
(2013) 10 AHC CK 0017
In the Allahabad High Court
Case No : Writ C. No. 52054 of 2013

Shyam Shankar

APPELLANT

Vs

Smt. Israji and Others

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 121 RD 628

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : B.D. Mishra, for the Appellant; Sunil Kumar Patel, for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Subhash Kumar, learned Counsel for the petitioner, learned Standing Counsel for the respondent Nos. 2 and 3, Sri Manoj Kumar Yadav for the respondent No. 4 and Sri Tiwari holding brief of Sri S.K. Patel for the opposite party No. 1 who has filed a caveat. After the matter was heard at length, on the basis of the facts already brought on record, learned Counsel for the respondent No. 1 submits that the matter can be disposed of finally at this stage itself without waiting for any further affidavits, inasmuch as, the details are already contained in the orders which require consideration on the strength of the submissions raised. Learned Standing Counsel and the learned Counsel for the Gaon Sabha also contend that the matter can be disposed of finally at this stage itself and no further affidavits are required to be filed on behalf of the respondents.

2. The facts giving rise to this case are a bit complicated in the sense that this is the third generation which is fighting this litigation and the contesting respondent No. 1 is a vendee from the vendees of the original tenure holder. The petitioner is the grand-son of one Ganesh. Ganesh had contested his title and prayed for its restoration when the village was under consolidation operations by filing an objection u/s 9 of the U.P. Consolidation of Holdings Act, 1953. The said

objection was allowed and attained finality vide order dated 7.12.1983 copy whereof has been filed as Annexure 1 to the writ petition. A perusal thereof indicates that the necessity arose for filing the said objection as one Girdhari was entered as a tenure holder against the disputed holding on the basis of an allotment under a lease. The petitioner's grand-father Ganesh had contested the matter on the ground that the entry of the leaseholder's name was wrong, inasmuch as, the holding in question was neither Gaon Sabha Property nor had it vested in the State in ceiling proceedings, and therefore, the same could not have been allotted to Girdhari.

3. To the contrary, title was claimed by Ganesh on the basis of litigation which was set up as a defence in the proceedings before the Consolidation Officer. After having assessed the entire claim, the Consolidation Officer came to the conclusion that the land could not have been subjected to any allotment and therefore the name of Girdhari had been wrongly entered. Consequently, it was directed that the name of Girdhari shall stand expunged and the holding shall stand restored in the name of Ganesh and other co-tenure-holders. This order dated 7.12.1983 of the Consolidation Officer is the foundation of the claim of the petitioner who is the grandson of late Ganesh.

4. The said order appears to have been followed by a development which has given rise to the present controversy, namely, an exchange u/s 161 of the U.P. Z.A. & L.R. Act, 1950, between the Gaon Sabha and one Prem Chand. The land which was directed to be recorded in the name of Ganesh under the order of the Consolidation Officer dated 7.12.1983 continued to be recorded in the name of the Gaon Sabha even after the said decision and taking advantage of this position, Prem Chand entered into a transaction of exchange which was allowed by the competent authority vide order dated 26th April, 1990. This appears to have been transacted without noticing the order in favour of Ganesh dated 7.12.1983 and without notice to him. Thus the same holding which was claimed as part of the holding of Ganesh became subject matter of exchange between Gaon Sabha and Prem Chand.

5. Prem Chand is said to have executed a sale deed in favour of one Salma who in turn executed a sale-deed in favour of respondent No. 1 in the present writ petition. The Gaon Sabha appears to have filed an application for recall of the order dated 26.4.1990 on 30.5.1997. After hearing the learned Counsel for the Gaon Sabha the said order of exchange in favour of Prem Chand came to be recalled on 22.9.2009.

6. In between, it appears that one Nanda Pradhan had also filed a restoration application for recall of the same order dated 26.4.1990 and the said application was rejected on 16.6.1998 and an appeal was filed before the learned Additional Commissioner by Nanda Pradhan which was dismissed on 30.6.2000.

7. Another development took place in between, namely, the reference dated 25.3.1998 on the application of the petitioner's father Krishna Kant (son of

Ganesh) as the necessary corrections and entries had not been carried out pursuant to the order of the Consolidation Officer dated 7.12.1983. This reference under the U.P. Consolidation of Holdings Act, 1953 was prepared on 25th March, 1998 copy whereof has been filed alongwith the writ petition as Annexure-2. According to the said reference, the land which continued to be recorded in the name of the Gaon Sabha and which was subject-matter of exchange with Prem Chand, was restored back to the Gaon Sabha and as a consequence thereof the same was allocated by way of reference to the petitioner's grand-father Ganesh mentioning therein that it is being done pursuant to the said order of 1983. The reference restored Plot No. 805 as well which is subject-matter of the present controversy in favour of the petitioner's grand-father Ganesh. It is this reference which has been also made the basis for contesting the said exchange between Prem Chand and the Gaon Sabha and his vendees, namely, Salma and respondent No. 1 Smt. Israji.

8. The respondent No. 1 Smt. Israji and Salma who were the vendees of Prem Chand filed an application u/s 151 read with Order IX, Rule 13 in the proceedings of the order dated 22.9.2009 relating to the exchange between Prem Chand and Gaon Sabha. This application on their behalf was allowed on 4.4.2011 setting aside the order dated 22.9.2009 and directing that the parties shall now be heard finally for disposal of the same. The said proceedings remained pending and were not disposed of finally.

9. The fourth dimension to this complicated litigation was added by a restoration application said to have been filed by one Ganga Pal Singh for setting aside the same order of exchange dated 26.4.1990. This is the same order which was in contest in the restoration application filed by the respondent No. 1 referred to hereinabove. The application filed by Ganga Pal Singh and another application filed by the D.G.C. Revenue were both taken up together and were rejected on the ground of res judicata as well as barred by limitation vide order dated 18.7.2011.

10. The net result was that the proceedings in relation to the restoration moved by respondent No. 1 Israji remained pending as noted above vide order dated 4.4.2011 but at the same time the order dated 26.4.1990 was upheld by the order dated 18.7.2011.

11. The petitioner was nowhere made a party in both these proceedings. He therefore was unaware of the aforesaid orders. The respondent No. 1 Israji then filed an application on 9th May, 2012 praying that since the order dated 26.4.1990 has been upheld therefore the same should be implemented in the records, and consequently, this application was entertained and an order was passed on 24.5.2012 in her favour. In these proceedings the petitioner filed an impleadment application and prayed that he should also be heard keeping in view the aforesaid background of the litigation the impleadment application was directed to be kept on file but no orders were passed thereon and ultimately the orders were passed in favour of the respondent No. 1 on 24.5.2012.

12. The petitioner feeling aggrieved by the said order, filed a revision contending that the order is patently erroneous as it has been passed without hearing the petitioner and secondly the proceedings in relation to the restoration application filed by respondent No. 1 Smt. Israji were still pending where parties had been called upon to submit their objections, but without deciding the same, this miscellaneous order was passed in favour of respondent No. 1 which deserves to be set aside.

13. The above mentioned facts relating to the status of the petitioner's claim on the basis of the order of the Consolidation Officer and the reference was also brought on record but the same was also ignored. The revisional Court proceeded to reject the revision without considering the aforesaid aspects of the matter on the ground that the Gaon Sabha had contested the order of exchange at an earlier point of time and the order was passed on the application of Nanda Pradhan on 16.6.1998 which had become final by the revisional order dated 30.6.2000, therefore, there was no occasion to reconsider the impact of the order dated 26.4.1990 and the same deserved to be maintained.

14. It is challenging the said orders impugned herein that the present writ petition has been filed.

15. Learned Counsel for the petitioner contends that the orders have completely overlooked and by passed the orders passed by the Consolidation Authorities in favour of the petitioner. The orders have been passed without hearing and allowing the petitioner to participate in the proceedings relating to the miscellaneous application filed by Smt. Israji. It is thirdly submitted that Smt. Israji herself was contesting the restoration application in which notices have been issued after restoring the case on 4.4.2011 but the same remained pending and a miscellaneous order has been passed separately on 24.5.2012 without finalizing the said proceedings. The dismissal of the application of Ganga Pal Singh and the DGC Revenue on 18.7.2011 does not take away the rights of the petitioner in any way.

16. Replying to the said submissions Sri Tiwari, learned Counsel for the respondent No. 1 submits that if the order of exchange dated 26.4.1990 is final as per the order dated 18.7.2011, and 16.6.1998 as affirmed on 30.6.2000, then the petitioner by virtue of a reference in 1998 cannot succeed in getting his name recorded over the plots which had already been granted in exchange to the predecessors in interest of the answering respondent No. 1.

17. He further submits that the answering respondent or his predecessor Prem Chand was never heard in the reference proceedings dated 25.3.1998 which are ex-parte and as such the petitioner cannot take advantage of the same as against the answering respondent. He contends that the order of exchange u/s 161 of the U.P.Z.A. & L.R. Act, 1950 is final between the Gaon Sabha and the answering respondent, and the petitioner has no role to play in the same. The impugned orders do not require any interference by this court. The exchange

order dated 26.4.1990 is final as per the order dated 18.7.2011 read with the order dated 16.6.1998 as affirmed on 30.6.2000.

18. Sri Tiwari then submits that even if the petitioner has not been heard in the miscellaneous proceedings which have given rise to the present controversy then too even the rights of the petitioner are nowhere prejudiced nor can he claim any right against the answering respondent whose status is independent in relation to the holdings purchased from Prem Chand and Salma. The exchange was validly concluded in favour of Prem Chand u/s 161 of the 1950 Act in 1990 itself when no rights of the petitioner existed.

19. Sri Manoj Kumar Yadav and the learned Standing Counsel have also been heard in opposition to the writ petition.

20. Having heard learned Counsel for the parties, the contention of Sri Tiwari for the respondent No. 1 that the petitioner's right would not be prejudiced does not appear to be correct in view of the fact that the petitioner did have the orders of the Consolidation Authorities in his favour indicating the recording of his name as well as the reference that was prepared in respect of Plot No. 805, which plot has also been directed to be exchanged in favour of the respondent No. 1. The aforesaid facts, no doubt, are subject to verification of the existence of the reference proceedings and any valid orders passed by the competent authority in this regard.

21. In the aforesaid circumstances, the direct interest of the petitioner is involved. Not only this, the entire history of the litigation aforesaid leaves no room for doubt that the holding over Plot No. 805 was also involved in the said dispute relating to exchange between the respondent No. 1, her predecessors in interest and the Gaon Sabha. It is also undisputed that the said proceedings u/s 161 were finalized behind the back of the petitioner inspite of the fact that the reference had been prepared in 1998 itself as claimed by the petitioner. In the aforesaid circumstances, after the matter had been restored on 4.4.2011, there was no doubt that the rights of the petitioner had intervened by then. In the circumstances the petitioner was fully justified in moving an application for getting himself impleaded in the miscellaneous proceedings which have now culminated in the passing of the impugned orders. The petitioner in my opinion was clearly a proper and necessary party and there fore the petitioner should have been given an opportunity to contest the same.

22. Apart from this, the petitioner on the same grounds also has a right to contest the restoration proceedings that arise out of the order dated 4.4.2011. These aspects have been completely overlooked by the learned Additional Commissioner as well as by the Sub-Divisional Magistrate who have passed the impugned orders dated 18.8.2013 and 24.5.2012 respectively. Consequently, the orders being in violation of principles of natural justice and without impleading a proper and necessary party, cannot be sustained in the background of the facts as narrated hereinabove.

23. Accordingly, the writ petition is allowed. The order dated 24.5.2012 and 16.8.2013 are quashed. The application filed by the respondent No. 1 shall now be clubbed with the restoration proceedings arising out the order dated 4.4.2011 and both shall be simultaneously heard and disposed of by the Sub-Divisional Magistrate. The petitioner shall be impleaded as one of the opposite parties and he shall be permitted to contest the same by filing objections or leading evidence as the necessity may arise. The Sub-Divisional Magistrate is also directed to hear the Gaon Sabha and the State as well, inasmuch as, the proceedings arise out of an order of exchange u/s 161 of the U.P.Z.A. & L.R. Act, 1950. Consequently, the writ petition stands allowed to the said extent with the aforesaid directions. The Sub-Divisional Magistrate shall conclude the proceedings expeditiously preferably within a period of six months from the date of production of a certified copy of this order before him.