
(2013) 10 AHC CK 0080
In the Allahabad High Court
Case No : Writ B. No. 48419 of 2013

Sant Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 121 RD 744

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Om Prakash Mishra, for the Appellant; Manoj Kumar Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Om Prakash Mishra, Counsel for the petitioners and Standing Counsel for State of U.P. and Sri Manoj Kumar Yadav, Standing Counsel for Gaon Sabha, for the respondents. The writ petition has been filed against the orders of Additional Collector (Revenue)/District Deputy Director of Consolidation (respondent-3) dated 30.6.2006 and 27.4.2013 and order of Chief Revenue Officer, Jaunpur dated 21.7.2012, deleting the names of the petitioners from the land in dispute and recording it as talab land of Gaon Sabha and rejecting the application of the petitioners for recall of the order dated 30.6.2006.

2. In compliance of the direction issued by Supreme Court in Hindi Lal Tiwari v. Kamla Devi, 2001 (92) RD 689 (SC) as well as this Court, a special drive was conducted for making inquiry of the talab land, which were recorded on 1.7.1952. Deputy Collector, Jaunpur submitted a report dated 4.4.2006 to District Deputy Director of Consolidation, Jaunpur that 91 such files were prepared, in which land which were recorded as the talab land, on 1.7.1952 are now recorded in the names of different persons. As these villages were placed under consolidation operation as such order relating to the correction of record was required to be passed by District Deputy Director of Consolidation. The

Collector, by order dated 12.4.2006 authorized the Additional Collector (Revenue) (respondent-3) to pass suitable orders. Respondent-3, thereafter, by order dated 30.6.2006 directed for deleting the names of the petitioners from the land in dispute and recording it as talab land of Gaon Sabha. The petitioners are concerned with plot No. 826 of village Lakhauna, pargana Haweli, district Jaunpur. The names of Sant Lal (petitioner-1) was recorded over an area of 0.121 hectare, Daya Nand (father of Balendu Kumar and Shailendra Kumar, petitioners-2 and 3) was recorded over an area of 0.405 hectare, Mohan (petitioner-5) was recorded over an area of 0.049 hectare and Sahadur (petitioner-6) was recorded over an area of 0.101 hectare of plot No. 826 of village Lakhauna, pargana Haweli, district Jaunpur.

3. That the petitioners filed an application dated 27.2.2010 for recall of the order dated 30.6.2006. The petitioners have stated that the disputed land was left as "naveen parti" in the previous consolidation, held in the village. Thereafter the disputed land was allotted to them by Gaon Sabha in the year 1967 and their names were recorded as sirdar over the respective area of the land allotted to them, by the order of Sub-Divisional Officer, in the year 1967, on the basis of the pattas. The petitioners have become bhumidhar of the disputed land. The disputed land was not the talab land but "naveen parti". The recall application was heard by Chief Revenue Officer, Jaunpur, who by order dated 21.7.2012, rejected the recall application in default. The petitioners filed another application dated 24.7.2012 for recall of the order dated 21.7.2012, which was rejected by Additional Collector (Revenue) by the order dated 27.4.2013. Hence this writ petition has been filed.

4. The Counsel for the petitioners submitted that plot No. 826/2 (area 0.25 acre) was recorded in the name of Buniyadi, son of Mata Badal and plot No. 826/3 (area 0.50 acre) was recorded in the name of Bhanu Pratap Singh son of Mahabir in 1359-F khatauni, which shows that entire area of plot No. 826 was not the talab land but some area of this plot was agricultural land. During previous consolidation an area of 2.79 acre of plot No. 826-C was left as "naveen parti". Previous consolidation in the village was finalized in the year 1966. In CH Form-41 and 45 prepared during previous consolidation, plot No. 826-C (area of 2.79 acre) was recorded as "naveen parti". This land of naveen parti was allotted to the petitioners by Gaon Sabha and their names were duly mutated in the revenue records by the order of Sub-Divisional Officer as sirdar over it. Since then, the petitioners were in continuous possession over it and have also acquired bhumidhari rights. He submitted that the land naveen parti and talab land were not demarcated by the consolidation authorities as such plot No. 826-C area 6.92 acre was recorded as talab land in CH Form-45. However on the spot land naveen parti and talab land are separately existing. The respondents have illegally treated the land of the petitioners as talab land. The orders of the respondents are illegal and liable to be set aside.

5. I have considered the arguments of the Counsel for the petitioners and

examined the record. The writ petition was heard on 10.9.2013 as fresh case. As by the impugned order, the names of the petitioners were directed to be deleted from plot No. 826, over which they were recorded and the papers attached to the writ petition and arguments of the Counsel for the petitioners was in respect of plot No. 826-C, as such, the Counsel for the petitioners was directed to file the pattas granted to the petitioners and papers relating to plot No. 826. After taking several adjournments, the Counsel for the petitioners produced the certified copy of the khatauni 1377 F-1379F of the khata of naveen parti of the village, in which neither plot No. 826 nor plot No. 826-C have been mentioned. The Counsel for the petitioners informed that original pattas granted by Gaon Sabha to the petitioners were not available with them. In order to prove that the petitioners were granted pattas and their names were duly recorded, he filed the original applications moved by Sant Lal and Balendra Kumar (petitioners-1 and 2) for supply of the copy of the mutation orders, by which their names were recorded over the land in dispute, which contains the report of Revenue Inspector dated 10.7.2013 to the effect that the name of Sant Lal was recorded in the khatauni 1372-1376F, on plot Nos. 826 (area 0.50 acre) and 870 (area 0.06 acre) in compliance of the order of Sub-Divisional Officer dated 22.11.1967 passed in Case No. 88 and the name of Daya Nand was recorded in the khatauni 1378F, over plot No. 826 (area 1.00 acre) in compliance of the order of Sub-Divisional Officer - dated 20.9.1967/10.4.1971 passed in Case No. 1834. The report of the Revenue Inspector shows that the names of the petitioners were mutated over plot No. 826 and not over plot No. 826-C as such the papers attached along with the writ petition, relating to plot No. 826-C are not relevant. The petitioners have not filed any paper relating to plot No. 826.

6. The Counsel for the petitioner submitted that Rule 100-A of U.P. Consolidation of Holdings Rules, 1954, which requires the consolidation authorities to submit final consolidation record to the Collector's Record Room, was inserted by notification dated 30.4.1971. Prior to it, the consolidation authorities used to submit final consolidation record to the Tahsildar, who prepares the settlement khatauni and submit it to Collector's Record Room, In preparation of settlement khatauni of 1377F-1379F, plot No. 826-C (area 2.79 acre) which was recorded in CH Form-41 and 45 was omitted from the khata of naveen parti of the village, due to the mistake committed by tahsil authorities. The petitioners cannot be allowed to suffer for the mistake committed by tahsil authorities. The respondents were bound to record a findings as to what happened to plot No. 826-C (area 2.79 acre), which was left as naveen parti of the village during consolidation operation.

7. Section 27(1) of the Act provides that as soon as may be, after final Consolidation Scheme has come into force, District Deputy Director of Consolidation shall cause to be prepared for each village, a new map, field book and record of rights in respect to the consolidation area, on the basis of entries in the map as corrected u/s 7, khasra chakbandi, annual register prepared u/s 10 and the allotment orders as finally made and issued in accordance of the

provisions of the Act. Corresponding Rules are Rules 93 and 97 under which consolidation Lekhpal used to prepare CH Form-41 and 45. CH Form-45 is the khatauni prepared u/s 27 of the Act. This documents are maintained by the Collector u/s 27(3) of the Act, in the Collector's Record Room. The arguments that due to the mistake committed by tahsil authorities in preparing settlement khatauni 1377 F-1379F, plot No. 826-C (area 2.79 acre) which was recorded in CH Form-41 and 45 was omitted from the khata of naveen parti of the village is not liable to be accepted. On the other hand the certified copy of the khatauni of 1377-1379F issued from the Collector's Record Room is a more authentic documents than the alleged copy of CH Form-41 and 45, which appears to be fabricated at the later stage. The petitioners have deliberately withheld the copies of CH Form 41 and 45 and settlement khatauni of plot No. 826, which according to the respondent authorities was talab land. It is not the case of the petitioners that they were allotted plot No. 826-C or their names was recorded over this plot, the arguments raised on the basis of papers relating to plot No. 826-C is vague and misleading. The petitioners are claiming themselves to be allottees of plot No. 826. Their names were recorded over plot No. 826. The impugned order has been passed for deleting their names from plot No. 826. But before this Court they are taking shelter of plot No. 826-C which was neither recorded in their names nor the impugned orders relates to this plot. The petitioners have failed to show that plot No. 826 was ever recorded as naveen parti of the village, which was allegedly allotted to them. The findings recorded by the respondents that plot No. 826 was talab land does not suffer from any illegality. Even if it is accepted that plot No. 826 was ever allotted to the petitioners by Gaon Sabha, in view of the provisions of section 132 of U.P. Act No. 1 of 1951, no sirdari/bhumidhari can accrue to the petitioners over it as this was the land of talab. Supreme Court in Gram Sabha Dhaniya Mau Vs. Ram Manohar (D) by L.Rs. and Others, has held finding of fact that the land in dispute was talab land recorded by Statutory Tribunal cannot be challenged on basis of some revenue entry by which, the name of the petitioner was recorded over it. The impugned orders do not suffer from any illegality. The writ petition has no merit and is dismissed.