
(2014) 03 AHC CK 0170
In the Allahabad High Court
Case No : Writ-B No. 13598 of 2014

Prem Babu

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

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

Citation : (2014) 123 RD 302

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : K. Ajit, Advocate for the Appellant; Arun Kumar Srivastava, Advocate for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri K. Ajit for the petitioner and Standing Counsel for the respondents. The writ petition has been filed against the order of Consolidation Officer dated 16.5.2006 and Deputy Director of Consolidation dated 23.11.2012 by which on the basis of order passed by the Sub-Divisional Officer in the proceedings u/s 202 of UP Z.A. & L.R. Act name of the petitioner has been deleted from the land in dispute.

2. The land in dispute was recorded in the name of Rameshwar, Ram Kunwar and Prem Babu in the khatauni as asami and a suit u/s 202 of U.P.Z.A.&L.R. Act. Consolidation of Holdings Act has been filed against the petitioner and several other persons for ejectment from the land in dispute as well as similar other land. The suit was initially decreed by Sub-Divisional Officer by order dated 18.3.2006. The petitioner challenged the aforesaid order in the appeal before the Sub-Divisional Officer which was allowed by order dated 14.11.2006 and the matter was remanded to Sub-Divisional Officer for giving opportunity of hearing to the petitioner as well as other similarly situated persons. After remand the matter was tried by Sub-Divisional Officer and after giving opportunity of hearing to the parties concerned, the Sub-Divisional Officer by order dated 13.10.2008 again upheld the earlier order and directed for ejectment of the petitioner from

the land in dispute. The order of Sub-Divisional Officer dated 13.10.2008 has not been challenged by the petitioners and has become final between the parties.

3. On the basis of the order of Sub-Divisional Officer dated 8.3.2006, State of U.P. has initiated proceedings under the provisions of U.P. Consolidation of Holdings Act for deleting the name of the petitioner. The Consolidation Officer by order dated 16.5.2006 allowed the objection of State of U.P. and directed to delete the name of the petitioner and other persons from the land in dispute. The petitioner filed a revision i.e. Revision No. 136 from the aforesaid order which has been dismissed by the Deputy Director of Consolidation by order dated 23.11.2012. Hence this writ petition has been filed with the delay of 1 year and 10 days.

4. The Counsel for the petitioner submits that petitioner was not an allottee of Gaon Sabha as such he was not liable to be ejected from the land in dispute. The consolidation in the village has already been started prior to passing of the order of Sub-Divisional Officer in the year 2006, as such, the Sub-Divisional Officer has no jurisdiction to proceed in the matter and the order passed by him was without jurisdiction and is null and void. The consolidation authorities have illegally placed reliance on the order of Sub-Divisional Officer and directed for deleting the name of the petitioner.

5. I have considered the arguments of the Counsel for the petitioner and examined the record. So far as the arguments that the petitioner was as-sami of the land in dispute since 1364 F i.e. from the time of abolition of Zamin-dari which has been applied in district Rampur. By notification dated 30th June 1954, the Zamindari in district Rampur has been abolished. The consequences of abolition of Zamindari has been mentioned u/s 6 of U.P. Act No. 1 of 1951 and all rights, title and interest of intermediaries has been vested in State of U.P. free from all encumbrances and entirely a new right has been created to the tenure holders as given in section 10 to 21 of the Act. Admittedly, the petitioner was conferred the assami right and his name was recorded, as in the khatauni as filed as Annexure-1 to the writ petition.

6. The Counsel for the petitioner submits that section 131 of U.P. Act No. 1 of 1951 has been amended by notification dated 21.1.1956 and Schedule II vide Entry No. 8, section 131 has been amended which is quoted below:--

Section 131:--Sirdar--Every person belonging any of the following classes shall be called a sirdar and shall have all the rights and be subject to all the liabilities conferred or imposed upon sirdars by or under this Act; namely --

(a) every person who, on the date immediately preceding the appointed day held land as--

(i).....

(ii).....

(iii) an asami ghair dakhilkar of land other than land mentioned in clause (hay) to (kaf) of section 14 of the Act Qabza Arazi, Riyasat Rampur 1937.

7. There is nothing on record that the petitioner was asami of ghair dakhilkar land prior to abolition of Zamindari. On the other hand entry of the asami has recorded in Annexure-1 to the writ petition continued till 2006 and has never been challenged by the petitioner which shows that the petitioner was conferred asami right and not a sirdari right. This sirdari right has been conferred only to an asami of ghair dakhilkar and not to any other land. Accordingly, the right of the petitioner has not been improved as sirdar or bhumidar at any point of time.

8. So far as the order of Sub-Divisional Officer dated 13.10.2008, is concerned. This is a judgment and order in the regular proceeding u/s 202 of U.P. Act No. 1 of 1951. Which is an affect of title proceeding and will operates as res-judicata. The order has not been challenged by the petitioner and is binding upon them. In this proceeding, the Sub-Divisional Officer has already directed for ejectment of the petitioner from the land in his possession. Therefore the entry is necessarily required to be corrected by the Consolidation Officer on its basis.

9. The Counsel for the petitioner submits that as the consolidation operation was started in the village as such the order of Sub-Divisional Officer was without jurisdiction and was liable to be ignored by the consolidation authorities. The arguments in this respect cannot be accepted. u/s 5(2)(a) of UPCH Act the proceeding is required to be abated and there is no abatement. A Division Bench of this Court in Tribeni and others Vs. The State of U.P. and others, and in Jangi Lal and Another Vs. The Deputy Director of Consolidation and Others, All have held that in case the proceeding has become final in ignoring the consolidation operation then the judgment is valid and is binding upon the parties. The arguments in this respect cannot be accepted. The writ petition has no merit and it is dismissed.