

(2014) 03 AHC CK 0135

In the Allahabad High Court

Case No : Consolidation Nos. 545 and 572 of 2001

Radhey Shyam etc.

APPELLANT

Vs

Balram and Others

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11, 12, 4, 48

Citation : (2014) 4 ADJ 238 : (2014) 123 RD 298

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Hari Om Singh, I.D. Shukla and S.K. Mehrotra, Advocate for the Appellant; R.N. Gupta and S.K. Mehrotra, Advocate for the Respondent

Judgement

Anjani Kumar Mishra, J.—Both these writ petitions have been filed challenging the order dated 25.6.2001 passed by the Dy. Director of Consolidation (for short, DDC). The facts in both the writ petitions being similar, the matters were heard and are being decided together. The dispute in the present writ petition relates to khata Nos. 337, 341, 350 and four plots recorded in khata No. 249 while the dispute in the connected petition relates to 4 plots of khata No. 249. In the basic year record khata No. 337 was recorded in the name of Shiv Shanker, son of Ram Kishan. Khata No. 341 was recorded in the name of Shiv Ratan, son of Gaya Prasad. Khata No. 350 was recorded in the name of Dharam Chand, son of Ram Dulare, while four plots of khata No. 249, namely, plot Nos. 55, 60, 61 and 69 were recorded in the name of Radhey Shyam and Munna Lal, sons of Sunder Lal and Sunder Lal son of Gaya Prasad. The land in dispute is situate in village Sewar, Paragana Mangalsi, tehsil Suhawal, District Faizabad.

2. In all four objections were filed u/s 9A(2) of the Consolidation of Holdings Act (for short, CH Act). Two of them were filed by the petitioner, Radhey Shyam, the third by his brother Munna Lal and the fourth by Shiv Shanker. The objection filed by Radhey Shyam and Munna Lal was barred by time while the objection filed by Shiv Shanker was within time. The case set up by the petitioner in his

objection was that the land in the aforesaid khatas was recorded in his name in 1959 Fasli over 90 bighas 19 biswas of land. These entries were both of exclusive and joint tenure. These entries continued till 1362 Fasli and in the khatauni of 1362 Fasli an amaldar amad was made of an order said to have been passed by the Assistant Consolidation Officer (for short, ACO) on 23.6.1955 on the basis of a compromise giving the rights to the opposite parties in the khatas in question. It is the case of the petitioner that this amaldar amad was made fraudulently, without any order having been passed in that regard. It was, therefore, claimed that the name of the recorded tenure holder be expunged and in their place the name of the petitioner be recorded.

3. As regards khata No. 249, the objection filed by Shiv Shanker and others was to the effect that the objectors were in possession over plot Nos. 55, 60, 61 and 69 since long; in the earlier consolidation operations a compromise was entered into between the parties on 23.6.1955 whereby the objectors were declared sirdars, amaldar amad whereof is available in the khatauni of 1362 Fasli, but the same was not incorporated in the revenue records, hence the plots in dispute be partitioned as per the compromise after expunging the name of Radhey Shyam and Munna Lal.

4. The Consolidation Officer by his order dated 18.1.1996 rejected the objections filed by the petitioner and Munna Lal but allowed the objection filed by Shiv Shanker, who by that time was deceased and was substituted by his widow Ram Rati. The basic year entry regarding plot Nos. 60 and 61 of khata No. 249 was ordered to be expunged and these plots were ordered to be entered in the name of the petitioner Radhey Shyam, and Ram Rati. It was further directed that the area of plot No. 61 be recorded as 13.10 and that plot No. 55 be recorded exclusively in the name of the petitioner.

5. Aggrieved by the order of the Consolidation Officer, four appeals were filed before the Settlement Officer, Consolidation (for short, SOC). Of these four appeals, two appeals were preferred by the petitioner, one by Munna Lal and the fourth by Smt. Ram Rati, widow of Shiv Shanker.

6. The SOC by his order dated 7.2.2001 allowed the appeals of the petitioner. The Appellate Court found that the order dated 23.6.1955, amaldar amad whereof was made on 6.8.1956, was a forged order. Even the amaldar amad was found to be doubtful. It was, therefore, directed that an area of 2-14-1/6 out of khata No. 250-, an area of 2-14-1/6 from khata No. 341 and an area of 6-2-2.1/2 from khata No. 337 be excluded from these khatas and be recorded in the name of the petitioner. It was further held that the name of the petitioner be recorded exclusively over khata No. 249.

7. Aggrieved by the order of the SOC, Revision No. 1350 was filed by Bal Ram and others. The DDC by the impugned order dated 25.1.2001 allowed the revision, set aside the order of the SOC and restored that passed by the Consolidation Officer.

8. I have heard Sri I.D. Shukla, learned Counsel for the petitioner and Sri Hari Om Singh, who appears for all the contesting respondents.

9. Learned Counsel for the petitioner has assailed the order passed by the DDC on the following points:

(a) The power to pass an order on the basis of conciliation was given to the ACO by means of Act No. VIII of 1963, whereby section 9A was incorporated in the Act. Prior to this amendment, the ACO had no power to pass an order on the basis of conciliation or compromise nor he had any power to make any amaldar amad in favour of any party, as has been done by him. In the alternative, he has further submitted that if the entry made in the CH Form No. 6, which is the basis of the amaldar amad in the khatauni of 1362 Fasli, in favour of the respondents, is accepted to be correct, even then, co tenancy could be granted to the respondents only in the four plots mentioned therein and not in the entire property of several khatas.

(b) The order passed by the DDC is beyond the scope of section 48 of the CH Act; the DDC has passed the order without reversing the specific findings recorded by the SOC and, therefore, the judgment of reversal is bad and is liable to be set aside.

(c) The petitioner was entered exclusively over the land in dispute in 1359 Fasli and, therefore, no rights could have been granted to anybody else in respect of this land. In support of this contention, he has placed reliance upon the judgment in Sitawan v. Pradeep Kumar, 2006 (101) RD 214 especially, referring to paragraph Nos. 5 and 6 of the judgment.

Sri Hari Om Singh, learned Counsel, on the other hand, submitted, that the ACO was fully competent to pass the order on the basis of a compromise between the parties in 1955. He further submits that the entry in 1359 Fasli is a rebuttable entry. Lastly, he has contended that the DDC has rightly decided the matter after having considered the facts and circumstances of the case, as also the evidence available on record. The revisional order is a perfectly correct order. It deserves to be affirmed and the writ petition deserves to be dismissed.

Thus, from the contentions as raised by the parties, the main point that arises for determination in the writ petition is as to whether the ACO was competent to pass an order on the basis of the compromise, as is alleged to have been done, on 23.6.1955. It would, therefore, be appropriate to examine the provisions of the CH Act, 1953, as they existed on 23.6.1955.

10. Section 9 of the Act at that point of time, i.e. 1955, provided for publication of corrected records. Section 10 provided for declaration regarding revision of records. Section 10A dealt with partition of holdings and the same is quoted below:

10-A. (1) Subject to such restrictions as may be prescribed, a tenure-holder entitled to any holding jointly with one or more other tenure-holders may, at any

time after the publication u/s 4, but before publication of the Annual Register u/s 9 or of the notification u/s 10, as the case may be, apply to the Consolidation Officer, that his share in the holding be separately allotted to him.

(2) Whenever an application is made by any tenure-holder under sub-section (1), the Consolidation Officer shall notwithstanding anything in section 178 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, treat the tenure-holder to be separately entitled to a portion of the following proportionate to his share therein and proceed accordingly.

11. Section 10B provided for amalgamation of holdings while the provisions of preparation of statement of plots and tenure holders was prescribed by section 11. Objections against the statement of plots and tenure holders could be filed u/s 12 of the Act. It is, in fact, section 12 which is relevant for the purposes of the dispute involved in these writ petitions and the same is extracted below:

12. (1) Any person may within 30 days of the publication of the statement prepared u/s 11 file before the Assistant Consolidation Officer an objection disputing the correctness or nature of an entry in the statement or pointing out any omission therefrom.

(2) The Assistant Consolidation Officer shall, after hearing the parties, if necessary, on the objections filed under sub-section (1) together with the views of the Land Management Committee submit his report on those objections to the Consolidation Officer who shall, except as provided in sub-section (4), dispose of the objections in the manner prescribed.

(3) The decision of the Consolidation Officer shall except as otherwise provided by or under this Act, be final.

(4) Where the objection filed under sub-section (1) involves a question of title and such question has not already been determined by a competent Court, the Consolidation Officer shall refer the question for determination to the Civil Judge having jurisdiction who shall thereupon refer it to the Arbitrator.

(5) Upon the making of reference under sub-section (4) all suits or proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in relation to same land has been raised, shall be stayed.

(6) The decision of the Arbitrator under sub-section (4) shall be final.

(Emphasis is supplied)

12. A bare perusal of section 12 of the Act reveals that once an objection was filed under sub-section (1) thereof, the ACO was required to hear the parties, if necessary and after obtaining the views of the Land Management Committee (in short, LMC) on the issue, submit his report to the Consolidation Officer, who was empowered to dispose of the objection in the manner prescribed. Sub-section (4) of section 12 provided that when an objection filed before the ACO involving question of title, which had not been already determined by a Court of

competent jurisdiction, the Consolidation Officer was required to refer the same to the Civil Judge having jurisdiction to determine the same, who, in turn, was required to refer the same to an arbitrator, whose decision was to be final as provided under sub-section (6). Thus, it is crystal-clear that the role of the ACO was limited to obtaining the views of the objector as also the Land Management Committee and therefore submitting a report along with the objection to the Consolidation Officer. The power to pass an order on the basis of conciliation or compromise was clearly not in existence in the statute book on the relevant date i.e. 23.6.1955. It has been rightly pointed by the learned Counsel for the petitioner that this provision was introduced in the statute book by means of the Act No. VIII of 1963. Since the order dated 23.6.1955 is based on an entry in the CH Form No. 6, which is the basis of the amaldar amad made on 6.8.1956, there is absolutely no doubt that the same was wholly without jurisdiction and would, therefore, confer no rights on the respondents.

13. In view of the above, the order passed by the DDC cannot be sustained and is liable to be set aside. Moreover, in view of the finding recorded that the very basis of the claim of the respondents, namely, amaldar amad in khata No. 1362 Fasli, which, in turn, was based on the entry in CH Form-6, was without jurisdiction, there appears to be no necessity to consider the other submissions made by the learned Counsel for the parties for assailing the impugned order.

14. There only remains consideration of connected writ petition filed by Balram and others, being connected Consolidation No. 572 of 2001. This writ petition pertains to plot Nos. 55, 60, 61 and 69, the case of the petitioners in this writ petition is that the Consolidation Officer had granted co-tenancy regarding plot Nos. 60 and 61 to the petitioner. The consequential appeal was dismissed by the Consolidation Officer. The DDC, it is alleged, upheld the order of the Consolidation Officer as regards plot Nos. 60 and 61, but no finding has been recorded regarding plot Nos. 55 and 69 and, therefore, the order impugned deserves to be quashed. In this connection, it is relevant to record that the aforesaid four plots were plots of khata No. 249. The SOC, while allowing the appeal, held the petitioners (in Consolidation No. 545 of 2001,) namely, Radhey Shyam, to be the owner of the khata No. 249, to the exclusion of the others. Even the claim as regards plot Nos. 60, 61, 55 and 69 is based on the entry made in CH Form-6, which has already been held to be without jurisdiction. Even the consequential amaldar amad made in khatauni of 1362 Fasli, which was made on the basis of the entry in CH Form-6, is also not sustainable. Under the circumstances, the petitioners in this writ petition [Consolidation No. 572 of 2001] are not entitled to any relief and the writ petition is liable to be dismissed. Accordingly, and for the reasons given above, Consolidation No. 545 of 2001 is allowed. The order of the DDC dated 25.6.2001 is quashed and the order passed by the SOC is affirmed. Consequently, Consolidation No. 572 of 2001 is dismissed. There will be, however No. order as to costs.