
(2019) 07 UK CK 0044
In the Uttarakhand High Court
Case No : Writ Petition (M/S) No. 869 Of 2003

Samay Singh

APPELLANT

Vs

Deputy Director Of Consolidation/Additional Collector,
Haridwar And Others

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Uttar Pradesh Consolidation Of Holdings Act, 1953 — Section 4
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 117, 122B,
122B(4F), 195, 198

Citation : (2019) 07 UK CK 0044

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Tapan Singh, S.R. Joshi, Sanjeev Singh, Anjali Bhargava

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. For village "Bharapur" which falls in Tehsil Roorkee, District Haridwar notification was made under Section 4 of the U.P. Consolidation of Holdings Act, 1953 and consolidation proceedings started in the village and "chaks" were allotted to the parties, regarding the land with which we are presently dealing. The matter relates to entry of two different names namely Samay Singh son of Genda and Samay Singh son of Nanak. After the allotment of chaks by the Consolidation Officer an application for correction was made by the present petitioner by saying that the name of Samay Singh son of Nanak has wrongly been entered and instead his name i.e. Samay Singh son of Genda be entered, after deletion of the name of Samay Singh son of Nanak. This application was allowed by the Consolidation Officer vide order dated 18.08.1997 and the name of Samay Singh son of Genda was entered in place of Samay Singh son of Nanak. Against this order dated 18.08.1997, an appeal was filed before the Settlement Officer Consolidation by respondent no. 2. During the proceedings

before the Settlement Officer Consolidation an alleged compromise dated 23.12.2000 was reached between the petitioner and respondent no. 1, where it was said that Samay Singh son of Nanak has agreed that the name be recorded in favour of Samay Singh son of Genda and the order passed by the Consolidation Officer dated 18.08.1997 be affirmed. On the basis of the said compromise dated 23.12.2000, the appeal filed by Samay Singh son of Genda was dismissed by the Settlement Officer Consolidation vide order dated 12.01.2001.

2. Thereafter a revision was filed by respondent no. 2 before the Deputy Director of Consolidation, Haridwar after a period of more than 10 years, against the order dated 12.01.2001 on ground that there was actually no compromise dated 23.12.2000 and the compromise was forged. The Deputy Director of Consolidation thereafter passed a detail order dated 30.08.2013 allowing the revision of respondent no. 2 and setting aside the order of the Settlement Officer Consolidation dated 12.01.2001. Aggrieved the petitioner has filed the present writ petition.

3. The undisputed facts in the present case are that both the present petitioner and respondent no. 2 belong to scheduled caste community and at the relevant time both claimed their right to remain in possession over the property being an "asami". It is an admitted position that whether it was the present petitioner or respondent no. 2, they were given plot of land by the Land Management Committee by "Gaon Sabha" under the provisions of Section 195 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. It is again an admitted position that the land can be given for a maximum period of five years. Therefore after a period of five years, if an "asami" continues on a land, he does it as an unauthorized occupant and "Gaon Sabha" can initiate proceeding under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

4. All the same, there is an exception created under sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 in favour of members of scheduled caste and schedule tribe community. Sub-section (4-F) of Section 122-B reads as under:

"122-B. Powers of the Land Management Committee and the Collector.

- (1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriate or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act, the Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2).....

(3).....

(4).... (4-A).... (4-B).....

(4-C)..... (4-D)..... (4-E).....

(4-F). Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in 132) having occupied it from before [May 13, 2007] and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.

Explanation. - The expression "agricultural labourer" shall have the meaning assigned to it in Section 198"

(emphasis provided)

5. None of the court below has actually given a finding as to which of the Samay Singh is in actual possession of the land. Sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 creates an exception in favour of members of scheduled caste or scheduled tribe community and thus whoever is eligible between the two i.e. the petitioner or respondent no. 2, is liable to get benefit of exception given under sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The only rider is that he should be an "asami" not having a total land of more than 1.26 hectares (3.125 acres).

6. Since both the petitioner as well as respondent no. 2 have made a claim that they are in occupation of the land, the matter is disposed of by giving direction to the Deputy Director of Consolidation, Haridwar to decide as to which of the two is in actual possession of the property and is hence liable to get the benefit under sub-section (4-F) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 being an agriculturist and "asami" not having more than 1.26 hectares (3.125 acres) of land. After making this determination he shall pass appropriate orders.