
(2003) 09 AHC CK 0301
In the Allahabad High Court
Case No : C.M.W.P. No. 42969 of 2003

Rizwan and Another

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122B, 209, 210

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C, 115D

Citation : (2003) 6 AWC 5065 : (2003) 95 RD 714

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : S.K. Pundir, for the Appellant; Anuj Kumar, Addl. S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Present petition has been preferred assailing the order0s dated 14.7.2003 and 29.4.2003 passed by Respondent Nos. 1 and 2 respectively.

2. The dispute in the instant petition takes within its sweep various plots, which were recorded as Gaon Sabha properties in the basic year. An objection was filed by the Petitioners u/s 9 of the U.P. Consolidation of Holdings Act claiming bhumidhari rights over the properties on the dint of adverse possession as also by relying on varg 4 entry. The Consolidation Officer who was seized of the objection allowed the same and pronounced the Petitioners as bhumidhars over plots in question vide judgment dated 22.4.1995 attended with further direction to record the names of the Petitioners as bhumidhars after expunging entry naming Gaon Sabha. Against the said judgment, appeals came to be preferred by the Gaon Sabha which culminated in being allowed and consequently, verdict rendered by the Consolidation Officer was set aside studded with direction to record entry accordingly in the relevant revenue record in relation to plots in question. This decision rendered by the Settlement Officer, Consolidation gave

rise to three revisions out of which two revisions were preferred against the appellate order, i.e., Revision No. 380/596 filed by Meharban (Petitioner No. 2) and Revision No. 376/592 preferred by Rizwan (Petitioner No. 1). These two revision came to be dismissed by means of judgment/order dated 14.7.2003, passed by Respondent No. 1. The third revision, namely, Revision No. 375/591 pertaining to khata No. 642 plot No. 2309 was allowed in part and the matter was remanded to Consolidation Officer. It is in this backdrop that the present petition has been preferred.

3. I have heard learned Counsel for the parties. I have also been taken through the materials on record and the impugned orders.

4. The learned Counsel for the Petitioners began his submission canvassing that since notices were withdrawn in proceedings arising out of Section 122B of the U.P.Z.A. and L.R. Act, authorities below manifestly erred in not declaring disputed plot as Petitioners' bhumidhari. It was further canvassed that the Petitioners had already perfected their titles over the plots on the basis of adverse possession and consequentially, have already acquired bhumidhari rights, therefore, the impugned orders passed by Respondents Nos. 1 and 2 respectively were wholly erroneous and cannot be countenanced in law. Per contra, learned Counsel representing the Gaon Sabha contended that Petitioners could not be said to have acquired any bhumidhari rights over the property in question notwithstanding varg 4 entry in their favour and relied upon Amendment effected in Section 210 of the U.P.Z.A. and L.R. Act by U.P. Land Laws (Amendment) Act, 1976.

5. Indisputably, the plots in question were recorded as Gaon Sabha property in the basic year. There are no indicia on the record to vouch for the fact that on the date of vesting of property, Petitioners or their predecessors were recorded in the revenue records. As a matter of fact, the petitions are staking their rights to the property on the dint of adverse possession and by reliance on varg 4 entry. In essence, the main plank of the argument is founded on adverse possession and on varg 4 entry and not that the Petitioners or their predecessor had their names in the relevant revenue record on or prior to vesting of the property in the Gaon Sabha u/s 117 of the U.P. Z. A. and L.R. Act.

6. In the above fact-situation, the questions that boil down for consideration are (1) whether a person in unauthorised possession of Gaon Sabha property could acquire any bhumidhari right on grounds of adverse possession, and (2) whether an order passed by the authorities in a proceeding u/s 122B of the U.P. Z. A. and L.R. Act which culminated in dropping of proceedings could amount to a declaration of bhumidhari rights?

7. As regards the first question, reference may be made to amendment in Section 210 of the U.P. Z. A. and L.R. Act made by the U.P. Land Laws (Amendment) Act, 1976. The amendment having a bearing on the answer of the first question, may be excerpted below:

For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

210. If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall:

(i) where the land forms part of the holding of a bhumidhari or sirdari become a sirdar of such land, and the rights, title and interest of an asami, if any, in such land shall be extinguished ;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, became an asami thereof holding from year to year."

8. The amendment aforesaid leaves no manner of doubt that it has been given retrospective effect the necessary implication of which is that a person having been in unauthorised possession even from the date of enforcement of the U.P. Z. A. and L.R. Act, i.e., since, 1st July, 1952, would not acquire any bhumidhari right on Gaon Sabha property. The necessary consequence that flows from this amendment in essence is that even if a person had been in actual possession for 12 years or more and even if suit u/s 209 of the U.P. Z. A. and L.R. Act had not come to be filed, any person in occupation thereof cannot acquire bhumidhari rights on the land belonging to Gaon Sabha. In the perspective of the amendment aforesaid made in Section 210 of the U.P. Z. A. and L.R. Act, the forceful contention pressed on behalf of the Petitioners who have not adduced any documentary evidence to bolster up their rights or possession prior to the date of vesting otherwise in accordance with law and have merely relied upon varg 4 entry besides oral evidence in vindication of their bhumidhari rights, will not have any cutting edge and falls to the ground. The view I am taking respecting question No. 1 is fortified by a Division Bench of this Court in *Likhi Ram alias Moola and Another Vs. State of U.P. and Others*, , in which the question raised before the Division Bench resembled the question involved in the instant petition.

9. Coming to the second question whether the rights of Petitioners could be determined in proceedings emerging from Section 122B of the U.P. Z. A. and L.R. Act and order passed therein thereby proceedings were ordered to be dropped, it is worth noticing that proceedings stemming from Section 122B of the U.P. Z. A. and L.R. Act are summary in nature and the question of fact cannot be appraised in these proceedings. The necessary consequence is that any order passed u/s 122B of the U.P. Z. A. and L.R. Act or Rule 115 C and D of the U.P. Z. A. and L.R. Rules is not capable of conferring any right on a person or a party to whom notices were issued and proceedings were initiated. The view, which I am inclined to take in this case, receives fortification from a decision in *U.P. State Sugar Corporation v. Deputy Director of Consolidation 2000 (2) AWC 933 : 2000*

(91) RD 165.

10. In the above conspectus, I would sum up that the Petitioners' mainstay for claiming bhumidhari rights is founded on ground on adverse possession and it has not been pleaded or proved that the Petitioners or their predecessors were recorded in the revenue record on or prior to enforcement of Z. A. and L.R. Act and by this reckoning, it necessarily follows that the Petitioners were in unauthorised occupation of the property vested in Gaon Sabha. In view of the amendment aforestated, the plea of possession otherwise in accordance with law cannot be invoked for claiming bhumidhari rights and in the circumstances, the objections preferred by the Petitioners rightly wrecked on disapproval of the appellate authority who justly allowed appeals and directed to record the property in dispute as Gaon Sabha property.

11. As a result of foregoing discussion, the petition fails and is accordingly, dismissed.