

(1979) 08 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1127 of 1973

Ratan Singh and others

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 21-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Act, 1927 — Section 20, 3, 4

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10(2), 48, 9A(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (1979) 08 AHC CK 0039

Hon'ble Judges : R.S.Singh, J

Final Decision : Allowed

Judgement

R. S. Singh, J.

This petition has been directed against the order of the Deputy Director of Consolidation by which the revision of the petitioners was dismissed with the finding that the revenue records are correct and cannot be challenged in this Court under the U. P. Consolidation of Holdings Act after the notification under Section 20 of Indian Forest Act.

The facts of the case in brief are; that according to the case of the petitioners, the petitioner No. 1 claims himself to be sirdar in possession of Plot No. 248/5 area 43.75 on the basis of lease deed dated 15/6/1949 executed by Mathura Prasad Mukhtar on behalf of Devi Prakash Singh, Zamindar, petitioner No. 2 claims himself to be the sirdar in possession of Plot No. 330/2 para 3.50, 331/2 area 1,00,331/3 area 2.78 on the basis of lease deed dt. 33/1/1949 executed by the Zamindar and the petitioner No. 3, claims himself to be the sirdar in possession of Plot No. 332/2 area 7 acres on the basis of the lease deed dated 24/1/1949 executed by the then Zamindar.

A notification under Section 4 of the Indian Forest Act was issued on 27/3/1954 and this notification mentioned 800 acres to be as reserved forest. This area,

had, thereafter been reduced. Under Section 4 of the Indian Forest Act, only the boundaries and the areas are necessary to be given with the particulars and, therefore, there is a difference in area under Section 4 of the Indian Forest Act and under Section 20 of the Act. From the notification No. 23 (23) 135/XIV. B66 dated 30th August 1966, it appears that 770 acres land has been declared as reserved forest w. e. f. March 31, 1967.

The consolidation of holding proceeding started in the village and in the basic year Katauni, the disputed land was recorded as reserved forest. An objection was filed on behalf of the petitioners under Section 9A(2) of U. P. Consolidation of Holdings Act on the allegation that the petitioners have taken the disputed land on lease from the then Zamindar Abolition and they acquired right of sirdar on the basis of the lease after enforcement of the U. P. Zamindari Abolition and Land Reforms Act and they are in possession over the disputed land as sirdars.

The jurisdiction of the Forest Department in declaring the disputed plot as reserved forest has also been challenged. The objection of the petitioners was opposed on behalf of the Forest Department on the allegation that a proceeding for declaring the land in dispute along with other lands as reserved forest was taken in accordance with the provisions of Indian Forest Act and the disputed land was declared as reserved forest. The petitioners did not file any objection under the provisions of the Forest Act. Therefore, they have no right to challenge the declaration of reserved forest. The objection of the petitioners, claiming to be declared as sirdars, is, therefore, not maintainable.

The objection of the petitioners, claiming to be sirdars of the disputed land was rejected by the Consolidation Officer. The order passed by the Consolidation Officer was affirmed, in appeal, by the Settlement Officer (Consolidation) and in revision, by the Deputy Director of Consolidation. The petitioners have challenged the aforesaid orders before this Court.

The main contention of the Learned Counsel for the petitioners is that the disputed land was the tenancy of the petitioners and the disputed land could not have been declared as reserved forest under the Act. According to the learned counsel for the petitioners, only that land can be declared as reserved forest, which is forest land or waste land and is the property of the Government or over which the Government have proprietary rights. According to him, the disputed land was the tenancy of the petitioners and was in their possession, therefore, could not be declared as reserved forest. The learned counsel for the respondents contended that it was open to the petitioners to file objection before the Forest Settlement Officer and when once the disputed land has been declared as reserved forest, the order of the Forest Settlement Officer cannot be challenged in this proceeding.

The petitioners have filed the lease deed and also certified extracts of Khatauni of various years and the khasra to show that the petitioners are recorded as sirdars and are also in possession upto 1374 F. In support of his contention that

the disputed land was not liable to be declared as reserved forest under Section 20 of the Act, the learned counsel for the petitioners referred several provisions of the Act and the rulings on the point.

In order to consider that nature of land could be constituted and declared as reserved forest it will be relevant to refer certain provisions of the Act:

Section 3 of the Indian Forest Act:

"Power to reserve forest; The State Government may constitute any forest land or waste land or any other land (not being land for the time being comprised in any holding or grove or in any village abadi) which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Explanation: The expression "holding" shall have the meaning assigned to it in the U. P. Tenancy Act, 1939, and the expression "village abadi" shall have the meaning assigned to it in the U. P. Act 23 of 1965 Section 2 (23111965).

Section 4: Notification by State Government.(1) Whenever it has been decided to constitute any land a reserved forest, the (State Government) shall issue a notification in the (official gazette):

- (a) declaring that it has been decided to constitute such land a reserved forest,
- (b) Specifying as nearly as possible, the situation and limits of such land; and
- (c)

The words "any land" used in the Section 4 of the Act has its own significance and meaning, though which generally means any land of any type, but here its scope is limited with reference to the preceding Section 3, in which the types of land are specified in which the State Government may issue notification for preservation of reserved forests. Bare perusal of Section 3 makes it clear that it applies to two kinds of lands as mentioned therein, which can be declared as reserved forest, they are(1) forest land and (2) waste land, both belonging to the Government. There is no reference in this Section that it applies also to the private land or the tenancy land.

Now the question is where a notification is issued under Section 4 of the Act in respect of the land other than the land contemplated under Section 3 of the Act, whether the Civil Court has the jurisdiction to try a suit challenging the declaration of the State Government, declaring the land as forest land by certain notification.

In Jung Bahadur v. State 1971 A.W.R. 599, it has been held:

"The State Government, could only issue a notification as provided under Section 4 of the Act about a land described under Section 3 of the Indian Forest Act and as the land in the instant case was not of any of the two categories of land

mentioned in Section 3 of the Indian Forest Act, the State Government had no power to declare this land as a Forest land. As such, the State Government while issuing the notification under Section 4 of the Indian Forest Act travelled beyond its power and scope given under Section 3 of the Indian Forest Act and as such was a notification without authority and jurisdiction. This being the State of affairs, the Civil Court certainly had jurisdiction to try the suit and as such and the finding of the trial Court and the lower Appellate Court that the suit was worked by Section 18 (4) of the Indian Forest Act was illegal and, therefore, it cannot be maintained."

In Jagdeo v. Lauhar, 1970 A.W.R. 532 it has been held that:

"If an Abadi plot is wrongly recorded as an agricultural plot during consolidation proceeding and because of absence of knowledge of this fact by Substituted for ""Provincial Government" by A. L. O. 1937. Substituted for local Official Gazette by A. O. 1937 the real owner the entry in revenue papers remains uncorrected a suit claiming right in the Abadi plot cannot be held to be barred by Section 40 of the Act."

The case was held to be cognizable by the Civil Court. In Triloki Nath v. Ram Gopal 1974R.D. 5 it has been held that if there is a brick kiln, the consolidation authorities will have no jurisdiction to decide the title in respect of that plot because the consolidation authorities have no jurisdiction to determine any kind of title, but is limited to the right of bhumidhari, sirdari and asami. In Dhula Bhai v. State of M. P. A.I.R. 1969 S. C. 78, exclusion of jurisdiction of Civil Court has been considered in detail.

My attention was also drawn to the provisions of Section 18(4) of the Act and Section 27 (A) of the Act Section 18 (4) Appeal under Section 17:

(4) the order passed on the appeal by such officer or Court by the majority of the members of such Court, as the case may be, shall, subject only to revision by State Government, be final."

This clause is applicable where the order has been passed on the appeal. Where no appeal is preferred, as in this case, this provision will not be attracted. Section 27 (A);

"Finality of orders etc. No act done, order made or certificate issued in exercise of any power conferred by or under this chapter shall, except as therein before provided, be called in question in any Court,"

This clause will also be applicable when the subject matter in dispute will be governed by Section 3 of the Act and Forest Settlement Officer will have jurisdiction to declare such land as reserved forest.

This case rests on the determination of the fact whether the land declared as reserved forest by the notification issued under Section 20 of the Act, was the land as contemplated under Section 3 of the Act or it fall outside the scope of

Section 3. This was a jurisdictional matter and it was necessary for the Deputy Director of Consolidation to go into the matter and the Deputy Director of Consolidation was not right in rejecting the objection of the petitioners merely on the ground that notification under Section 20 of the Indian Forest Act, declaring the land as reserved forest has already been issued. In case, it is found that the land in dispute at the time then notification under Section 4 of the Act was issued, was forest land or waste land and it was the property of the Government or in which the Government have the proprietary right, in that case the notification issued under Section 20 of the Act declaring the disputed land" as reserved forest cannot be challenged in this proceeding. But in case, the disputed land was not covered by Section 3 of the Act and was the tenancy land of the petitioners and was in their cultivation, it will not be governed by the provisions of Sections 3 and 4 of the Act and any notification issued under Section 20 of the Act, declaring the land as reserved forest, will be without jurisdiction and the Civil Court or any regular Court competent to decide the title of the parties, will have jurisdiction to determine the title of the petitioners and their claim will not be barred under the provisions of the Act.

There is another aspect of the case. The U. P. Consolidation of Holdings Act applies to land, which is governed by the provisions of the U. P. Zamindari Abolition and Land Reforms Act. The land has been defined under Section 3 (5) of the U. P. Consolidation of Holdings Act as following:

"Land means land held or occupied for purposes connected with agriculture, horticulture, and animal husbandry (including pisciculture and poultry farming) and includes;

- (i) the site, being part of a holding, of a house or other similar structure, and
- (ii) trees, wells and other improvements existing on the plots forming the holdings;

The provisions of the U. P. Zamindari Abolition and Land Reforms Act nowhere says that it is not applicable to the reserved forest. The U. P. Zamindari Abolition and Land Reforms Act applies even to the land owned by the Government, may be with certain modifications. If any person occupies vacant land within the reserved forest, he will be liable for ejectment under Section 209 of the U. P. Zamindari Abolition and Land Reforms Act and even if any person has acquired any title within the reserved forest by any of the provisions of the U. P. Zamindari Abolition and Land Reforms Act, the suit will be maintainable under the provisions of the U. P. Zamindari Abolition and Land Reforms Act. Now, in this matter, any question raised by the petitioners regarding their title is liable to be considered by the consolidation authorities and their claim cannot be rejected merely on the ground that the land has been declared to be reserved forest under the Indian Forest Act.

On consideration of the entire facts and circumstances of the case and the points involved therein, the order of the Deputy Director of Consolidation cannot be

sustained in law and deserved to be quashed.

In the result, I allow this petition and the orders of the Deputy Director of Consolidation dated 1611971, Settlement Officer (Consolidation) dated 2131970 and Consolidation Officer dated 30101969 are hereby quashed and I direct the Consolidation Officer to decide the case afresh in accordance with law and in the light of the observations made above. Parties shall bear their own costs.