
(2003) 10 AHC CK 0196
In the Allahabad High Court
Case No : C.M.W.P. No. 6075 of 1984

Pancham Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 144

Citation : (2003) 6 AWC 4983 : (2003) 95 RD 712

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Brij Bhushan Paul, for the Appellant; V.K. Singh and K.B. Garg, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—No counter-affidavit has been filed till date by any of the Respondents in spite of notice.

2. Heard counsel for the Petitioners and Sri V. K. Singh, counsel for the Gaon Sabha and perused the record.

3. This writ petition is directed against the orders dated 30.4.1983 and 18.1.1984 passed by the Tahsildar/Assistant Collector, First Class, Aligarh and the Additional Collector, Aligarh, respectively.

4. The dispute relates to abadi plot No. 65 area 6 biswa situated in village Balrampur, Pargana Ghurai, Tahsil Iglas, district Aligarh. It is alleged by the Petitioner that the said abadi plot is the ancestral property on which a pucca building exists. In the year 1970 the Petitioners applied for a declaration u/s 144 of the U.P.Z.A. and L.R. Act. Upon a report submitted by the Tahsildar, Iglas, district Aligarh dated 11.9.1970 by order dated 3.10.1970 declared the land in dispute to be agricultural land. Order dated 7.5.1971 in Case No. 2, Pancham Lal v. State and a declaration u/s 144 of the U.P.Z.A. and L.R. Act was made in

respect of the land in dispute but no copy of order has been filed with writ petition and the declaration has not been denied.

5. The Lekhpal on 30.8.1975 submitted a report that Pancham and one Kali Charan were in unauthorised possession of the plot aforesaid for the past over 12 years and the land in dispute was recorded as usar land in the revenue records but it is Gaon Sabha property. Notice in Form No. 49ka was issued to the Petitioner No. 1 who filed objection stating that the land in dispute was abadi and filed copy of khewat of 1357 fasli. In support of his case he also examined Tula Ram, Natthi Bal, Madan and Kishan Lal. Except filing of khasra, no evidence was adduced by the Gaon Sabha. It is alleged that Gaon Sabha failed to substantiate that the land in dispute was usar land and it belonged to Gaon Sabha. By an order dated 17.5.1976 passed in Case No. 479 of 1975-76, Gaon Sabha v. Pancham Lal and Ors. the Tahsildar, Iglas, district Aligarh ordered the eviction of Petitioner No. 1 and Kali Charan from the land in dispute and further ordered recovery of Rs. 20 as damages from them observing that if the Petitioner Pancham Lal and others wanted to have adjudication of their rights, title and interest in respect of the land in dispute, they may do so within a period of one month before the competent authority.

6. Aggrieved by the aforesaid order, the Petitioners preferred a revision before the Commissioner, Agra Division, Agra, who vide order dated 24.11.1976, recommended to the Board of Revenue that the revision petition may be allowed, the order of the Tahsildar dated 17.5.1976, may be set aside and the case may be remanded for decision afresh in the light of the observations made by him in order. The recommendations of the Additional Commissioner, Agra, were registered as Reference No. 707 of 1976-77, Pancham Lal v. Gaon Sabha, in the Board of Revenue. By order dated 16.12.1977 the recommendations were accepted. Revision was allowed and the order of the Tahsildar dated 17.5.1976 was set aside and the matter was remanded to the trial court for decision afresh.

7. In the meantime, after passing of the order dated 17.5.1976 the Petitioner filed a Civil Suit No. 160 of 1976 in the Court of Munsif, Hawali, Aligarh, Pancham Lal and Ors. v. Gaon Sabha and others, for a permanent injunction restraining the Gaon Sabha and the State of U.P. not to evict the Petitioners from the land in dispute which was decreed.

8. It is urged on behalf of the Petitioners that the said suit was filed in the civil court inasmuch as the property in question was an abadi plot and that the civil court had alone jurisdiction to pass an order of injunction pertaining to the abadi land. The Gaon Sabha after filing objection did not contest the matter any further. The suit was decreed ex parte vide judgment and order dated 10.2.1977. The Gaon Sabha and the State of U.P. did not file any restoration application or review application and the order of the trial court dated 10.2.1977 became final between the parties.

9. Consequent upon the order of the Board of Revenue dated 16.12.1977, the

Tahsildar Iglas, district Aligarh, resumed the trial of the case afresh. The Petitioners moved an application that in view of the order of the civil court dated 10.2.1977 the proceedings against the Petitioners were not maintainable and were liable to be dropped. But the Tahsildar vide order dated 25.9.1981, ordered that the case shall continue as the civil court has no jurisdiction to pass any order in respect of the land in dispute as it was recorded as banjar belonging to Gaon Sabha.

10. Aggrieved by the order of the Tahsildar dated 25.9.1981, the Petitioners filed Revision No. 25.9.1981 before the Additional Collector, Aligarh who vide order dated 28.7.1982 allowed the revision and remanded the case to the trial court for decision afresh in the light of the judgment of the Board of Revenue besides examining the question whether or not the land in dispute was an abadi plot and the question of jurisdiction.

11. During the pendency of the proceedings in the courts below in the year 1981, the land in dispute came under consolidation operations. The Petitioners moved an application before Respondent No. 3 that the proceedings u/s 122B of the U.P.Z.A. and L.R. Act may be abated. By order dated 25.6.1981 the proceedings in question, abated u/s 5 (2) of the U.P. Consolidation of Holdings Act, were withdrawn without giving an opportunity to the Petitioners. By order dated 30.4.1983, Tahsildar Iglas, district Aligarh, ordered eviction of the Petitioner No. 1 and Kali Charan from the land in dispute and imposed damages of Rs. 206 to be recovered from them.

12. Aggrieved by the aforesaid order, the Petitioners filed a revision which was dismissed vide order dated 18.1.1984 by the Additional Collector, Aligarh. The Petitioners filed objection before the consolidation authorities stating that the entry in the revenue records treating the plot aforesaid as usar plot was incorrect and the aforesaid plot was abadi plot. It was further prayed in the objection that the entry in the revenue records may be expunged and the plot in question may be ordered to be abadi of the Petitioners.

13. It is alleged that after due notice to the Petitioners, Pradhan of the Gaon Sabha and other concerned authorities the Assistant Consolidation Officer was directed to make local inspection and by report dated 18.8.1982 the Assistant Consolidation Officer, Iglas district Aligarh, reported that the plot in question was an abadi plot and that the entry in the revenue records recording the plot in dispute as usar land was incorrect. However, the Consolidation Officer by order dated 4.10.1981, rejected the objection of the Petitioners.

14. Aggrieved by the order of the Consolidation Officer the Petitioners filed an appeal before the Settlement Officer (Consolidation) which was allowed by order dated 19.1.1984 and the order of the Consolidation Officer was set aside directing plot No. 65 in dispute (area 6 biswas) may be recorded as abadi plot and that the entry contrary to the revenue records regarding the plot aforesaid as usar land may be expunged. Settlement Officer recorded findings of fact,

which could not be challenged further.

15. From the aforesaid facts it is evident that the decree passed by the civil court as well as by the consolidation authorities became final and the land in dispute cannot be said to be Gaon Sabha property. The judgments of civil court and Settlement Officer are binding on the parties. If plot in question was abadi the civil court had jurisdiction to grant injunction.

16. In view of the fact that the report of the Tahsildar dated 11.9.1970, report of the Assistant Consolidation Officer, Iglas, district Aligarh, dated 18.8.1982 and the final order of the Settlement Officer (Consolidation) dated 19.1.1984, the proceedings in question against the Petitioners cannot be sustained and are liable to be quashed. The proceedings are vexatious and abuse of process of law.

17. For the aforesaid reasons the proceedings u/s 122B of the U.P.Z.A. and L.R. Act were not maintainable being barred by principles of res judicata. Respondent Nos. 2 and 3 have committed an error in law in not considering the report of the Tahsildar dated 11.9.1970, order of the Assistant Consolidation Officer dated 18.8.1982 and final order of the Settlement Officer (Consolidation) dated 19.1.1984 which show that the land in dispute was abadi land. The petition is, therefore, liable to be allowed.

18. For the reasons stated above, the petition succeeds and is allowed. The impugned orders dated 30.4.1983 and 18.1.1984, are quashed. No order as to cost.