

(1999) 04 AHC CK 0057

In the Allahabad High Court

Case No : Writ Petition No. 11826 of 1999 and 82 other Writ Petitions

State of U.P.

APPELLANT

Vs

Assistant Director of Consolidation, Bareilly and others

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 10, 11, 12, 13, 14
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9
Uttar Pradesh Tenancy Act, 1939 — Section 27A, 3(7)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 18(1), 4

Citation : (1999) 3 AWC 1968

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : C.S.C, for the Appellant;

Judgement

R. H. Zaidi, J.—Present batch of writ petitions arises out of proceedings u/s 9 of U. P. Consolidation of Holdings Act (for short "the Act") and is directed against the order passed by the respondent Nos. 1 to 3, dated 5.9.1984, 14.1.1988 and 4.5.1988. Petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the said orders.

2. Since all these petitions are directed against the common orders, the questions of law and fact involved in these cases are also common, they were, therefore, heard together and are being disposed of by this common Judgment.

3. The dispute relates to 128.26 acres of land situated in village Sherpur, District Shahjahanpur. thereafter referred to as the land in dispute). In the basic year, the land in dispute was recorded in the name of contesting respondents. Some of the plots were recorded as "Gram Sabha" and as "Ceiling" land in the revenue papers. 63 objections were filed by the petitioners before the Assistant Consolidation Officer claiming that the land in dispute was the land of Forest Department. The entries of the names of contesting respondents were illegal and

they were liable to be expunged. The objections filed by the petitioner in all the cases were common. Only the opposite parties in the said objections were different. The objection filed against Sri Kulbant Singh and others (Annexure-4) is reproduced below :

"Objection on behalf of Forest Department :

1. That the land in dispute is the property of the forest department ii vested in the State Government (Forest Department) vide Notification No. 617/XIV-5, dated 11.11.1952 u/s 117 of the U.P.Z.A. and L.R. Act.

2. That notification u/s 4 of the Indian Forest Act constituting the land in dispute as reserved forest as published in the U. P. Gazette vide Notification No. 569/XIV-43-54, dated 16.3.1954 and the proceedings of Section 6 of Indian Forest Act were also taken by the Forest Settlement Officer.

3. That the land in dispute has been declared reserved Forest u/s 20 of Indian Forest Act and has been published in U. P. Gazette vide Notification No. 2688/XIV-B-508-64, dated 21.8.1965.

4. That no right can legally be occurred to any person on State Forest Land. The entries in the Forest of the opposite parties are illegally and liable to be expunged.

5. That the applicant came to know about the wrong entries recently and the delay in filing the objection may kindly be condoned u/s 5 of the Indian Limitation Act and the objection be treated within time.

6. It is, therefore, prayed that the wrong entries in the name of parties may kindly be expunged and the land dispute be recorded in the name of State Government (Forest Deptt.)."

4. The contesting respondents on the receipt of the notices from the Consolidation Officer filed their written statements pleading that the objections filed by the petitioners were totally baseless, the objectors were in cultivatory possession of the land in dispute since before the Zamindari Abolition in the State. The land in dispute was given to them on pattas executed in 1950, by the erstwhile Zamindar Smt. Anjum Begum, Some of the objectors claimed that the land in dispute was purchased by them through registered sale deeds from the Zamindars and other persons and since then they have been cultivating the land and their names were recorded by the orders of the competent revenue authorities on the land in dispute, which was part of their holdings, therefore, there was no question of land being of the Forest Department. It was also pleaded that the contesting respondents had absolutely no knowledge or notice of the notifications alleged to have been issued under Sections 4 and 20 of the Forest Act, and u/s 117 of U. P. Z. A. and L. R. Act.

5. The parties produced evidence in support of their cases before the Consolidation Officer, oral and documentary. In support of the case of the

petitioner, one "Ban Daroga" Shri Nusratullah Beg was examined as a witness and Notifications dated 11.10.1952, 16/27.3.1954 and 21.8.1965 were produced. A copy of proposed correction of notification dated 24.5.1967 was also produced by the petitioner.

6. On behalf of the contesting respondents, copies of Khatauni for the years 1359, 1360, 1361 and 1363 Fasli. Khasra for the year 1359 Fasli, patta dated 20.6.1950 executed in their favour by Smt. Anjum Begarn the erstwhile Zamindar were produced, besides the other documents. The contesting respondents also examined a number of witnesses in support of their cases.

7. The Consolidation Officer after hearing the counsel for the parties and perusing the record dismissed the objections filed by the petitioners by his common judgment and order dated 5.9.1994. The petitioner aggrieved by the Judgment and orders passed by the Consolidation Officer filed appeals before the Settlement Officer. Consolidation, The Settlement Officer. Consolidation allowed the appeals in part as against the "Gram Sabha" and Ceiling Department : but the appeals filed against the contesting respondents were dismissed by his common judgment and order dated 14.1.1998. It was directed that the entries of the names of "Grain Sabha" and the "Ceiling Department" be expunged and the plots recorded in their names be entered in the name of the petitioner,

8. The petitioner thereafter filed revisions against the judgments and orders passed by the Settlement Officer, Consolidation. It may be noted that no revision was filed by the Gram Sabha or by the Ceiling Department against the judgment and order passed by the Settlement Officer Consolidation, therefore, orders passed by the Settlement Officer Consolidation as against them thus have become final. The Deputy Director of Consolidation after hearing the counsel for the parties dealt with the matter in detail. He has taken into account the entire evidence on record, critically examined the same and recorded clear and categorical finding on all issues involved in the case. It was held that the Consolidation authorities could not go behind the notifications Issued by the State Government in exercise of power under Sections 4 and 20, but from the notifications referred to above, it was not proved that the land in dispute was ever declared as "reserved forest", therefore, the entries of the names of contesting respondents cannot be expunged from the revenue papers and the land in dispute cannot be recorded as forest land. Having recorded the said finding, revisions filed by the petitioner were dismissed by common order dated 4.5.1998, The petitioner aggrieved by the orders passed by the Consolidation Officer, Settlement Officer Consolidation and the Deputy Director of Consolidation as stated above, filed writ petitions for the above mentioned reliefs.

9. Learned Additional Chief Standing Counsel vehemently urged that the judgments and orders passed by the consolidation authorities are wholly illegal and without jurisdiction inasmuch as. the consolidation authorities had no jurisdiction to disregard the notifications issued by the State Government under Sections 4 and 20 of the Forest Act to hold that the entries of the names of the

contesting respondents could not be expunged. It was urged that from the material on record it was conclusively proved that the land in dispute was the property of the Forest Department and the findings recorded to the contrary are against the evidence, illegal and erroneous. It was also urged that the proceedings before the consolidation authorities were barred by Section 27A of the Forest Act.

10. I have considered the submissions made by the learned Additional Chief Standing Counsel and also carefully perused the material on record.

11. Legally the State Government may constitute a reserved forest in exercise of its power under the Forest Act after following the procedure prescribed for the same. In the present case, the questions which require consideration, are as to whether on the basis of material on record, it can be held that the land in dispute was declared as reserved forest in accordance with law and as to whether the consolidation authorities had the jurisdiction to deal with and decide the cases. Further, as to whether proceedings before consolidation authorities were barred by Section 27A of the Forest Act.

12. For the purposes of decision of the aforesaid questions issues, the provisions of Section 117 of U. P. Z. A. and L. R. Act. 1950, Section 3 as substituted by the State of U. P. by U. P. Act No. 23 of 1965 and Sections 4 6 and 20 of the Forest Act are relevant, which are reproduced below :

"Section 117. Vesting of certain lands, etc. In Gaon Sabha and other local authorities.-

(Only relevant quoted)

(1) At any time after the publication of the notification referred to in Section 4, the State Government may, (by general or special order to be published in the manner prescribed) declare that as from a date to be specified in this behalf, all or any of the following things, namely,--

(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,

(ii) forests,

(iii) trees, other than trees in a holding on the boundary of a holding or in a grove or abadi,

(iv) fisheries,

(v) hats, bazars and melas, except hats, bazars and melas held on lands to which the provisions of clauses (a) to (g) of subsection (1) of Section 18 apply or on sites and areas referred to in Section 9, and

(vi) tanks, ponds, private ferries, water channels, pathways and abadi sites.

which had vested in the State under this Act, shall vest in a Gaon Sabha or any

other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another :

Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be (specified in order)."

(6) The State Government may at any time, (by general or special order to be published in the manner prescribed) amend or cancel any declaration, notification or order made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing, and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be shall be entitled to receive and be paid compensation on account only of the development, if any. effected by it in or over that things :

Provided that the State Government may after such resumption made a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed, in the same or any other local authority including a Gaon Sabha and the provisions of sub-sections (3). (4) and (5) as the case may be shall mutatis mutandis. apply to such declaration."

(Italicize to add emphasis)

THE (INDIAN) FOREST ACT :

"Section 3. Power to reserve forest.--The State Government may constitute any forest land or waste land or any other land (not being land for the time being comprised in any holding) (***) or any village abadi which is the property of the Government or over which the Government has proprietary rights or to the whole or any part of the forest produce which the Government is entitled, a reserve forest in the manner hereinafter provided.

Explanation.--The expression holding shall have the meaning assigned to in the U. P. Tenancy Act. 1939, and the expression "village abadi" shall have the meaning assigned to it in the U. P. Village Abadi Act. 1947."

"Section 4. The Notification by State Government,--(1) Whenever it has been decided to constitute any land, a reserved forest, the State Government shall issue a notification in the Official Gazette-

- (a) declaring that it has been decided to constitute such land a reserved forest ;
- (b) specifying as nearly as possible, the situation and limits of such land ; and
- (c) appointing an officer thereafter called the "Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this

Chapter.

(Italicize to add emphasis)

Explanation.--For the purpose of Clause (b) it shall be sufficient to describe the limits of the forest by roads, rivers, bridges or other well known or readily intelligible boundaries.

(2) The officer appointed under Clause (c) of sub-section (1) shall ordinarily be a person not holding any forest office except that of Forest Settlement Officer.

(3) Nothing in this section shall prevent the (State Government) from appointing any number of officers not exceeding three, not more than one of whom shall be person holding any forest office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act."

Section 6. Proclamation by Forest Settlement Officer.-- When a notification has been issued u/s 4. the Forest Settlement Officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation-

(a) specifying as nearly as possible, the situation and limits of the proposed forest ;

(b) explaining the consequences which as hereinafter provided will ensue on the reservation of such forest ; and

(c) fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation if any claimed in respect thereof."

Section 20. Notification declaring forest reserved.--(1) When the following events have occurred, namely :

(a) the period fixed u/s 6 for referring claims has elapsed, and all claims, if any made under that section or Section 9 have been disposed of by the Forest Settlement Officer ;

(b) if any such claims have been made, the period limited by Section 17 for appealing from the order passed on such claims has elapsed and all appeals (if any) presented within such period have been disposed of by the Appellate Officer or Court : and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, u/s 11. elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government u/s 16 of that Act. .

the State Government shall publish a notification in the Official Gazette

specifying definitely, according to boundary marks elected or otherwise, the limits of the forest which is to be reserved. and declaring in same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be reserved forest."

13. A reading of the aforesaid statutory provisions reveals that the State Government may make a declaration by publication in the Official Gazette regarding the land vested in the State (except land for the time being comprised in any holding or grove), shall vest in Gaon Sabha, or any other local authorities subject to such exceptions and conditions as may be specified in the order. In the present case, the petitioner has filed notification dated 11.10.1952, wherein it has been stated that in exercise of power conferred by Section 117 of the U. P. Z. A. and L. R. Act, 1950 (U. P. Act No, 1 of 1951). the Governor is pleased to declare that as from the first day of November. 1952 all land whether cultivable or otherwise, excepting the land for the time being comprised in holding or grove and of forest within the village boundaries situate in circulate which is vested in State under the said Act shall subject to exceptions shown in Schedules 1 and 2 has vested in Gaon Samaj. In the said notifications the details of the property vested by the State Government in the Gaon Samaj have not been mentioned. In schedule appended to it also, no details of the land have been given. In Columns 1, 2. 3 and 4 the name of the district, tehsil. pargana and village have been mentioned. Column 5 extent to which uncultivable land (to be demarcated) shall not vest were required to be stated. has been left blank. Notification, if any. made u/s 4 of -the U. P. Zamindari Abolition and Land Reforms Act, has not been filed.

(Italicize to add emphasis)

14. The petitioners claim that vide Notification dated 11.10.1952 land in dispute vested in the State Government but aforesaid notification reads otherwise. It provides that the land except the land for the time being comprised in any holding, shall vest in Gram Samaj. Thus, the very foundation of the claim of the petitioners is missing. Section 3 of the Forest Act as substituted by U. P. Act No. 23 of 1965 itself provides that reserve forest may be constituted of any forest land, waste land or any other land (not being land for the time being comprised in any holding or grove). Explanation to Section 3 of the Act referred to above provides that expression "holding" shall have the meaning assigned to in the U. P. Tenancy Act. 1939. Under clause (7) of Section 3 of U. P. Tenancy Act. 1939 term holding" has been defined as under :

"3. (7) "holding" means a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in the case of a thekadar includes the theka area."

15. On the dale the notification u/s 4 of the Forest Act was issued, the land in dispute admittedly was not Forest Land or waste land but it was part and parcel of the holding of the contesting respondents, except the land which was recorded

in the name of "Gram Sabha" and "Ceiling Department". The land in dispute could come under the term "other land" but for the same, exception has been carved out in the aforesaid section. The Authorities below have recorded the concurrent findings of fact which are based on relevant evidence on record, that the land in dispute was recorded in the holdings of the contesting respondents. The said land, therefore, could not be subject matter of the Notification issued u/s 4 of the Forest Act, The Notifications if they purported to declare the said land as Forest Land, were ultra vires of the Act and without jurisdiction. The said Notifications, in view of the law laid down by Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, , are liable to be ignored. The same view has been consistently taken by this Court in the following and many other decisions :

Raghunath Singh and another v. State of U. P. and another 1961 AWR 532 ; Jang Bahadur and others v. State. 1971 AWR 599 ; The State of U.P. Vs. Mahant Avidh Nath, : Ratan Singh and others v. State of U. P. and others. 1979 All LJ 1216.

16. Learned counsel for the petitioners referred to and relied upon the decision of Apex Court in The State of U.P. Vs. Dy. Director of Consolidation and Others, . In the said case, reference has been made to and reliance has been placed upon decision of Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, .

17. I have gone through the aforesaid decisions. In my humble opinion, decisions in the aforesaid cases have got no application to the facts of the present case, for the reason that in the said decisions, provisions of Section 3 of the Indian Forest Act, as amended by U. P. Act No. 23 of 1965 were not considered, as there was no occasion for considering the same. In Mahendra Lal Jaini case (supra), notifications under Sections 4 and 20 of the Forest Act were made before U. P. Act No, 23 of 1965 was enforced. Similarly, in the case of State of U. P. (supra), notifications under Sections 4 and 20 of the Act were Issued prior to enforcement of U. P. Act No. 23 of 1965, Said decisions are based on interpretation of unamended Section 3 of the Forest Act, which reads as under :

"3. Power to reserve forest.--The State Government may constitute any forest land or waste land, or any other land, which is the property of the State Government or over which the State has proprietary rights or to the whole or any part of the forest produce of which the Government is entitled as reserved forest, hereinafter provided."

18. The Apex Court has rightly ruled that all lands Sirdari or Bhumidhari stood vested in the State Government, vide notification issued u/s 4 of the U. P. Z. A. and L. R. Act. Therefore, even Bhumidhari land situated in the State, could be subject matter of notifications under Sections 4 and 20 of the Forest Act. After enforcement of U. P. Act No, 23 of 1965. the position was changed, inasmuch as Section 3 as amended by the said Act, carved out an exception. It provided that

the State Government may constitute any forest land, waste land, or any other land, (not being the land for the time being comprised in any holding or grove or in any village or Abadi) which is property of the State Government or over which the Government has proprietary rights. The Government could constitute reserved forest after following the procedure prescribed under the Act. On the basis of the decisions, therefore, it cannot be accepted that even the land, which is part and parcel of the holding of a tenure holder, can be subject matter of notification issued or proceedings taken under Sections 3 to 20 of the Act. Submissions made by learned Additional Chief Standing Counsel that the land in dispute could be constituted as reserved forest, cannot be accepted.

19. Now. It will have to be seen, as to whether on the basis of notifications referred to above, the land in dispute was ever declared as Reserved Forest land. In the notification dated 16.3.1964 issued u/s 4 of the Indian Forest Act. It was stated that the Governor was (sic) land shown in said subjoined schedule in Shahjahanpur district as reserved forest and Sub-Divisional Officer of said Divisions concerned, were appointed as Forest Settlement Officers and Collector. Shahjahanpur was . empowered to hear the appeals. Section 4 of the Forest Act require issuances of Notification specifying as nearly as possible, the situation and limits of such land. Explanation provided that it would be sufficient to describe the limits of the forest by roads, rivers, bridges or other well-known or readily intelligible boundaries.

20. In the Notification in question, the boundary description of the land sought to be declared as Forest, was given as follows :

North : Fields. East : Jamuna River. West : Deoria Village South : Nandanpur.

21. The aforesaid boundaries except the eastern boundary are contrary to the requirement of law inasmuch as towards North only fields without any particulars of the said fields, has been stated. Similarly, towards West and South, names of villages have been mentioned. No evidence to connect the aforesaid notification with the land in dispute in the shape of survey map, etc. was filed before the authorities below. Similarly in the Notification issued u/s 20 of the Act only old plot numbers and the boundaries have been mentioned. Village Sherpur admittedly undergone new settlement in 1366 F. Before issuance of Notification u/s 20 the old plots have lost their identity and existence in the new settlement. No attempt was made to connect the said plots with the land in dispute. Neither Fard Mutabikat was filed nor any other evidence was produced. The statement of fact made in paragraph No. 19 of the writ petition cannot be accepted as the same has been verified on the basis of record and no record has been produced in support thereof. Further there is no reference of Farde-Mutabikat (comparative table) in the orders passed by the authorities below. Therefore, on the basis of the notification issued under Sections 4 and 20 it cannot be said that the land in dispute was ever declared as reserved forest. With a view to rectify the notification issued u/s 20, a copy of proposed notification dated 24.5.1997 was produced before the authorities below. Said corrections were never made in the

notification noted above, as the proposed notification was never published in the Official Gazette. The proposal was, thus, not effective and was of no consequence in view of Section 21 of the U. P. General Clauses Act and the law laid down by Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, (para 30), The authorities below have also recorded concurrent findings to the same effect and it has been held that on the basis of the aforesaid notifications, it cannot be held that the land in dispute was ever declared as reserved forest. The authorities below even if they could not disregard the said notifications but were legally justified to see as to whether the said notifications cover the land in dispute or not, inasmuch as, the petitioner itself filed objections for expunction of the names of contesting respondents from the revenue papers. The expunction of names of contesting respondents was not possible unless it was found that the land in dispute was actually declared as reserved forest.

22. In view of the said facts, the authorities below did not commit any error of law or Jurisdiction in refusing to expunge the names of contesting respondents from the basic year revenue record.

23. In view of what has been stated above, submission made by learned counsel for the petitioners that the proceedings before the consolidation authorities were barred by Section 27A as added by U. P. Act No. 23 of 1965 also cannot be accepted.

24. Section 27A of the Act as added by U. P. Act No. XXIII of 1956 (w.e.f. 23.11.1956) simply provided that no act done or order made or certificate issued in exercise of power conferred under Chapter II of the Act shall be called in question in any Court except as provided under the Act itself. In the instant case, respondents did not file any objection before Consolidation authorities, as stated above objections were filed by the petitioner No. 1 through Forest Department claiming that the land in dispute was the forest land and the names of the respondents were liable to be expunged from the Revenue papers. The contesting respondents filed their written statements and denied the claim of the petitioner pleading that they had no knowledge of the Notifications issued u/s 117 of U. P. Zamindari Abolition and Land Reforms Act and of the Notifications issued under Sections 4 and 20 of the Forest Act and that the said notification could not be issued in respect of the land in dispute as the same was part and parcel of their holdings and also that the land in dispute was not covered by the said Notifications.

25. The Consolidation authorities in view of the provisions of U. P. Act No. XXIII of 1956 and in view of the decisions of this Court referred to above could ignore the said Notifications as the said notifications were without jurisdiction. They could also see as to whether the land in dispute was covered by the Notifications without going into the question as to whether the Notifications were valid or not. The authorities below in the present case recorded concurrent findings that the land in dispute was not covered by the said Notifications inasmuch as there was no supporting and admissible evidence on the record to connect the land in

dispute with the land mentioned in the Notifications u/s 20 but was part of the holdings of the contesting respondents. The findings recorded by the authorities below are findings of fact which are based on relevant evidence on the record. Therefore, the submission made by the learned Additional Chief Standing Counsel that proceedings before the Consolidation authorities were barred by Section 27A as added by U. P. Act No. XXIII of 1956 cannot be accepted.

26. In view of the aforesaid discussion, no case for interference under Article 226 of the Constitution of India is made out.

27. All these writ petitions fail and are hereby dismissed.