
(2008) 08 UK CK 0002
In the Uttarakhand High Court
Case No : Writ Petition (M/S) 4035 of 2001

State of U.P.	Vs	APPELLANT
Malkeet Singh and Others		RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 210, 229B

Citation : (2009) 1 UC 361

Hon'ble Judges : P.C.Verma, J

Bench : Single Bench

Advocate : Gopal Narain, Brief Holder, for the Appellant; D.C. Joshi, holding brief R.S. Sammal, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Verma, J.—This writ petition has been filed by the State challenging the legality and validity of the judgment and order dated 29-1 -1992 passed by the Board of Revenue, which is contained in Annexure 3 to the writ petition.

2. Relevant facts of the case giving rise to present writ petition are that a suit u/s 229-B of the U.P. Zamindari Abolition & Land Reforms Act (hereinafter referred to as "the Act") was filed the Respondent No. 1, Malkeet Singh for declaration of Bhumidhari rights over the land in dispute claiming possession for more than 20 years and thus having acquired rights by way of adverse possession u/s 210 of the Act. The suit was decreed by the Sub-Divisional Officer/Assistant Collector, 1st Class vide judgment and order dated 26-3-1991 and Respondent No. 1 was declared Bhumidhar, Class-II.

3. State filed an appeal against the aforesaid judgment and order dated 26-3-1991 before the Additional Commissioner (Judicial), Kumaon Division, Nainital, which was allowed vide judgment and order dated 16-7-1991 holding that the recorded tenure-holders were THARU" who belong to Scheduled Tribe and in view of the amendment made u/s 210 of the Act, no right could be

perfected by adverse possession.

4. Aggrieved by the aforesaid order of the Additional Commissioner, Respondent No. 1 preferred second appeal before the Board of Revenue. The Board of Revenue vide its judgment and order dated 29-1-1992 allowed the appeal and affirmed the order passed by the Trial Court.

5. I have heard learned Counsel for the parties and have gone through the record.

6. The main ground of challenge is that Board of Revenue ignored the amendment made in Section 210 of the Act and as such no right could be perfected by adverse possession as the recorded tenure-holders belong to Scheduled Tribe. I do not find any force in the submission put forth on behalf of the learned Counsel for the Petitioner. The proviso in Section 210 of the Act prohibiting the perfection of title in respect of the land held by a Bhumidhar or Asami belonging to Scheduled Tribe was appended by UP. Act No. 20 of 1982 with effect from 3-6-1981. The Trial Court had already recorded a finding of fact that the possession of the Respondent No. 1 started about 20 years before filing the suit before the Trial Court and as such rights had perfected before 3-6-1981. The said amendment shall operate prospectively and shall not affect the title of the Respondent No. 1. Since the Respondent No. 1 had perfected his title over the land in dispute much before the appointed day and, therefore, subsequent amendment would not at all affect his title.

7. The impugned order has been passed after proper and exhaustive examination of the matter and in correct perspective of law. The findings recorded by the Trial Court are based on evidence and revenue records and, therefore, the Board of Revenue rightly affirmed the order of the Trial Court. I do not find any illegality or perversity in the impugned order and it requires no interference by this Court.

8. In the result, I find no merit in the writ petition and the same is accordingly dismissed. There shall be no order as to costs.