(1998) 05 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4623 of 1978

Prem Pal Singh and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(1), 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 3

Citation : (1998) 05 AHC CK 0095

Hon'ble Judges : R.K.Mahajan, J

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.—This writ petition has been filed under Article 226 of the Constitution of India for issuing a writ, order or direction in the nature of certiorari quashing the order dated 9 21978, passed by Opposite Party No. 1 (Annexure III) and to issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

2. In this petition dispute started from 1963 over a question of grove which is under Bhumidhari of opposite party Nos. 4 and 5 as alleged by them which should not have the matter of consolidation proceedings started in the village when it was shown to be grove and was included in the chak allotted to the petitioner. The mistake was rectified by Settlement Officer Consolidation vide its order dated 6101993 (Annexure 4 to the writ petition) but later on opposite party Nos. 4 and 5 found difficulty in getting the order implemented. The matter went up to the Revenue Board in Second Appeal assailing the finding of the suit filed by opposite party Nos. 4 and 5, under Section 229B of the U.P. Zamindari and Land Reforms Act (hereinafter referred to as the U.P.Z.A. & L.R. Act) for declaration of title of bhumidhari in Plot No. 194 (new) (old plot No. 401). It appears that the opposite parties found difficulty in implementing the order of the settlement officer and such suit was filed under Section 229B of the U.P.Z.A. & L.R. Act. It returned a finding while dismissing the suit that it is not a "grove"

and Settlement Officer''s order is not binding as the defendant petitioners were not parties and the order of Settlement Officer is without jurisdiction (Annexure 1 to the writ petition). The matter was taken before the Commissioner and the finding of the lower court was upheld. The matter was taken to the Revenue Board on behalf of opposite party Nos. 4 and 5 by way of Second Appeal. The Revenue Board was of the view that while allowing the appeal that the decision of Settlement Officer was valid and grove could not have been formed a chak allotted to the petitioner. The Revenue Board was also of the view that the revenue courts are not to sit over the findings of the Consolidation authorities and implementing their decision and jurisdiction of the revenue court is barred. The judgment of the revenue court is Annexure 3 to the writ petition.

3. This writ petition involves a very short question that once Board comes to the conclusion that the "grove" is not subject matter under the definition of the land, then it cannot form subject matter of consolidation proceedings, under Section 3 of theU.P.ZA. &L.R. Act. The land does not include a grove land. This has been conceded by the Counsel for the petitioner also. During the course of arguments he submits that the petitioners are "Sir" of the land in dispute.

Explanation of Section 3 (i) of U.P. Consolidation of Holding Act for the purposes of this clause, holding shall not include the following:

"(i) Land which was grove in agricultural year immediately preceding the year in which the notification under Section 4 was issued."

4. It may be mentioned that the existence of jurisdictional fact is a sine qua non for attracting the jurisdiction of a Tribunal or authority which decide the matters. The foundational fact to attract the jurisdiction of the authority should be that it must be subjectmatter of consolidation proceedings. I am of the firm view that once a finding was given by the Settlement Officer during the consolidation proceedings started and there was an entry of a grove before CH Form 23 then it could not have been included in the chak of the petitioner. The intention of the legislature is not to disturb the grove. The petitioner''s Counsel Shri Srivastava has submitted the following points for consideration.

5. Sri Srivastava has firstly submitted that once title of plot No. 194 (new) (Old Plot No. 401) area was decided by the Consolidation authorities and later on a notice was not given to the petitioners at the time of setting aside the order of consolidation proceedings in Appeal No. 1610, Mahavir Singh v. Raghubar and others without notice in favour of opposite party Nos. 4 and 5. The order is nullity and not binding on the parties. He has further submitted that the opposite parties have failed to file objection under Section 11 of the U.P. Consolidation of Holdings Act. 1953 ans since objections were not filed during the consolidation proceedings it would operate as resjudicata. Section 11 A of U.P. Consolidation of Holdings Act is quoted with an advantage:

" 11A Bar on objection.No question in respect of:

(i) claims of land,

(ii) partition of joint holding, and

(iii) valuation of plots, trees wells and other improvements, where the question is sought to be raised by a tenureholder of the plot or the owner of the tree, well or other improvements recorded in the annual register under Section 10, relating to the consolidation area, (which has been raised under Section 9 or which might or ought to have been raised under that section), but has not been so raised, shall be raised or heard at any subsequent stage of the consolidation proceedings."

He has also laid emphasis of Section 21 of the U.P. Consolidation of Holdings Act. It reads as under:

"21. Disposal of objection on the statement.(i) All objections received by the Assistant Consolidation Officer shall, as soon as may be, after the expiry of the period of limitation prescribed therefore, be submitted by him to the Consolidation Officer, who shall dispose of the same, as also the objections received by him, in the manner hereinafter provided after notice to the parties concerned and the Consolidation Committee."

6. Counsel for the petitioner Sri Srivastava contended that there was no order and question of deciding any appeal did not arise by the Settlement Officer. He further stated that no notice was given and it is not binding. The learned Counsel further submits that Revenue Board''s decision is not correct as it has disturbed the concurrent findings of the two courts below. It has also did not consider the findings on the point of possession given in favour of the petitioner by the two courts below. The Revenue Board also did not consider inaction of the parties for implementation of order dated 6101968 by opposite party Nos. 4 and 5, passed by the Settlement Officer. He has relied upon so many rulings but each ruling need not be referred for the controversy as it is not relevant.

7. The respondent Counsel has cited Rishal Singh v. Board of Revenue, U.P Allahabad and others, 1970 RD 413. It has been observed that under the U.P. Consolidation of Holdings Act, 1953 under Section 49 parties cannot ask revenue court to go into merits of consolidation proceedings. Rights determined by consolidation authorities before land came to common consolidation pool are final, such rights cannot be challenged in the Civil or Revenue court. Counsel for the respondent has submitted that the remedy available was before the Consolidation authority. He has further cited Mukhtar v. Deputy Director of Consolidation, 1993 RD 457. The ratio of this ruling is that while interpreting Rule 109A of the U.P. Consolidation of Holdings Rules/1953 it is the duty of the Consolidation Authority to implement the order which has been passed under the Act and not on person in whose favour the decision is given to make an application for implementation. Then he has cited some more rulings relating correction of clerical mistake i.e. Gaon Samaj v. H.L. Bhargava, Deputy Director (Consolidation) U.P. Lucknow, 1965 RD 365, regarding the fact that clerical error or mistake can be corrected by the Settlement Officer.

8. I would mention only few rulings which has been cited by the learned Counsel for the petitioners. Kishar v. Ahmad Khan, 1962 RD 172, the ratio of this ruling is that entries made in the revenue record as a result of consolidation proceedings. The jurisdiction of Civil and Revenue courts to question their correctness is barred. Anther ruling which has been cited is Ram Saran and another v. Smt. Canga Devi, 1972 RD 251 in which it was observed that in a suit under Specific Relief Act for declaration if the relief or possession is not taken and the defendant is found in possession then the suit is barred. Both the ruling are not applicable in the facts and circumstances of the case as possession has been found by the lower authorities of opposite party Nos. 4 and 5 and this question cannot be gone into. He has cited Banshidhar v. Deputy Director of Consolidation, Lakhimpur Kheri and others, 1996 ALJ 1032 on the proposition that if the respondents here failed to raise objection under Section 9 of the U.P. Consolidation of Holdings Act, 1953, the same cannot be raised later on under Section 20 of the Act. This is also not applicable in the facts and circumstances of the case as the entries have been found to be without jurisdiction.

9. Counsel for the respondent Sri Satya Prakash submitted that Revenue Board''s decision is correct and it has given a right finding that the claim of the petitioners is barred under Section 49 of the Consolidation of Holdings Act in view of the correct final decision passed by the Settlement Officer, Consolidation dated 6101963 He further submitted that upto the stage of decision right and title i.e. CH Form 2A, CH Form 11 and CH Form 23, the opposite parties were held and recorded as tenureholder of the grove. He has submitted that a trouble started at subsequent stage of allotment of "chak" available and fixing procedure of the allotted plot was given unauthorisedly and surreptitiously by the consolidation authorities which was corrected on 6101963 in appeal vide Annexure 5 to the counter affidavit. The main submission of the learned Counsel for the respondent is that even if the suit was filed under wrong advice to get the order implemented by the Settlement Officer the title decided in favour of opposite party Nos. 4 and 5 has been concluded finally as the petitioners did not avail remedy before the Director under Section 48 of the consolidation proceedings by way of filing a revision. It is further submitted that the writ petition is barred and the matter cannot be reopened under Section 49 of the CH Act.

10. Now I would deal to the controversy on merits of the case. In my view the writ petition lacks force. The Revenue Board vide its decision dated 921978 was of the opinion that the judgment of Settlement Officer Consolidation dated 6101963 is binding upon the parties. I am not convinced by the argument of Mr. Srivastava that notice was not given to the parties. In fact the matter was brought to the notice of Settlement Officer Consolidation by way of filing the appeal and in the appeal the matter was decided and serious allegations were made vide Annexure 1.1 am also of the view that the grove could not have formed the subjectmatter of the consolidation and its entry of including in the chak of the petitioners was uItra vires to the provisions of the Act and was not binding. The entry has no force or foundation of title to attract the jurisdiction

and there was no bar to ignore such surreptitious, illegal, fake and fictitious entries. The petitioners have been hardly prejudiced who is perpetrator of the wrong in collusion with She consolidation authorities. The Consolidation Officer corrected its own record.

11. Sri Srivastava''s submission is that no objection was filed under Section 11 and, as such, it would operate as res judicata in subsequent proceedings under Section 21 (1). I am not persuaded by submission of the Counsel for the petitioners. The entry is without jurisdiction and that void order can be ignored. There is no dispute on this principle and bar of Sections 11 and 21 can be of no avail. In other words the Settlement Officer was competent to decided the same, Mr. Srivastava submitted that title proceedings became final and is also of no avail as foundation of title is missing and it means that the entry was without jurisdiction.

12. Mr. Srivastava submitted that the suit for declaration was filed by opposite party Nos. 4 and 5 and no relief was claimed for possession on this score also, the Revenue Board has committed mistake. I do not agree with the submission and reasoning. In my view once the correction was made, the opposite parties were, already in possession of the grove at the time of filing of the suit and only suit for declaration was filed for correction of wrong entries. Under Section 34 of the Indian Specific Relief Act. There was no need to claim consequental relief.

Now coming over to the scope of Section 49 of U.P. Consolidation Act which bars the jurisdiction of Civil Court and Revenue Court regarding the matters to be dealt under the U.P. Consolidation of Holdings Act. Section 49 of the U.P. Consolidation of Holdings Act is quoted with advantage:

"Bar to Civil jurisdiction.Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenureholders in respect of land lying in an area, for which a (notification) has been issued (under subsection (2) of Section 4) or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provision of this Act and no civil or revenue court shall entertain any suit or proceedings with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act)".

13. There is complete bar for civil court and revenue court to entertain or proceed with respect to any such land or with respect to any other matter for which proceedings ought to have been taken under this Act. The intention of the legislature is that when the village has been brought under the consolidation by way of notification issued under the consolidation Act the consolidation authorities are to decide the matters relating to civil jurisdiction and revenue court in order to complete the consolidation proceedings finally and expeditiously. This is a complete code itself. The remedy by way of appeal and

revision have been provided. There is no bar to avail remedy which the petitioners have failed to challenge the order of settlement officer under Section 48 of the U.P. Consolidation of Holdings Act and scope under Article 226 of Constitution of India is very limited. In writ jurisdiction the High Court would not examine the matter as a court of appeal but would only interfere by way of supervisory jurisdiction where there is a failure of justice or apparent error of law on the face of record. It appears that Revenue Board has taken pain to collect the material from the subordinate authorities to know the correct version vide Annexures 3 and 4 and which must have weighed with the Revenue Board by way of doing justice to the respondent Nos. 4 and 5 and holding that opposite party Nos. 4 and 5 have been erroneously deprived from plot No. 401.

14. In my considered view the submission of the learned Counsel for the respondent that the petitioners did not avail remedy under Section 48 of the U.P. Consolidation of Holdings Act, 1953 and as such the writ petition is not maintainable. Ordinarily writ petition is not maintainable but if there is patent error of law on the record and there is failure of justice then it is maintainable. In this case these features are not attracted. I also do not find any error of law in the judgment of Revenue Board or Settlement Officer Consolidation and requires no interference.

The writ petition is devoid of force and fails. Petition dismissed.