
(2016) 04 AHC CK 0114
In the Allahabad High Court
Case No : Writ-B No. 50314 of 2015.

Smt. Rajjo Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 24, 27, 28

Citation : (2016) 131 RD 489

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Gaurav Singh and Kripa Shanker Singh, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This writ petition has being filed challenging an order dated 29.07.2015 whereby a prayer made by the petitioner for demarcation and delivery of possession has been refused, on account of pendency of a revision No. 23/14-15.

3. A prayer has also been made for issuance of a mandamus directing the respondents to demarcate and handover the possession of plot no.237 to the petitioner.

4. The case of the respondents is that delivery of possession was affected in the unit in the year 2002. The notification under Section 52 of the Act was issued on 15.12.2004 bringing the consolidation operations to a close. Thereafter the petitioner purchased land of plot no.237 by means of a registered sale deed dated 01.09.2006 executed by Ranveer Singh.

5. Several applications for demarcation and possession have been filed by the petitioner thereafter. One such application was made in February 2015 to the

Additional Commissioner, Aligarh Division, Aligarh. This application was marked to the District Magistrate who in turn remitted the same to the Consolidation Officer.

6. A report was submitted that one Ram Babu son of Thakur Das was in possession over plot no.237 and had sown crops thereon. Once the crops are harvested, possession could be handed over to the petitioner. On its basis, a letter to the same effect was issued by the District Magistrate on 29.05.2015.

7. Since it was the case of the respondents that delivery of possession have been effected in the year 2002 itself and consolidation operations had come to close in the year 2004, this Court, prima faice, being of the opinion that the report and the letter of the District Magistrate issued on the basis of the report aforementioned was beyond jurisdiction, summoned the Consolidation Officer and the Collector, Hathras.

8. The Collector appeared on 18.12.2015, along with a personal affidavit. He conceded that there is no provision for further delivery of possession, once delivery of possession was effected in the unit. Consequently, the report and its consequential letter dated 29.05.2015 have been withdrawn.

9. Thus, the letter dated 29.05.2015 issued by the District Magistrate, which is the basis of this writ petition, stands withdrawn as has been stated in the affidavit filed by the Collector.

10. Once the order dated 29.05.2015 had been withdrawn, learned counsel for the petitioner has submitted that the case of the respondents that delivery of possession have been effected in the unit in the year 2002, is not correct. His submission is that the alleged delivery of possession is a mere paper transaction. He submits that the affidavit filed by the Consolidation Officer, Hathras (affidavit of compliance) contains the minutes of a meeting, wherein it was stated that 100% demarcation has been carried out in the Unit and the meeting itself had been fixed for making publication as required by Section 24 of the Act. In this meeting dated 31.07.2002, the provisional consolidation scheme has been confirmed.

11. It is submitted that Section 24 of the Act talks of the date from which the final consolidation scheme shall be enforced. It also talks of the objections regarding payment of compensation for trees and improvements existing on the chaks.

12. He therefore submits that in fact, no delivery of possession as contemplated by Section 28 of the Act, which provides for delivery of possession being effected in accordance with the provisions of Civil Procedure Code, has actually being done, on the spot. The mandamus prayed for, is therefore liable to be issued.

13. Learned Standing Counsel, in rebuttal has submitted that Section 24 provides that the Settlement Officer Consolidation shall fix a date to be notified in the Unit from which the final consolidation scheme shall come into force. After this date, a

tenure holder is entitled to enter into possession over the plots allotted to him. The actual demarcation of the chaks was started on 19.04.2002 and the same was completed on 20.07.2002. The original register in this regard has been produced in support of this submission.

14. Referring to Section 28 of the Act, learned Standing Counsel submits that in case a person has not entered into possession within six months of the date of coming into force of the final consolidation scheme, he may file an appropriate application in this regard. Upon, such an application being filed, the authorities are required to ensure delivery of possession in accordance with the procedure prescribed under the Civil Procedure Code. Sub-section 2 of Section 28 provides that in case, no such application is made within six months from the date notified under Section 24, the tenure holders would be deemed to have entered into possession. Since the date notified under Section 24 was 31.07.2002 and since no application was filed by the vendor of the petitioner, as contemplated under Section 28 of the Act, the writ petition has no legs to stand.

15. He reiterates that the petitioners' vendor did not file any application alleging that delivery of possession had not been effected. Besides, the sale deed executed in favour of the petitioner contains a recital that she has been put in possession over the land purchased by her. The petitioner was mutated over the land purchased by her in proceedings under Section 34 of the U.P. Land Revenue Act. An application under Section 34, necessarily contains a statement of the applicant that he/she is in possession over the land regarding which mutation is sought.

16. Referring to the averments made in the affidavit of compliance filed by the District Magistrate, especially paragraph 3 (viii) thereof, learned Standing Counsel submits that the first application moved by the petitioner alleged that she was in possession over the land in question, however, Ram Babu and Mahaveer sons of Thakur Das beat her up on 22.07.2013 and she was orally stopped from cultivating her land. Thus the allegation of counsel for the petitioner that delivery of possession was not effected in the year 2002, is contrary to the case of the petitioner herself.

17. He lastly submits that in case, the petitioner has been dispossessed illegally, her remedy is by means of a suit for possession.

18. In rejoinder, learned counsel for the petitioner submits that at least five other persons along with the petitioner had filed a revision, seeking delivery of possession which had, in fact, not been effected. He however concedes that this revision has been dismissed.

19. The order of the Revisional Court, dismissing the revision aforesaid, is not under challenge in this writ petition. Learned counsel for the petitioner is not in a position to state as to whether this order was in fact ever challenged by the petitioner. The petitioner therefore has accepted the order whereby a relief similar to that claimed in the writ petition, has already been refused by the

Deputy Director of Consolidation and the said order has been allowed to attain finality, not having been challenged further. In view of the aforesaid facts and circumstances, I find merit in the submissions made by learned Standing Counsel.

20. The petitioner had purchased the land in question by means of a registered sale deed in the year 2006. It is established on record that delivery of possession was effected in the unit in the year 2002 and even though, the petitioner's vendor was entitled to make an application under Section 28, in case he had not obtained possession over the chak allotted to him, he failed to make any such application. It is therefore, not open for the petitioner to claim that delivery of possession was not effected in the unit. Even otherwise, as already noticed, her prayer in this regard has already been turned down by the Deputy Director of Consolidation which order appears to have attained finality.

21. A reading of Sections 24, 27 and 28 of the Act shows that after the demarcation of final chaks has been made, a date is notified under Section 24 wherefrom the final consolidation scheme comes into force and thereafter the tenure holders are entitled to enter into possession over the chaks allotted to them. In case someone is not able to obtain possession, he is entitled to apply for being put in possession within six months of this date and thereafter possession is to be delivered to such applicant in accordance with the procedure prescribed under the Code of Civil Procedure. It is therefore clear that no signature of the parties is required in the proceedings book to show that possession was actually delivered to the tenure holders, as is sought to be argued by counsel for the petitioner. No application was filed by the petitioners' vendor within six months of the enforcement of the final consolidation scheme under Section 24 and therefore he is to be deemed to have obtained possession over the chak allotted to him.

22. In the aforesaid scenario, the mandamus prayed for by the petitioner cannot be issued.

23. In case, the petitioner has been dispossessed illegally as appears to be the case, her remedy is not by means of an application for demarcation and delivery of possession under the provisions of the U.P. Consolidation of Holdings Act.

24. The writ petition is therefore dismissed.