
(2011) 02 AHC CK 0154
In the Allahabad High Court
Case No : Writ C No. 28289 of 1998

State of U.P. and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Forest Act, 1927 — Section 20, 4, 4(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2011) 02 AHC CK 0154

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned standing counsel for the Petitioner-State and learned Counsel for contesting Respondents.

2. A notification u/s 4 of Forest Act was issued on 29.4.1955 in respect of various agricultural lands situate in different villages of Tehsil Puranpur, District Pilibhit, including village Bhaipur, where land in dispute is situate. Annexure-2 to the writ petition is the typed copy of the said notification which at sl. No. 45 contains the name of the village Bhaipur and total area is shown to be 175.56 acres. No particulars like plot numbers have been given. The total area is shown to be bounded on east by khet (field) & on all the other three sides by Zamindara Jungal.

3. Annexure-3 to the writ petition is typed copy of gazette notification dated 9.6.1965 published in U.P. gazette on 7.8.1965 u/s 20 of Forest Act. It relates only to plot No. 461/1 area 148.68 acres situate in village in question i.e. Bhaipur.

4. This writ petition is directed against judgments, orders and decrees dated 23.3.1994, 7.8.1995 and 2.2.1998 (Annexures 6,7 and 9 to the writ petition respectively). The first judgment contained in Annexure-6 was passed on

23.3.1994 by Sub Divisional Officer, Pooranpur District Pilibhit in suit No. 30 of 1993-94 - Jaswant Singh and Ors. v. State of U.P. and Ors.. That was a suit u/s 229-B of U.P.Z.A.&L.R. Act. The suit was decreed and Plaintiffs-Respondents were declared to be bhoomidhar with transfer rights. Against the said judgment and decree State of U.P. filed appeal No. 94 of 1994. Additional Commissioner (Judicial-Ist), Bareilly division, Bareilly dismissed the appeal on 7.8.1995. Thereafter State of U.P. filed revision before the Board of Revenue, U.P., Allahabad being revision No. 29 of 1995-96. Revision was dismissed on 2.2.1998 hence this writ petition. The suit related to old plot No. 461/3 new number of which was 167. The said plot had been purchased through registered sale deed dated 25.10.1966 by the Plaintiffs Respondents. Total purchased area was 18.5 acres.

The occasion to file the suit arose because after conclusion of consolidation it was found that name of the State had been entered on the land in dispute. One of the objections taken by the Petitioner before the courts below as well as this Court was that suit was barred by Section 49 of U.P. Consolidation of Holdings Act. The said section is quoted below:

49. Bar to Civil Jurisdiction.--Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a [notification] has been issued [under Sub-section (2) of Section 4] or ad-judication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act.

(proviso not relevant)

5. As the name of the contesting Respondents and before them of their predecessor in interest was continuing in the revenue record and as no notice was given to them hence there was absolutely no occasion for them to file any objection before the Consolidation Officer for continuing the existing position. No one is required to file any application before the Consolidation Officer for such purpose. Such an application/objection is to be filed only when position as depicted in the revenue records is sought to be changed.

6. True copy of the gazette (probably typed) was filed before the Courts below. The Board of Revenue observed that published copy of the gazette was not filed. I have perused copy of the 1965 U.P. gazette supplied by the High Court Library. The relevant notification is on page 2234. It tallies with Annexure-3 to the writ petition. In column No. 2 at sl. No. 21, 31 and 32 plot No. 461/2 and 461/3 are shown as situate towards the boundaries of the plot No. 461/1 which was subject matter of the notification u/s 20 of the Forest Act. From the perusal of the gazette it is patently clear that only and only plot No. 461/1 was declared to be

reserved forest and plot No. 461/2 and 461/3 were in existence at that time and they were not declared reserved forest.

7. The case of the Petitioner was that land in dispute had been declared reserved forest however, it wrongly continued to be shown in the name of the contesting Respondents hence Consolidation officer had rightly passed the order. Firstly, it has not been proved that the land in dispute was ever declared as reserved forest. Actually what was declared as reserved forest was plot No. 461/1 area 148.68 acres. Secondly absolutely no reason was given as to why in spite of declaration of land in dispute as reserved forest it continued to be recorded in the revenue records in the name of contesting Respondents or their predecessor. In any case consolidation officer did not issue any notice to the contesting Respondents or their predecessor in interest whose names were recorded in the revenue record before passing the order directing mutation of the name of the State on the ground that land in dispute had been declared as reserved forest.

8. Accordingly, I do not find least error in the impugned judgments, orders and decrees.

Writ petition is therefore dismissed.