.06.1992. From the perusal of order dated 30.06.1992 (Annexure-I to the writ petition) it is clear that different officers had given reports in favour of different persons. Survey Niab Tehsildar reported that Petitioners were in possession for ten years, however Deputy Collector, Sri G.S. Paul found that Respondent No. 4, Tahir Ali was in possession since before 1385 Fasli. It is further mentioned in the said order that at the time of inspection made by FSO, Petitioners were found in possession over an area of 14 biswas of Plot No. 80-ka and out of total area of 2 bighas 8 biswas of Plot No. 82-ka, Petitioners were found in possession over 1 bigha and 8 biswas and remaining 1 bigha was found in possession of Tahir Ali, Respondent No. 4 and it was also found that Petitioners were unnecessarily interfering in the possession of Respondent No. 4. Ultimately Plot No. 80-ka, area 14 biswas and total area of Plot No. 82-ka, i.e. 2 bighas 8 biswas was excluded from the limits of the proposed forest u/s 11(2)(i) of Forest Act. Petitioners were declared to be bhumidhars of area of 14 biswas of Plot No. 80-ka and 1 bigha 8 biswas of Plot No. 82-ka and Respondent No. 4 was declared to be bhumidhar of Plot No. 82-ka, area 1 bigha.

4. Respondent No. 4, Tahir Ali filed appeal against the said order, which was registered as Misc. Case No. 1 of 1993. It was accompanied by delay condonation application. However the Supreme Court had directed in the aforesaid judgment of Banwasi Sewa Ashram that all the records of the cases decided by FSO should be transmitted to the appellate court. FSO had filed appeal against order dated 30.06.1995 in the form of Misc. Appeal No. 3298 of 1992. Both the appeals were heard together. Appellate court decided (allowed) the appeal through judgment and order dated 26.02.1993, which has been challenged through this writ petition.

5. Appellate court observed that in the khatauni of 1395 Fasli (there is some overwriting in the figure, it appears that initially 1385 was written thereafter "8" was converted into "9") both the plots in dispute were entered as banjar. Presiding judge of the Appellate Court in Para-7 of his judgment mentioned that he along with general inspection team inspected the plots in dispute on 22.01.1993; both the plots were found covered by agriculture or capable of agriculture. It is also mentioned that the Presiding Judge of the appellate court wrote to Commissioner/ Record Officer Kaimur, Survey Agency, Obra for making changes in the map according to the spot position and thereupon Survey Niab Tehsildar inspected the spot and submitted amended map along with his report dated 15.02.1992. Thereafter, it is mentioned in Para-8 that it was evident from record that both the plots were entered in the name of Tahir Ali under Warg-IV since 1368 Fasli. It is further mentioned that under order of Assistant Record Officer dated 06.12.1980, the name of Tahir Ali from Plot No. 80-ka and the name of Hanif (father of Petitioners) which was entered as occupant thereof were scored off and the plot was entered as banjar. From the said order and record, appellate court inferred that as far as Plot No. 80-ka was concerned, since before 1385 Fasli, the name of Respondent No. 4 was entered under Warg-IV, however

simultaneously the name of Hanif father of Petitioners was also recorded as occupant, hence both were in occupation; accordingly, both had acquired transferable bhumidhari rights over the same in view of Section 131-A of U.P.Z.A. & L.R. Act, which is quoted below:

131-A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.--Subject to the provisions of Section 132 and Section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha u/s 117 or belonging to the State Government, in the portion of district Mirzapur south of Kaimur range, other than the land notified u/s 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with non-transferable rights of such land

(proviso not relevant)

(30.06.1978 is last date of 1385 Fasli)

Ultimately, both were declared to be bhumidhar with transferable rights of Plot No. 80-ka to the extent of half share each.

6. As far as plot No. 82-ka is concerned, in Para-9 of its judgment, the appellate court held that since 1368 Fasli, the name of Tahir Ali alone was entered under Warg-IV in the revenue records and through order dated 15.11.1980 passed by Assistant Record Officer, Chopan, which was mentioned in the list (suchi) No. 3, the name of Tahir Ali was directed to be expunged and in the said order, possession of Hanif father of Petitioners was nowhere recorded. It was further observed that Petitioners could not file any documentary evidence to show that before 1385 Fasli they or their father were in possession. It was further observed that according to the Photostat copy filed by the Petitioners themselves which was of khatauni parchi in respect of Plot No. 82-ka, only the name of Tahir Ali was mentioned while on Plot No. 80-ka along with the name of Tahir Ali, the name of Hanif father of the Petitioners was also mentioned as occupant. From this fact the appellate court drew inference that before 1385 Fasli over Plot No. 82-ka, only Tahir Ali was in possession, hence he acquired transferable bhumidhari rights u/s 131-A of U.P.Z.A. & L.R. Act. In the last sentence of Para-10, it was observed that the Petitioners on the basis of their possession if any would be at liberty to seek declaration from competent court. Ultimately, it was held that Plot No. 80-ka was joint bhumidhari (transferable) of both the parties and Plot No. 82-ka was exclusive transferable bhumidhari of Tahir Ali, Respondent No. 4. The order of F.S.O. was set aside and both the plots were ordered to be excluded from the limits of the proposed forest.

7. I do not find least error in the well discussed judgment of the lower appellate court. In any case lower appellate court granted liberty to (allowed) the Petitioners to seek declaration from competent court. Since 1368 Fasli name of both the parties were entered in the revenue records in respect of Plot No. 80-ka and only the name of Respondent No. 4 was entered in respect of Plot No. 82-ka, hence lower appellate court rightly held that in respect of first plot both the

parties became joint bhumidhars and in respect of Plot No. 82-ka only Respondent No. 4 became bhumidhar.

8. Accordingly, there is no merit in the writ petition, hence it is dismissed.