
(2012) 01 AHC CK 0053
In the Allahabad High Court
Case No : C.M.W.P. No. 1399 of 2012

Ramdev

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52

Citation : (2012) 4 AWC 3925

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : R.S. Shukla, for the Appellant; Tripathi B.G., D.D. Chauhan and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioner and Sri. Mishra holding brief of Sri. B.G. Tripathi learned counsel for the respondent caveator-respondent No. 6, the learned standing counsel for the State and Sri. D.D. Chauhan, learned counsel for the Gaon Sabha. The contest in this petition is very peculiar, inasmuch as, the petitioner contends, that he is in possession over the land in dispute as the land is in the shape of abadi. The Consolidation Officer passed an order on 20th of October, 1972 for recording plot No. 2386 area 19 biswas as abadi Gaon Sabha.

2. He has filed Annexure-1 to the writ petition stated to be an extract of khatauni 1378 fasli to 1380 fasli indicating the name of Smt. Marjadi Devi over the land in dispute.

3. The respondent No. 6 after 36 years filed an appeal against the said order contending that he had no knowledge of the alteration made by the Consolidation Officer and that the said plot was the bhumidhari holding of the predecessor-in-interest of the respondent No. 6 as such the same could not have been recorded as abadi which was beyond the jurisdiction of the Consolidation Officer. The

appeal was dismissed as being time barred whereafter a revision has been filed and the same has been allowed holding that on merits, the Consolidation Officer had no authority in law to change the status of the land from bhumidhari to abadi and has restored the status as was indicated in the basic year.

4. Learned counsel for the petitioner submits that there was no valid explanation for the delay nor was there any explanation worth the name as to why the appeal was filed after 36 years when the records had already been finalized and the village has been denotified u/s 52 of the Uttar Pradesh Consolidation of Holdings Act, 1953 long back. Learned counsel, therefore, submits that the consolidation authorities had become functus officio and any such proceedings are void.

5. Learned counsel for the respondent No. 6 submits that the Deputy Director of Consolidation has simply restored back the correct position and, therefore, this Court should not interfere, inasmuch as, interfering with the said order would amount to restoring back a wrong position. It has further been pointed out that the petitioner has already filed Original Suit 1838 of 2011 for an injunction on the basis of the rights so claimed.

6. Needless to mention that in view of the decision of this Court in the case of Prabhu Dayal v. Gaon Samaj, Tandarpore, 1965 ALJ 426, a suit for injunction necessarily is founded on a claim of declaration and as such the petitioner has rightly approached the civil court for the declaration of his rights as against the rights of the respondent No. 6. In the opinion of the Court, the real person aggrieved against the order would have been the Gaon Sabha. In the absence of any such petition being maintained on behalf of the Gaon Sabha, I am not Inclined to interfere at the instance of the petitioner who has already filed a suit for declaration of his rights. In view of this, so far as the claim of the petitioner is concerned, the same would be dependent on any declaration made by the civil court. The petitioner will have to first establish that the land was recorded as abadi prior to the consolidation operations or was being reflected as such in revenue records for asserting his rights.

The writ petition is dismissed.