(2008) 05 AHC CK 0186

In the Allahabad High Court

Praphull Kumar Rai and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
UTTAR PRADESH LAND REVENUE ACT, 1901 — Section 231, 234, 28, 32, 40

Citation : (2008) 4 AWC 3318 Supp : (2008) 4 AWC 3318 : (2008) 105 RD 126

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri R.N. Singh, learned Senior Advocate, assisted by Sri Satish Rai, for the petitioners and Sri M.K. Gupta, learned Counsel for the contesting private respondents as well as learned Standing counsel.

2. Counter and rejoinder affidavits have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being finally decided.

3. By this writ petition, the petitioners have prayed for quashing the judgment and order dated 20.12.2006, passed by the Chairman, Board of Revenue by which order the Board of Revenue decided case Nos. 77 to 91 and 313 and 314 which were withdrawn and transferred to the Board of Revenue from the court of Assistant Record Officer Sub Divisional Officer Ballia. The dispute raised in the writ petition has a checkered history of litigation. The writ petition arises out of record operation which were initiated by issue of notification u/s 48 of the U.P. Land Revenue Act, 1901 issued in the year 1973. Objections were filed before the Assistant Record Officer by the petitioners regarding record operation with regard to several villages included in the notification with the prayer that their names be recorded as Bhumidhar in the revenue records. The contesting respondents objected to their claim and claimed themselves to be in possession of the land in dispute. An application was filed by the petitioners before the

Board of Revenue on 1.11.2004 praying for transfer of above cases from the court of Assistant Record Officer. Allegations were made in the application against the Assistant Record Officer to the effect that he is unfairly proceeding and is in influence of political leaders and the petitioners did not expect justice from Assistant Record Officer. The Board of Revenue after hering both the parties came to the conclusion that the case is very old early disposal of which is in the interest of both the parties hence, hearing may take place before the Board of Revenue itself and the records be summoned. The said order was passed on 8.12.2004. In consequence of the order dated 8.12.2004, the records were summoned. On 9.9.2005, the Board of Revenue passed an order fixing 10.10.2005 with the observation that if the applicants intend to lead any evidence they may do so. The Board of Revenue thereafter by the impugned order dated 20.12.2006 decided the cases and declared the respondents as Bhumidhar. The claim of the petitioners was rejected which order has been challenged in the present writ petition.

4. Before noticing the issues raised in the present writ petition, it is necessary to note the brief history of dispute and the earlier litigation between the parties. The petitioners'' case is that the land in dispute was situated in Pargana Garha district Ghazipur and a survey was made after 1840. The Village Umarpur Diyara revenue survey No. 19 became part of district Shahabad, State of Bihar on account of change of deep stream of river Ganges. Again in settlement year 1981-82, larger part of village Umarpur Diyara became part of district Ghazipur and smaller part remains in district Shahabad, State of Bihar. A settlement is claimed to have taken place in the year 1907 between the ancestors of petitioners, the Zamindar of district Shahabad and Secretary of State in which the petitioners were held to be occupancy tenants of the land of Umarpur Diyara on payment of annual rent of Rs. 10,000/-. Subsequently, a confirmation deed was executed again on 3.9.1919 between the Secretary of State Maharaja Keshav Prasad Singh proprietor of Dumaron estate and ancestors of the petitioners who were known as Narhi Babus. The petitioners'' case is that in the confirmation deed, the petitioners were again accepted as tenants and by which deed settlement of 40 villages were made in which Secretary of State undertook to make payment with regard to 40 villages to Maharaja Dumaraon and the petitioners'' ancestors accepted the payment of annual rent as earlier agreed. Due to change of deep stream as well as alluvial and dilluvial action of river Ganges, there was constant dispute of boundaries of State of UP and State of Bihar which in turn had been affecting the rights of tenure holders of the land. Government of India appointed Sri CM. Trivedi as Arbitrator, who submitted a report in the year 1964 recommending a fixed boundary between two States. The report was accepted and Parliament passed an Act namely; The Bihar and Uttar Pradesh (Alternation of Boundaries) Act, 1968. Section 2-C of the Act defines deep stream and Section 2-d defines as fixed boundaries. Sections 2-c and 2-d are quoted as follows:

2 (c) "deep stream", in relation to the river Ganga or the river Ghaghra, means

the deep stream thereof as verified and agreed upon by the State Governments of Bihar and Uttar Pradesh after the 30th day of September of the year preceding the year in which the appointed day falls and before the 1st day of January of the year in which the appointed day falls in default of agreement between the State Governments, as determined by such authority as may be specified by the Central Government;"

2(d) "fixed boundary" means the boundary line demarcated under the provisions of Sub-section (2) of Section 3 in relation to the river Ganga or the river Ghaghra, as the case may be;

5. According to Section 3 (2), the fixed boundary in relation to river Ganga was to be demarcated by authority appointed by the Central Government. As per schedule of 1968 Act, certain villages which fell between deep stream and fixed boundaries were transferred to the State of U.P. and certain villages were transferred from State of U.P. to State of Bihar. The land in dispute comprising in different villages is transferred territory from the State of Bihar to State of U.P. Record operations were held in the State of Bihar. Arising out of record operation started in the State of Bihar, an appeal was filed before the Commissioner, Patna. who transferred the appeal to the Commissioner Varanasi vide order dated 20.6.1971. The Commissioner Varanasi vide order dated 7.8.1978 abated the proceedings. In series of litigation arising through record and survey operation, the matter was decided by Commissioner Patna vide order dated 18.6.1985, in survey appeal No. 194 and 38 other appeals. The appeals filed by group represented by the petitioners were dismissed. Revision was filed before the Board of Revenue which was dismissed against which writ petition No. 7694 of 1989 was filed in the High Court of Judicature at Patna which writ petition was permitted to be withdrawn to enable the petitioners to move Allahabad High Court.

The notification issued u/s 48 of the UP. Land Revenue Act, 1901 was challenged by Shiv Poojan Rai and others in this Court in writ petition No. 49428 of 2005, regarding the villages mentioned at serial No. 31 to 40 of the notification dated 26.7.1973. It was claimed by the petitioners that those villages were non existent villages names of which had been supplied by the State of Bihar, whereas the land pertaining to these villages actually fell within the limits of certain other villages having different names. The writ petition was decided by this Court on 1.12.2005 allowing the same in part. The objection which was filed by the petitioners before the Assistant Record Officer has been filed as Annexure-1 to the writ petition. Objection relates to village Mauja Umarpur Diyara No. 618. It was claimed in the objection that the land of 8 other villages was included in Mauja Umarpur Diyara No. 618 names of which villages were mentioned in paragraph 2 of the objections. After tracing the history of the earlier settlements and the litigation, it was mentioned in the objection that in proceedings u/s 145 Cr.P.C, the land was attached and subsequently released in favour of the petitioners, against which order revision was filed which was dismissed by this Court. It was claimed that the name of the respondents who were recorded as Sikimidar over the plots, be expunged since they had never been in possession. It was further claimed that no survey was made during record operation and the papers which were sent from the State of Bihar did not depict the correct facts.

6. It is further claimed by the petitioners that before the Board of Revenue, an application was filed on 4.12.2006 claiming that oral evidence of petitioners was not complete hence, the matter be sent to competent court for taking evidence and thereafter the case be decided on merits. The respondents'' case as disclosed in the counter affidavit filed by them, is that there is no error in the record operation. It is claimed that in the record prepared in the State of Bihar and in the record operation, the respondents were found in possession and they were recorded as Sikimidar and on the basis of possession they became Bhumidhar and no error has been committed by the Board of Revenue in declaring the respondents as Bhumidhar. Reliance on the order of Commissioner, Patna passed in appeal dated 18.6.1985 has been placed. Khatiyan prepared by the revenue officials of the State of Bihar has also been relied where the petitioners were recorded as Sikimidar. It is also contended that in survey conducted by survey officials, the petitioners were found in possession although in the Khatauni, the name of Haridwar Rai etc. has been mentioned as the tenants.

7. Sri R.N. Singh, learned Counsel for the petitioners challenging the order of Board of Revenue contends that the Board of Revenue has declared the respondents as Bhumidhar without referring to any evidence on record, without referring to the nature of possession of the respondents and without referring to the period from which the respondents claimed possession. It is contended that Board of Revenue has illegally discarded the proceedings u/s 145 Cr.P.C. which were confirmed up to the High Court and Hon''ble Supreme court in which the petitioners were found in possession, on flimsy grounds. It is contended that the relevant materials on record including settlement of 1907 and 1919 have not been looked into. The Board of Revenue did not give opportunity to the petitioners to lead evidence whereas evidence was not even complete before the Assistant Record Officer. It is contended that the petitioners have filed only transfer application for transferring the case and there was no consent given by the petitioners for deciding the case by the Board of Revenue itself. Learned Counsel for the petitioners submits that the order of the Board of Revenue declaring the respondents as Bhumidhar is sketchy order without considering the evidence on record. It is further submitted that this Court vide its judgment dated 1.12.2005 in writ petition No. 49428 of 2005, Shiv Poojan Rai and Ors. v. State of U.P. has directed that survey operation shall be carried in accordance with survey report dated 10.12.1996 of Surveyor General which has not been adverted to by the Board of Revenue, while passing the impugned order.

8. Sri M.K. Gupta, learned Counsel appearing for the respondents refuting the

submission of the learned Counsel for the petitioners contended that Board of Revenue gave full opportunity to the petitioners and the order was passed on 8.12.2004, transferring the case to the Board of Revenue after hearing both the parties and the petitioners having submitted to the jurisdiction of the Board of Revenue, it is not open for them to challenge the order on this ground. It is further contended that Board of Revenue vide order dated 9.9.2005 granted opportunity to the petitioners to lead evidence but no evidence was led. Learned Counsel for the respondents submits that in the record prepared by the State of Bihar and order passed by the Commissioner, Patna the petitioners possession was found as Sikimidar and no error has been committed by the Board of Revenue in declaring the respondents as Bhumidhar.

9. I have considered the submissions of counsel for both the parties and perused the record.

The dispute raised in the writ petition arises out of record operation initiated by the State of U.P. vide notification dated 26.7.1973. Section 52 of the U.P. Land Revenue Act provides that Record Officer shall prepare for each village therein a map and field-book, which shall thereafter be maintained by the Collector as provided u/s 28. Section 53 provides for preparation of new records of Rights. Section 54 provides for survey, map correction, field to field Partal and test and verification of annual register. Section 54(2) provides for issue of notices to the tenure holder containing relevant extract. An objection is provided u/s 54(3) and 54(4) sub section (6) provides that record of all cases which cannot be disposed of by the Naib Tahsildar by conciliation shall be forwarded to the Assistant Record Officer, who shall dispose of the same in accordance with provisions of Sections 40, 41 or 43. Section 54(6) as well as Section 40 of the Act are as follows;

54 (6) The record of all cases which cannot be dispose of by the Naib-Tahsildar by conciliation as required by Sub-section (5), shall be forwarded to the Assistant Records Officer who shall disposed of the same, in accordance with the provisions of Section 40, 41 or 43, as the case may be, and where the dispute involves a question of title, he shall decide the same after a summary inquiry.

40. Settlement of disputes as to entries in annual register.- (1) All disputes regarding entries in the annual registers shall be decided on the basis of possession.

(2) If in the course of inquiry into a dispute under this section the Collector or the Tahsildar is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.

Section 55 of the Act provides for particulars to be stated in the list of tenants. Section 55 as substituted for the areas where UP. Zamindari Abolition and Land Reforms Act is enforced is as follows:

55. Particulars to be stated in the list of cultivators.- The registere of person

cultivating or otherwise occupying land specified in Section 32 shall specify as to each tenure-hoer the following particulars:

(a) the class of tenure as determined by the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950,

(b) the revenue or rent payable by the tenure-holder, and

(c) and other conditions of tenure which the State Government may by rules made u/s 234 require to be recorded.

Explanation.- For the purposes of this section the year for which the register is prepared shall be reckoned as a complete year.

10. The petitioners filed objection before the Assistant Record Officer, copy of which has been filed as Annexure-1, raising several objections regarding the record operation including the objection that the land which is shown to be included in the village of UP. is actually the land of other villages and the record prepared by the State of Bihar and sent to the Collector Ballia had not been correctly prepared. The objections were proceeding before the Assistant Record Officer and the order was passed by the Assistant Record Officer in the case permitting the petitioners to lead evidence at the time of hearing. Thereafter an application was filed by the petitioners for transferring the case before the Board of Revenue and Board of Revenue vide order dated 8.12.2004 withdrawn the cases from Assistant Record Officer and fixed the same before the Board of Revenue. The proceedings thereafter continued before the Board of Revenue. Although learned Counsel for the petitioners submits that petitioners did not give consent for deciding the case by Board of Revenue but in view of the fact that after the transfer was allowed and the cases were withdrawn by the Board of Revenue, the petitioners participated in the proceedings, the submission of learned Counsel for the petitioners that they did not give their consent for deciding the cases by Board of Revenue, cannot be accepted. Section 231 of 1901 Act provides that power of subordinate authority can be exercised by superior authority, more so the Board of Revenue decided to near the matter itself due to the fact that large number of parties were mere and the land involved was more than 1000 acres and the case was old one. Thus, the submission of the learned Counsel for the petitioners that the petitioners did not give consent for deciding the matter by Board of Revenue, cannot be accepted.

11. The Board of Revenue in its judgment dated 20.12.2006 recorded following findings:

This Court in writ petition No. 49428 of 2005 Shiv Poojan Rai and others decided on 1.12.2005 held that it cannot be said that umarpur Diyara was non-existing village hence, the claim of the petitioners that Umarpur Diyara was non existing village was incorrect. Village Umarpur Diyara No. 618 and Umarpur Diyara Paschimi Naubarar were not imaginary village but were real villages. The survey proceedings were initiated in the State of Bihar in 1969 in which possession of respondents were found which was confirmed by appellate and revisional court.

12. In the survey Partal, the petitioners were not found in possession. In the agreement of 1907, one of the conditions put by Maharani Smt. Bern Prasad Kunwari was that Sikimi tenant could be evicted only in the event of non payment of rents, which proved that Ram Nath and others were Sikimi tenants. Further, the agreement of 1907 and 1919 were not available on record.

13. Proceedings u/s 145 Cr. P.C. ought not to had been proceeded with since at that time, the proceedings for determination of title in survey proceedings were pending.

Ram Nath and others respondents were in possession since long period hence, they had acquired rights in the land in dispute. Thus, they were declared bhumidhar of the land in dispute and objection of the petitioners were rejected.

14. A perusal of the objection Annexure-1 to the writ petition indicates that attack of the petitioners was on the revenue record sent from the State of Bihar in the name of village Umarpur Diyara with the allegation that the land shown therein is actually land of other villages. The above objection has been rejected by the Board of Revenue relying on the judgment of this Court in Shiv Poojan Rai''s case, copy of which has been filed as Annexure-14 to the writ petition. It is useful to quote following observations of this Court in Shiv Poojan Rai''s case:

Whether the Bihar records are authentic or whether the Bihar Government had included fictitious villages in their notifications cannot be decided in this writ petition as the Bihar Government is not a party in the writ petition nor are the various tenure holders of the affected villages parties and their version has not been obtained. This Court will not be in a position to give opinion upon the authenticity of the Khatians or other records of Bihar that may have been produced before the authorities by the rival claimants more so when these records have not been filed in this Court. From what has been discussed above, it cannot be said from the material on record of this petition that the villages shown in the notification are non-existent villages but it is made clear that no finding is being given by this Court either way as the question cannot be appropriately decided in writ jurisdiction.

From the above observations, it is clear that this Court did not give any finding in the writ petition since the said question could not have been appropriately decided in the writ petition. This Court thus, did not adjudicate the issue and it was left open for the Assistant Record Officer to decide the objections on merits after looking all the evidences. The Board of Revenue erred in observing that this Court in Shiv Poojan Rai''s case had rejected the objection of the petitioners that the villages were non existent villages. Although observation was made by the Court that from the record which were brought on the record, it cannot be observed that Umarpur Diyara was a non existent village in U.P. but the said observation was on the basis of the record of that writ petition. This Court clearly clarified in the observation as quoted above that no finding is being recorded in the writ petition thus, the question was not finally adjudicated by the High Court in the writ petition and the objection raised by the petitioners in their objection Annexure-1 has not been decided on the basis of evidence on record and the Board of Revenue committed error in rejecting the objection of the petitioners only on the basis of the observations made by this Court in Shiv Poojan Rai''s case.

15. It is further relevant to note that this Court in Shiv Poojan Rai''s case has referred to and relied on the report dated 10.12.1996 of Surveyor General which report was submitted on the basis of the notification dated 13.5.1996 of the Central Government issued u/s 3(2) of 1968 Act. This Court in Shiv Poojan Rai''s case ultimately issued following directions:

The survey operations shall be carried on in accordance with the survey report copy of which was sent by the letter dated 10.12.1996 of the Surveyor General''s office annexed to the affidavit of the Additional Surveyor General. For the rest of the reliefs, the writ petition is dismissed.

16. The Board of Revenue, while passing the final order has not adverted to the report of the Surveyor General dated 10.12.1996 whereas there was clear direction of this Court that survey operation shall be carried out in accordance with survey report sent by letter dated 10.12.1996. Further more, the Board of Revenue has withdrawn the cases from the court of Assistant Record Officer and it was for the Board of Revenue to have decided all the issues raised in record operation and had to satisfy itself that survey operation was made in accordance with the report of the Surveyor General sent by report dated 10.12.1996. In the entire order of the Board of Revenue, neither the Board of Revenue has referred to the report of Surveyor General nor has recorded any finding that survey has been made in accordance with directions issued by this Court in Shiv Poojan Rai''s case. On this ground alone, the order of the Board of Revenue is unsustainable.

17. The observation of the Board of Revenue with regard to 145 Cr.P.C. proceeding is also not correct. The orders passed in proceedings u/s 145 Cr.P.C. has been brought on record. The proceedings were initiated between the parties represented by the petitioners and the respondents on a report dated 5.11.1970 with regard to transferred land. A preliminary order dated 9.11.1970 was passed and the land was attached. The Magistrate after hearing the parties vide order dated 2.1.1976 released the land in favour of the party represented by the petitioners. A criminal revision No. 126 of 1976 with other connected revisions were filed in the High Court Sugandh and Ors. v. Surendra Rai and Ors., which was dismissed by this Court on 27.3.1979 confirming the findings of Sub Divisional Officer, Ballia that the disputed land is in the possession of the second party i.e. represented by the petitioners in the present case. Again in the year 1994, the dispute arose u/s 145 Cr.P.C. In the second proceedings the Magistrate noticed the earlier proceedings and passed order u/s 145 Cr.P.C. during the pendency of the proceedings under Record operation. The order u/s 145(1)

Cr.P.C. was withdrawn on 20.10.1997, against which revision filed by the respondents was dismissed by the High Court on 11.5.1998. A SLP was also filed by the respondents group before the Apex Court, which was dismissed on 26.11.1999. The Board of Revenue made observations that the proceedings ought not to have been drawn u/s 145 Cr. P.C. When the proceedings were drawn and decided up the High Court, it was not appropriate to question the drawing of the proceeding itself. The proceedings u/s 145 Cr. P.C. in which the properties was released in favour of the group represented by the petitioners was a relevant fact. Further observation of the Board of Revenue that since the record operation was pending, proceedings u/s 145 Cr. P.C. ought not to have been drawn and were irrelevant are too wide observations to be accepted. Thus, the Board of Revenue in its order failed to consider the effect of the proceedings u/s 145 Cr. P.C.

18. With regard to the agreement of 1907 and 1919, the Board of Revenue referred to conditions of the agreement that Sikimi tenant can be evicted only on account of non payment of rent and from that concluded that respondents are Sikimi tenant but in the next line observed that agreement of 1907 and 1919 are not on the record. Both the observations and findings are self contradictory.

19. The Board of Revenue has relied on the judgment of the Commissioner Patna dated 18.6.1985 with regard to several survey operations and relied the order by which the name of the respondents were recorded as Sikimidar. However, effect and consequence of the order passed by Additional Commissioner, Varanasi dated 7.8.1978 in appeal No. 477/364 of 1969, which were transferred from Commissioner Patna to Commissioner, Varanasi vide order dated 20.6.1971, has not been considered. The Additional Commissioner by the said order abated the proceedings of appeal as well as the original proceedings of survey which was initiated under Bengal Revenue Settlement Regulations 1822. Both the above two judgments were required to be looked into in details and considered by the Board of Revenue.

20. There is also substance in the submission of learned Counsel for the petitioners that the Board of Revenue while declaring the respondents as Bhumidhar, has not recorded a finding as to from which period to which period, the respondents were in possession and what is the evidence on the record, which is being relied for such possession and in what manner the rights of Bhumidhari has been matured by the respondents. u/s 55 of the U.P. Land Revenue Act, 1901 the Record of Right is to mention the nature of tenure. The nature of tenure is to be determined in accordance with provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950. It was incumbent on the Board of Revenue to give the basis for declaring the respondents as Bhumidhar under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950, which basis is completely missing in the judgment of the Board of Revenue. From the facts brought on record, it is clear that the dispute between the parties was a long drawn dispute, which was contested at different stages and different courts.

It is also on the record that in the record prepared by the revenue officials of Bihar, which was transferred to Ballia, the petitioners'' group was mentioned as Chief tenant and the respondents were mentioned as Sikimidar. The manner of acquisition of rights of Bhumidhari by the respondents was to be more clearly considered specially when the cases from original court i.e. Assistant Record Officer were withdrawn by the Board of Revenue and the Board of Revenue was deciding the same as original proceedings.

21. In view of the foregoing discussions, the order of the Board of Revenue dated 20.12.2006 cannot be sustained and is hereby set aside. The writ petition is allowed. The matter is remitted to the Board of Revenue to decide the cases afresh. It is made clear that while deciding the matter afresh, it will be open for the Board of Revenue to give opportunity to the parties to lead further evidence and for that purpose, the Board of Revenue itself may record the evidence or direct an Assistant Record Officer/Record Officer to record evidence of the parties and remit the same to the Board of Revenue for deciding the case finally. The Board of Revenue may pass any other or further order as it deem thought fit in the facts of the present case as per the observations made above.

The parties shall bear their own costs.

