
(2016) 07 AHC CK 0045
In the Allahabad High Court
Case No : WRIT-B No. 3390 of 2015

Ram Dayal Pal

APPELLANT

Vs

Dy. Director of Consolidation Varanasi

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Citation : (2016) 132 RD 327

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Mahesh Narain Singh and M.N. Singh, Advocates, for the Appellant; C.S.C, Prakhar Tandon, Prashant, Kumar Tripathi, Rajeev Misra and S. Shekhar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—In this matter, judgment have been reserved vide order dated 14.03.2016. However, upon a mention by learned counsel for the parties, I have heard them namely Sri Mahesh Narain Singh for the petitioner and Sri Rajeev Mishra for the contesting respondents.

2. The writ petition arises out of an objection under Section 12 of the U.P. Consolidation of Holdings Act filed by the petitioner and seeks quashing of the orders passed by the Consolidation Officer, Pindra, District Varanasi, the Settlement Officer Consolidation, Varanasi and the Deputy Director of Consoliation, Varanasi on 03.10.2009, 02.02.2011 and 22.09.2014 respectively.

3. The dispute in the writ petition pertains to plot no.320/1 area 0.820 Hectares of village Ganeshpur, Pargana Shivpur, Tehsil and District Varanasi. This village came under the consolidation operations by means of a notification under Section 4 of the Act issued on 06.10.1998. In the basic year record, this land was recorded in the name of Prahlad Das.

4. The facts of the case briefly stated are that the Prahlad Das, the recorded tenure holder died on 12.02.1994. The respondents, his sons, claimed mutation

by means of an objection under Section 12 of the Act, which allowed on 21.03.1994.

5. The petitioner, on 22.08.1997, obtained a registered sale deed of the plot in question from one Rajendra Prasad. He thereafter, filed an objection under section claiming mutation on the basis of the sale deed. This objection was allowed in terms of a compromise on 20.01.1998 and the petitioner was ordered to be mutated over the land in question.

6. A time barred appeal was filed by one of the heirs of Prahlad Das on the ground that the land fell exclusively in his share and that he was not a signatory to the compromise. The Settlement Officer Consolidation, vide order dated 06.10.1998, allowed the appeal on the ground that an order for issuing proclamation was passed on 20.01.1998. The objection under Section 12 was filed on 20.12.1997. The proclamation available on record has been issued on 20.11.1997, one month before the objection was filed. It was also observed that the appellant and his brothers had been mutated over the land in question and therefore they were also entitled to notice which was never issued. On these ground and the order was set aside and the matter was remanded back for decision afresh.

7. Upon remand the petitioner filed an objection for amendment of the objection. Apart from seeking incorporation of additional facts, it was also prayed that the objection be treated also as one under Section 9-A(2) and that this Section be also incorporated in the objection.

8. This amendment application was directed to be considered at the time of final hearing. Thereafter as many as six issues were framed by the Consolidation Officer. The first issue framed, was as regards maintainability of the objection itself. The second issue framed was whether the objection was barred by Section 11 and 49 of the Act. The third issue framed was whether the Court was competent to decide the claim of title on the basis of sale deeds dated 03.02.1972 and 27.11.1982. Other issues were also framed.

9. The Consolidation Officer by his order dated 03.10.2009 decided the preliminary issue of the maintainability of the objection. He held that the case of the petitioner was that Prahlad Das had executed a sale deed in favour of three persons on 03.03.1972. These three persons in turn executed a sale deed on 27.11.1982 in favour of Rajendra Prasad, who in turn, sold the land in question to the petitioner by means of a registered sale deed dated 27.11.1982. The vendees of the sale deeds dated 03.02.1972 and 27.11.1982 was never recorded over the land in question and in the basic year record the land continued in the name of Prahlad Das. The vendees should therefore have filed objection under Section 9-A(2) raising their claims which they failed to do. The petitioner purchased the land from a person, who was not recorded thereon. Since his vendor should have raised a claim under Section 9A(2) on the start of consolidation operation in 1992, but he did not do so, the petitioner could not

maintain his objection in proceedings under Section 12 of the Act, wherein, only a claim arising after the unit came under the consolidation operation, could be entertained. Any claim based on a transfer which had taken place prior to the start of the consolidation operations, could not be subject matter of the proceedings under Section 12 of the Act.

10. On this ground and also on the ground that the petitioner's vendor has failed to raise his claim on the basis of the alleged sale deed executed in his favour in the year 1982, the objection was held to be not maintainable. For the same reasons, the amendment application was also dismissed, as was the objection.

11. It was however held that the objection was not barred by Section 11 and 49 of the Act.

12. Against the order dated 03.01.2009, petitioner filed appeal No.3. The Settlement Officer Consolidation dismissed the appeal on 02.02.2011 and the orders have been affirmed by the Deputy Director of Consolidation vide order dated 22.09.2014, whereby the revision No.1105/586/859 filed by the petitioner was dismissed.

13. The contention of the learned counsel for the petitioner is that Prahlad Das had executed a registered sale deed in favour of three persons on 03.02.1972. Subsequently, on 27.11.1982, these three persons sold the land in question to Rajendra Prasad. The name of Rajendra Prasad was ordered to be recorded over the land in question by means of an order passed in the year 1988 in proceedings under Section 34 of the Land Revenue Act. This order was also incorporated in the register Malikan as also in the Khatauni. The petitioner therefore acquired a valid title to the land in question and the Courts below have committed manifest illegality in rejecting this claim.

14. It is next contended that even if there was a technical defect in the objection and the objection should, in fact, have been filed under Section 9-A(2) of the Act, an amendment application in this regard was filed, after the matter had been remanded back to the Settlement Officer Consolidation. This amendment should have been allowed and in failing to allow it, the Consolidation Officer committed manifest illegality, which illegality was perpetuated by the appellate and revisional Courts.

15. It is lastly contended that the initial order of mutation passed in favour of the petitioner was a compromise order. It was alleged that this compromise was fraudulent. He therefore submits that the compromise order could have been set aside only on a finding that it was vitiated by fraud. No such finding had been returned and therefore also this order, as also the subsequent proceedings in pursuance thereof are vitiated.

16. Sri Rajeev Mishra, in rebuttal, has submitted that on the date of sale in favour of the petitioner, his vendor was not recorded over the land in question. Even the vendor of the petitioner's vendor were never recorded over the land in

question. The land, all along, continued to be recorded in the name of Prahlad Das and this entry continued in the basic year, and up to the death of Prahlad Das in the year 1994, where after his sons were mutated over the land in question.

17. The petitioner's vendor despite his name not being recorded, never claimed title to the land by means of an objection under Section 9A(2) of the Act. The petitioner cannot claim on his behalf. Rajendra Prasad has never come forward at any stage and therefore the objection filed by the petitioner has rightly been held to be not maintainable.

18. In so far as the last contention of learned counsel for the petitioner that the order of remand was illegal and therefore also the proceedings in pursuance thereof, is concerned, the same in my opinion cannot be raised in this petition. Against the appellate order of remand, the petitioner had filed a revision which was dismissed. This revisional order has not been challenge any further. Neither is it under challenge in the instant writ petition. The order of remand has therefore attained finality and cannot be reopened now.

19. The only question that survives for consideration is as to whether the petitioner can raise a claim based also on sale deeds executed in favour of his vendor and his vendor's vendor in the year 1982 and 1972 respectively.

20. It is clear from the facts noticed above that Rajendra Prasad, the vendor of the petitioner, is alleged to have acquired title to the land in question by means of a registered sale deed dated 27.11.1982. Although it is the case of the petitioner that an order for his mutation was passed in the year 1988 in proceedings under Section 34 of the U.P. Land Revenue Act, but, it is established on record that this order, even if passed, was never given effect to in the revenue records and for this reason alone, the name of Prahlad Das continued up to the basic year and beyond. This also necessarily means that the vendees of the sale deed, alleged to have been executed by Prahlad Das in the year 1972, were also never mutated over the land they are alleged to have purchased and later transferred to Rajendra Prasad.

21. In any case, since the name of Rajendra Prasad was not recorded in the revenue records in the basic year, he was necessarily required to file an objection under Section 9-A(2) of the Act in this regard. There is no dispute, as regards, the factual situation that the said Rajendra Prasad never filed any objection. His claim is therefore barred both by sections 11 and by Section 49 of the Act because as on date, the unit is no longer under consolidation operations after a notification under Section 52 was issued on 22.06.2000.

22. The petitioner claims through Rajendra Prasad. The petitioner therefore cannot get any title to the land in dispute till such time, the right of his vendor is established. His vendor admittedly, neither filed an objection nor was any order passed in his favour and as already noticed herein above, his claim, therefore is barred both of Section 11 and Section 49 of the Act. A vendor, whose his claim is

barred as aforesaid cannot transfer a better title than the one held by him. Therefore, even if the sale deed executed in favour of the petitioner is accepted, he will not get title to the land in question, thereby.

23. In such view of the matter, the Courts below have rightly decided the matter.

24. The writ petition therefore, is devoid of merits and is dismissed.