

(1989) 08 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1843 of 1979

Ram Autar and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-08-1989

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9, 9A, 9A(2)

Citation : (1990) 1 AWC 35

Hon'ble Judges : D.S. Bajpai, J

Bench : Single Bench

Advocate : V.B.L. Srivastava and P.L. Misra, for the Appellant; N.K. Saxena, for the Respondent

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—Petitioners Ram Autar and Bipat (Ram Autar has since been substituted by his legal heir Bhaggu) filed this writ petition for "issue of a writ" of certiorari modifying the Orders passed by Respondents 1 and 2 so far as it relates to recording of the name of Respondent No. 4, Kaloo, in class IX.

2. Brief facts giving rise to the writ petition are that on plot No. 167/3 situate in village Singahi, Pargana and Tahsil Patti, district Pratapgarh the name of Ram Autar and Bipat were recorded as tenure holders in the basic year. Respondent No. 4 filed an Objection u/s 9A(2) of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) claiming that the plot in dispute was abadi and may be recorded as such; expunging the name of the Petitioners. The Petitioners contested. The Consolidation Officer held the plot in dispute to be abadi. Aggrieved the Petitioners went up in appeal before the Settlement Officer Consolidation who dismissed the appeal "whereafter the Petitioners filed a revision application before the Deputy Director of Consolidation. In revision the Deputy Director of Consolidation set aside the orders" passed by the Consolidation Officer and the Settlement Officer Consolidation and remanded the matter back to the Consolidation Officer for redetermination of the issue after

giving opportunity to the parties to adduce fresh evidence. When the matter came up before the Consolidation "Officer after remand" Respondent No. 4 preferred another objection before him claiming to be Sirdar of the land in dispute on the basis of adverse possession. The Consolidation Officer by his order dated 19-9-1972 (annexure IV) upheld that objection of the Respondent No. 4 and declared him to be a Sirdar of the land in dispute. On appeal the Assistant Settlement Officer Consolidation partly allowed the Petitioners appeal and in as far as that order of the Consolidation Officer (annexure 1) was concerned he set aside the finding to the effect that the Respondent No. 4 was Sirdar and was to be entered as such in the revenue records. He, however, upheld entry of Respondent No. 4 in class IX holding him to be in possession of the land in dispute. This order of the Assistant Settlement Officer Consolidation dated 25-10-1972 has been placed on record as Annexure 2 to the writ petition. Aggrieved by the order of the Assistant Settlement Officer Consolidation (annexure 2) the Petitioners as also Respondent No. 4 preferred two revisions before the Deputy Director of Consolidation. The Deputy Director of Consolidation by his order dated 18-1-1973 (annexure 3) dismissed both the revisions and affirmed the order passed by the Assistant Settlement Officer Consolidation contained in annexure 2.

3. I have heard learned Counsel for the Petitioners. Despite due service on Respondent No. 4 neither any-one has put in appearance on his behalf nor has any counter affidavit been filed to controvert the averments made in the writ petition. Learned Counsel for the Petitioners made two fold submissions. His first contention was that since the second objection was filed after remand before the Consolidation Officer the plea of Sirdari right could not be entertained at all in view of the fact that objection had to be filed only before the Assistant Consolidation . Officer in accordance with the scheme of Section 9 of the Act. The second submission of the learned Counsel was to the effect that since claim for sirdari right made by Respondent No. 4 did not find favour with the Assistant Settlement Officer Consolidation who rejected the same by his order dated 25-10-1972 (annexure 2) the Assistant Settlement Officer Consolidation erred in directing that the order pertaining to entry of Respondent No. 4 in class IX of the Khasra be maintained inasmuch as u/s 9A of the Act only question of title had to be decided and anyone who though in possession had not established his title his name can no longer continue in the revenue records.

4. In as far as the first contention of the learned Counsel to the effect that objection could not be filed before the Consolidation Officer after remand since he was not the appropriate forum for entertaining objections there is hardly any dispute. The Consolidation Officer therefore erred in law in entertaining fresh objections. The contention of the learned Counsel is sustained.

5. The second submission of the learned Counsel is to the effect that only u/s 9A of the Act title was to be decided and no entry on the basis of possession could at all be maintained in class IX under these provisions unless the Respondent No.

4 succeeded in establishing his right and title over the land in dispute. The learned Counsel has placed reliance on a decision of this Court in the case of *Lakhan v. The Director of Consolidation U.P. Ballia 1970 AWR 592*, in which this Court held:

The Director of Consolidation has held that the Petitioner Lakhan is entitled to be recorded as tenure holder but has directed that Jamuna Singh "should be recorded in possession in class IX on the plots No. 1246, 1247, 1326, 1432, 1889, 3117, 3118, 3119 and 3121". The possession in class IX is recorded of "occupiers of land without the consent of the person entered in column 4 of the khasra". In column 4 of the khasra the name of such tenure holder is to be recorded who may be entitled to hold the tenure u/s 9A of the U.P. Consolidation of Holdings Act, the rights of the parties have to be determined and the name of the person entitled to hold the land is to be entered in the revenue records. The enquiry u/s 9A is conducted for the purpose of determining the valuation of land which different tenure holders may be entitled to. Once it is found that a particular person is the tenure holder, his name has got to be recorded. If, however, he is by reason of another's possession, found to have lost title, then his name will be expunged. It is, therefore necessary to determine whether or not the person in possession has remained in possession of the land long enough to acquire title over the land. The law does not contemplate the recording in revenue records, during consolidation proceedings, names of persons in possession who have no title to the land. What is material for consolidation operations is the title to the land and not illegal possession of the same, based on no title. The order of the Director of Consolidation, therefore, suffers from a manifest error of law.

6. Examining the submission of the learned Counsel on the law settled by this Court in Lakhan's case (*supra*) there is no dispute in as far as the questions of fact are concerned. The Assistant Settlement Officer Consolidation in his order dated 25-10-1972 (annexure-2) has categorically held that the Respondent No. 4 failed to produce any oral or documentary evidence indicating that he was in possession for a period which entitled him to perfect his rights over the disputed land as Bhumidhar and that even though he was found to be in possession at the time of Chakbandi Partal he could not establish that he was in such a possession adverse to the Petitioners for well over six years. I am of the view that in the face of finding of fact recorded by the Assistant Settlement Officer Consolidation he erred in directing the name of the Respondent No. 4 to be maintained in class IX of the Khasra on the disputed plot. The order of the Assistant Settlement Officer Consolidation suffers from manifest error of law in as much as it directed recording of the name of the Respondent No. 4 in class IX and the same cannot be sustained. The Deputy Director of Consolidation has also committed the same error by upholding the judgment and order of the Assistant Settlement Officer Consolidation.

7. In the result the writ petition succeeds and is allowed. The order of the Deputy

Director of Consolidation dated 18-1-1973 (annexure-3) and the order of the Assistant Settlement Officer Consolidation dated 25-10-1972 (annexure-2) are quashed to the extent they direct the name of Respondent No. 4 to be recorded in class IX of the khasra. The order of the Consolidation Officer dated 19-9-1972 (annexure-1) also stands quashed. Let a writ of certiorari issue accordingly. The name of Respondent No. 4, Kaloo, shall stand expunged from the revenue records. There shall be no order as to costs.