
(2016) 07 AHC CK 0027
In the Allahabad High Court
Case No : Writ-B No. 68158 of 2015

Raman Das

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2016) 6 FLT 791 : (2016) 132 RD 322

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Adya Prasad Tewari, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Sri A.P. Tiwari, learned counsel for the petitioner and Sri Sanjay Goswami for the State-respondents.

2. The instant writ petition arises out of an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act and seeks quashing of the orders dated 23.04.2015, 28.09.2015 and 04.12.2015 passed by the Consolidation Officer, Settlement Officer Consolidation and the Deputy Director of Consolidation.

3. The dispute in the writ petition pertains to six plots namely, 446 area 1.214 hectares, 750/1M area 58.437 hectares, 418 area 9.827 hectares, 438 area 11.817 hectares, 443 area 0.324 hectares and 750M area 14.269 hectares of Khata no.755, total area 94.988 hectares, situated in village Khuthan Khas, Tappa Khuthan, Pargana Haveli, Tehsil Sadar, District Gorakhpur.

4. It is alleged that the aforesaid land was the grove land of one Gabboo Lal, Zamindar. The grove consisted of Sakhu trees. The trees were cut four years before the abolition of the Zamindari and land was put to cultivation. On the date of vesting, land being khudkast of the Zamindari, he became bhumidhar under Section 18 of the U.P.Z.A. & L.R. Act. The petitioner in the instant writ petition is the grand son of Gabboo Lal.

5. It is the case of the petitioner that in the first round of consolidation operations, which commenced sometime in the year 1955-56, an objection was filed by the petitioner seeking title to the land. The proceedings were contested by the Forest Department claiming that it was forest land in view of notification under Section 4 of the Indian Forest Act issued on 19.05.1954.

6. The notification under Section 4 of the Act was denied and the benefit of Section 18 of the U.P. Zamindari Abolition and Land Reforms Act was claimed on behalf of the petitioner. Since the objection was one under Section 12 of the old U.P. Consolidation of Holdings Act, the matter was referred to the Civil Judge, who framed issues and referred the matter to the arbitrator. The Arbitrator pronounced an award on 16.01.1970 which was remitted to the Civil Judge who by an order dated 11.11.1970 made the arbitration award rule of the Court.

7. The appeals filed by the State under Section 39(1)(VI) of the Indian Arbitration Act was dismissed by the order dated 25.08.1971. This order has become final and was duly given effect to in the revenue records.

8. Subsequently, proceedings under Section 33/39 of the U.P. Land Revenue Act were initiated and by an ex-parte order passed without any notice or information to the petitioner, his name was ordered to be expunged. The revision filed against this order was abated when the village was brought under consolidation operations for the second time.

9. Upon a report made, the Deputy Director of Consolidation, vide order dated 11.10.1993, ordered the name of the petitioner to be expunged again. Even this order was passed without any notice or information to the petitioner. The petitioner filed writ petition before this Court which were allowed on 28.10.1993. The order expunging the name of the petitioner was set aside and the State authorities were directed to proceed afresh after giving a notice to the petitioner stating the grounds on which his name was sought to be expunged, whereupon the matter was to be decided, after hearing the parties. A further direction was issued that in the meantime, possession of the land be restituted. In pursuance of this direction of the writ court, the petitioner is alleged to have been obtained possession on 22.06.1994.

10. The Deputy Director of Consolidation, vide order dated 10.03.2015, remanded the matter to the Consolidation Officer to decide the dispute after inviting objections under Section 9A(2) of the Act.

11. This order of remand was challenged by the petitioner by means of a writ petition, wherein further proceedings were stayed vide interim order dated 22.04.2015.

12. The Consolidation Officer by his order dated 23.04.2015 dismissed the objection filed by the petitioner, despite the existence of the interim order. Subsequently the writ petition wherein the interim order has been granted was dismissed as infructuous, as the Consolidation Officer had already decided the

matter, pursuant to the order of remand.

13. The petitioner thereafter preferred an appeal against the order of the Consolidation Officer dated 23.04.2015 which was dismissed on 14.05.2015. The consequential revision of the petitioner was also dismissed.

14. In the meantime, the petitioner appears to have preferred yet another objection under Section 9A(2) of the Act which was dismissed in default and the restoration application was also dismissed as also the consequential revision. Both the aforementioned appeals and revisions were dismissed by common orders.

15. The impugned orders are, therefore, challenged on the ground that the Deputy Director of Consolidation had wrongly remanded the matter to the Consolidation Officer, especially since he had been directed by the writ Court to decide the issue himself.

16. The second ground taken is that the Consolidation Officer on remand, illegally, decided the matter despite the proceedings having been stayed by the High Court. The order of the Consolidation Officer was also passed without opportunity of hearing.

17. The third ground is that the award of the arbitrator was made Rule of the Court and the said order having attained finality, was duly implemented in the revenue records. The title proceedings which attained finality during the first round of consolidation operations, could not have been re-opened in the second round of consolidation operations.

18. The next contention of the learned counsel for the petitioner is that the notification under Section 4 of the Indian Forest Act 1927 issued in the year 1954 was vague as it did not mention the plot numbers and the land in issue was shown as the southern boundary of the land notified under Section 4 of the Forest Act.

19. It is lastly contended that the findings/observations made in the impugned orders that the matter had been referred to the arbitrator in the year 1967-68 is factually incorrect. The reference was made in the year 1957. In any case, no reference could be made as this provision of reference stood deleted in view of the amendment made in the U.P. Consolidation of Holdings Act in the year 1963. Moreover, this plea of the reference being made in 1967 was never raised by the Forest department earlier.

20. In rebuttal, Sri Sanjay Goswami has submitted that the claim of the petitioner is based exclusively upon the arbitration award. He submits that the land in question is forest land and was not under cultivation. It was recorded as forest in the khasra, therefore relief, if any could be granted to the petitioner only under the Forest Act. He further contends that since no objection was filed, claiming rights in the land subject matter by the notification under Section 4, the claim was barred in view of Section 9 of the Indian Forest Act 1947. No new

rights can accrue in the land, subject matter of a notification under Section 4 of the Act. He therefore submits that the writ petition is liable to be dismissed.

21. In rejoinder affidavit, Sri A.P. Tiwari has submitted that the question in issue is as to whether the land in question was forest land. This aspect has not been considered by the Courts below. The Courts below have also failed to consider the effect of the award of the arbitrator which was made rule of the Court and had attained finality between the parties. He has also submitted that the land in question was not the subject matter of the notification under Section 4 of the Forest Act. He lastly submits, that in any case, a notification under Section 4 could have been issued only with regard to a forest or waste land. The land in question was under cultivation on the date of vesting and on the date of the notification under Section 4 of the Forest Act.

22. I have considered the submissions made by learned counsel for the parties and have perused the record, which reveals that the claim of the petitioner is primarily based upon the award of the arbitrator made in proceedings under Section 12 of the unamended U.P. Consolidation of Holdings Act.

23. It is admitted on record that the notification under Section 4 of the Indian Forest Act, 1927, was issued on 19.05.1954. It is the admitted case of the petitioner that the objection under Section 12 of the Act which was referred to and was decided by the arbitrator and subsequently made rule of the Court was filed after the start of the Consolidation operations in 1955-56.

24. It is no doubt true that the objection of the petitioner was referred to the arbitrator who decided in his favour and the said order has attained finality and has also been implemented in the revenue records, yet, the question for consideration is as to whether the Consolidation courts were competent to decide the controversy, once the land had been notified under Section 4 of the Forest Act and also whether it was only the Forest settlement officer who could have considered and decided the claim of the petitioner.

25. In case, the consolidation Courts could not have entertained the objection, once the notification under Section 4 of the Forest Act had been issued, the award of the arbitrator, which has no doubt attained finality, would still be of no help to the petitioner, since it would be wholly without jurisdiction and therefore void-ab-initio. Moreover, if this issue is decided against the petitioner, the ancillary issue as to whether the reference was made in the year 1967 or in the year 1957 would also be immaterial.

26. In the above context, it would be relevant to refer to the various provisions of the Indian Forest Act 1927.

27. Section 3 of the Act empowers the State Government to constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, a reserved forest. This section in its application to the State of U.P. has been amended by U.P. Act No.23 of 1965 with

effect from 23.11.1965. By this amendment, any land which is comprised in any holding or village Abadi cannot be constituted reserved forest. Since the notification under Section 4 of the Act in the instant case was made in the year 1954, this provision as amended by Act No.23 of 1965 is not applicable in the instant case and it necessarily follows that prior to the U.P. amendment of the year 1965, even land which comprised in any holding or a village Abadi would also be constituted a reserved forest.

28. Section 4 of the Act provides that once a decision is taken to constitute any land, a reserved forest, a notification has to be issued by the State Government. The explanation to this Section provides that it shall be sufficient to describe the limits of the forest by roads, rivers or other well known intelligible boundaries. In the case at hand, the plot in question has been mentioned as the boundary of the area sought to be constituted as reserved forest.

29. Section 5 of the Act provides that once a notification under Section 4 has been issued, no rights shall accrue in and over the land which is comprised in the notification, except by succession or under a grant of contract in writing made by or on behalf of the Government.

30. Section 6 of the Act provides that once a notification under Section 4 has been issued, the Forest Settlement Officer is required to publish a proclamation specifying the situation and limits of the proposed forest and explaining the consequences of the notification. He has also required to fix a period within which every person claiming any right mentioned in sections 4 or 5 in the land notified, may raise a claim, specifying the nature of the right, if any claimed by him.

31. Section 7 provides that the Forest Settlement Officer shall examine the claims made before him. He shall also enquire about the existence of any rights, even if no claim has been filed under Section 6 of the Act.

32. Section 9 provides that in case, no claim has been preferred under Section 6 and no rights are found to exist in the enquiry conducted under Section 7, all rights shall be extinguished upon the publication of notification under Section 20 of the Act.

33. Section 20 of the Act provides that once the claims filed under Section 6 have been decided by the Forest Settlement Officer and the limitation provided under Section 17 for filing an appeal against the order passed by the Forest Settlement Officer has expired or the appeals filed, have been disposed of, a notification shall be published in the official gazette, specifying the limits of the forest which is to be reserved and declare the same to be reserved, from the date of the notification. It is therefore clear that irrespective of the fact as to whether or not the land in question was a forest on the date of notification under Section 4 of the Act or even if the same was under cultivation, once the notification under Section 4 was, in fact, issued, the remedy available to the petitioner lay under Section 6 of the Indian Forest Act, itself.

34. No claim was raised on behalf of the petitioner under Section 6 of the Act. Therefore, in view of Section 9 of the Act, the rights if any, of the petitioner over the land in dispute, which was comprised in the notification under Section 4 of the Act, stood extinguished.

35. It is not in issue that the consolidation operations started subsequent to the notification under Section 4 of the Forest Act. The petitioner in the writ petition has admitted that the objection before the Consolidation Courts was filed by him sometime in the year 1955-56. Therefore, the proceedings before the Consolidation Courts were wholly without jurisdiction. This view is fortified by the view taken by the Apex Court in *State of U.P. v. Deputy Director of Consolidation*, AIR 1996 Supreme Court 2432 which lays down as follows :-

" Forest Act is a complete Code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of a Civil Court."

36. Therefore and especially in view of the pronouncement of the Apex Court noticed above, this Court is constrained to hold that the proceedings before the Consolidation Officer were, without jurisdiction.

37. It is established on record that a notification under Section 4 of the Act was duly published. The same is not impugned in this writ petition. The petitioner is therefore not entitled to any relief as he has failed to raise his claim under Section 6 of the Indian Forest Act 1927. He had wrongly raised his claim before the Consolidation Courts which were not competent to deal with the same.

38. Since the orders passed by the Consolidation Authorities in the first round of the consolidation operations were wholly without jurisdiction, the petitioner cannot claim that the orders having attained finality could not be re-opened in the second round of the consolidation operations. A judgment or order which is wholly without jurisdiction and therefore void-ab-initio, can always be ignored, even in collateral proceedings. The petitioner is therefore not entitled to any benefit of the arbitration award in his favour during the first round of the consolidation operations.

39. The rights, if any, of the petitioner stood extinguished due to the failure on his part to raise a claim under Section 6 of the Forest Act.

40. The order passed by the Consolidation Officer cannot be challenged at this stage on the ground that it was passed in the teeth of an interim order because the writ petition wherein the interim order was granted, came to be dismissed as infructuous, after taking note of this order of the Consolidation Officer.

41. The contention of learned counsel for the petitioner is that since the plot in question is mentioned as the boundary of the reserve forest it would necessarily

fall outside the area sought to be constituted as reserved forest. This contention, in my considered opinion, is not liable to be accepted. A plot which is mentioned as the boundary an area sought to be constituted as reserved forest would necessarily fall within the area sought to be notified and not beyond it.

42. The writ petition is therefore devoid of merits, is liable to be and is hereby dismissed.