

(2019) 06 UK CK 0129

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1364 Of 2017

Nakliram & Another

APPELLANT

Vs

Prem & Others

RESPONDENT

Date of Decision : 27-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Uttar Pradesh Consolidation Of Holdings Act, 1953 — Section 9, 9A, 11, 48

Citation : (2019) 06 UK CK 0129

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Parikshit Saini, M.S. Tyagi

Final Decision : Disposed Of

Judgement

Manoj K. Tiwari, J

1. This petition under Article 227 of the Constitution of India has been filed challenging the orders dated 18.05.2017, 07.08.2008 and 24.05.2005 passed by Deputy Director of Consolidation, Settlement Officer Consolidation and Consolidation Officer, respectively.

2. Petitioners and respondents are resident of Village Belda, Paragana & Tehsil Roorkee, District Haridwar. The said village was brought under consolidation by a notification issued under U.P. Consolidation of Holdings Act. Objections were invited from tenure holders under Section 9 of the Consolidation of Holdings Act, which was decided by Consolidation Officer on 24.05.2005. Feeling aggrieved by the order passed on their objection, petitioners filed an appeal under Section 11 of the Consolidation of Holdings Act, which was dismissed by Settlement Officer Consolidation vide judgment dated 22.12.2007. Petitioners thereafter filed restoration application, which was allowed by the Settlement Officer Consolidation vide order dated 07.08.2008 and his appeal was partly allowed on 07.08.2008. Eight years after the order passed by the Settlement Officer

Consolidation, petitioners filed a revision on 13.10.2016 under Section 48 of the Consolidation of Holdings Act against the order passed by Settlement Officer and the said revision was dismissed by Deputy Director of Consolidation vide order dated 18.05.2017. The orders passed by all the three Consolidation Authorities have been challenged in this writ petition.

3. According to the petitioners, they are recorded tenure holder in respect of Gata No. 567 admeasuring 4.035 hectares, however, in the survey, done by Consolidation Authorities, the area of Gata No. 567 was found to be 4.225 hectares, however, when Gata No. 567 was physically measured, then its area was found to be 4.706 hectares on the spot. The Consolidation Officer ultimately directed that the area of Gata No. 567 be recorded as 4.225 hectares. The appellate court affirmed the order passed by Consolidation Officer and directed that the area of Gata No. 567 be recorded as 4.225 hectares, as recorded in the survey. Thereafter, the revional court not only affirmed the order passed by Settlement Officer Consolidation, but also directed that the excess land of 0.481 hectares of Gata No. 567 be recorded in the name of Gaon Sabha.

4. Heard learned counsel for the parties and perused the record.

5. Hon'ble Allahabad High Court in the case of Ved Pal & others Vs Joint Director of Consolidation reported in 2004 (97) RD 12 has held that no tenure holder can claim land in excess of the area recorded in his name during settlement, unless he claims title in respect of excess land on the basis of adverse possession. Para 10, 11 and 12 of the said judgment are extracted below:-

"10. The intention of Legislature while enacting U. P. Consolidation of Holdings Act is not to authenticate entry of excess area of a particular plot of a bhumidhar unaided by any right accruing to a person otherwise than in accordance with law but to maintain correct record.

11. Notwithstanding Court's specific queries whether there is any provision under the U. P. Consolidation of Holdings Act or under the U. P. Zamindari Abolition and Land Reforms Act under which a person who is a recorded tenure holder of a particular holding with particular area could get any right of any increased area merely on the basis of a survey not supported by any law, the learned counsel for the petitioner could not point out any law on the basis of which the consolidation authorities could declare rights in favour of a person who is not claiming any right on the basis of adverse possession or otherwise under Section 9A of the U. P. Consolidation of Holdings Act, in a land which was not recorded in his name in the basic year.

12. We are governed by Constitution and the law of constitutional scheme is rule of law. Unless law so permits nobody could get any right other than the right given by law. A bhumidhar is a bhumidhar with a particular holding and his right cannot be recognised over an area more than the area of a specific plot unless he has legitimate right recognised under law as bhumidhar. Admittedly, as in the present case no adverse right was claimed by the petitioner for the, excess land

on spot verification, they cannot be recorded as bhumidhar of such excess land. They simply say that by reason of spot verification, some area is reported to have been enhanced in a particular plot should be subsumed with that area as bhumidhar and accordingly, be recorded as reported by the subordinate consolidation officer."

6. Since petitioners are in possession over the land in excess of the area recorded during settlement, therefore, they cannot claim any right over such excess land in view of the ratio of the judgment extracted above. Since petitioners are recorded tenure holder in respect of 4.225 hectares, as per the last consolidation survey made on 08.08.2003, therefore, it would be just and proper that name of the petitioners be recorded in respect of 4.225 hectares area.

7. However, the direction issued by learned revisional court to record the excess area of 0.481 hectares found in Gata No. 567 in the name of Gaon Sabha, is unjustified, therefore, the same is set aside.

8. Accordingly, the writ petition is disposed of in above terms.