
(2011) 08 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34589 of 2010

Tej Bali

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Laws (Amendment) Act, 1977 — Section 135
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 135, 137

Citation : (2011) 8 ADJ 144 : (2011) 6 AWC 5720 : (2011) 114 RD 660

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble A.P. Sahi, J.—The Petitioner has assailed the judgment and orders dated 13.5.2010 and 3.3.2009 passed by the Respondent Nos. 1 and 2 and the order of the Nayab Tehsildar dated 12.1.2004 in proceedings u/s 137 of the U.P. Z.A. & L.R. Act.

2. The contention raised is that under the then existing provisions of Sections 134 and 135 of the U.P. Z.A. & L.R. (since omitted by U.P. Act No. 8 of 1977 w.e.f. 28.1.1977), Petitioner's father late Parmanand moved an application claiming acquisition of Bhumidhari rights upon deposit of the requisite rent and issuance of a declaration in the form of a Sanad. According to the facts as disclosed, the declaration in favour of the Petitioner's father came to be made on 14th April, 1971.

3. The Petitioner appears to have initiated proceedings for cancellation of the said grant on the ground that he is the son of the claimant and that his father was quite old, and there is every likelihood that the property which is in reality an Abadi may be alienated through this circumvented method. By virtue of the said declaration, it could not have been done as the land in dispute was Abadi

and was not an agricultural holding so as to claim cultivatory rights and grant of Sanad.

4. The authority after perusing the said complaint and after hearing the parties came to the conclusion that the land being in the nature of Abadi, the same is uncultivable and if it was not in the shape of an agricultural holding, no such declaration for grant of Bhumidhari rights could have been made. Accordingly the declaration in favour of the Petitioner's father was cancelled vide order dated 23.11.1971, copy whereof is Annexure-3 to the writ petition.

5. The Respondent Nos. 4 to 9 herein, who have filed a counter-affidavit to the supplementary affidavit sworn by Respondent No. 4, claimed the property on the basis of a gift deed said to have been executed by late Parmanand in their favour. On coming to know of the said cancellation of the declaration filed an appeal contending that they had succeeded to the said property and that the order cancelling the declaration and grant of Sanad had been passed without impleading them as a party. The appeal filed by the Respondents came to be allowed on this short ground that the order had been passed without impleading them as a party. After the appeal was allowed on 11th January, 1973, the Petitioner preferred a second appeal before the Board which was dismissed. The records of the proceedings which had been sent were with the Board. After the matter was remitted, the proceedings again became pending and the objection filed by the Petitioner itself was dismissed in default on 17.9.1994.

6. There is a short contest on this issue as well which deserves to be noticed at this stage. The Petitioner contends that the dismissal order dated 17.9.1994 was passed by the Tehsildar in the presence of the Petitioner but in the absence of the contesting Respondents. This fact has been stated in the objection dated 16.2.1996, copy whereof has been filed as Annexure-4 to the supplementary affidavit dated 28.10.2010. The stand of the contesting Respondents, according to the Petitioner, was to the effect that the order was passed in the presence of both the parties as is evident from the application dated 28.8.1995, which is Annexure-3 to the same supplementary affidavit. The finding recorded on this issue by the Tehsildar in the order dated 12th January, 2004 is to the effect that the order was passed on 17.9.1994 in the absence of both the parties. The aforesaid counter claim and the findings recorded, therefore, establish that the order dated 17.9.1994 was actually passed and was in existence which fact could not be disputed by Sri S.B. Singh, learned Counsel for the Petitioner. The issue that the order was passed in the presence of both the parties or in their absence, therefore, becomes immaterial.

7. There is yet another aspect which deserves to be noted that the Petitioner did not challenge this order dated 17.9.1994 as a result whereof the order of grant in favour of the Parmanand dated 14.4.1971 remained intact.

8. The Respondents vide application dated 28.8.1995 had made a request for the issuance of Sanad to the Respondents as the objection of the Petitioner had been

dismissed on 17.9.1994. The Petitioner filed an objection to the same. The application filed by the Respondents for issuance of Sanad was allowed and the objection filed by the Petitioner was rejected vide order dated 12.1.2004. Aggrieved, the Petitioner filed an appeal which was dismissed on 29.4.2008. The second appeal filed before the Board against the same was also dismissed on 3rd March, 2009. A review application filed by the Petitioner was also came to be dismissed on 13.5.2010. Aggrieved by the aforesaid orders, the Petitioner is before this Court under Article 226 of the Constitution of India praying for quashing of the same and for declaring that his father had illegally been given the benefit of declaration u/s 134 read with Section 135 which was invalid in view of the provisions of Section 137 of the 1950 Act.

9. Replying to the said submissions, Sri I.S. Tomar, learned Counsel for the Respondents submits that once the order dated 17.9.1994 had become final and had not been assailed, then there was no occasion for the Petitioner to contest the application filed for issuance of Sanad which was only a ministerial act, and the Petitioner had no claim surviving to contest the same. He further submits that the land in question was not Abadi land and the Bhumidhari Sanad had been validly granted. It is further contended that the Petitioner is not to gain any rights if the Bhumidhari Sanad is cancelled and the land is declared Abadi as he has no right, title or interest in the same. In short the contention raised is that the Petitioner is unnecessarily contesting the matter without having any valid claim involved, hence the writ petition deserves to be dismissed.

10. Before proceeding further, it would be appropriate to quote Section 137 of the 1950 Act which reads as under:

Cancellation of declaration.-(1) A declaration granted u/s 135 [as it stood immediately before the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977] may, on the application of any person interested (including the state Government) be cancelled or modified by the Assistant Collector on any of the following grounds, namely-

(a) that the declaration was obtained fraudulently by making of a false suggestion or by the concealment from the Assistant Collector of something material to the case;

(b) that the declaration was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof through such allegation was made in ignorance or inadvertently; and

(c) that a decree or order passed by a Competent Court in a suit or other proceedings with respect to the holding for which declaration was made shows that the applicant was not entitled thereto.

(2) Where the declaration is cancelled under Sub-section (1), the person depositing the amount shall be entitled to its refund.]

11. A perusal of the said Section would indicate that a cancellation of such

declaration granted u/s 134 read with Section 135 and grant of Bhumidhari Sanad can be initiated on the grounds referred to therein. In the instant case, the proceedings were initiated but the same came to be dismissed on 17.9.1994 which fact could not be disputed by Sri S.B. Singh, learned Counsel for the Petitioner. As noted hereinabove, the said order was not put to challenge before any forum. The existence of the order could not be successfully disputed and, therefore, in the opinion of the Court the Petitioner had no right left to contest the subsequent application moved by the Respondents for formal issuance of Sanad. The same could not have been forestalled once the order dated 17.9.1994 had become final and there was an order in favour of the predecessor in interest of the contesting Respondents dated 14.4.1971.

12. So far as the issue relating to the nature of the land in dispute is concerned, namely, as to whether it was Abadi land or not, the same becomes irrelevant, insofar as the Petitioner is concerned once it has been found that he has not chosen to contest the order dated 17.9.1994, and which is admitted by him to have been passed in his presence.

13. The subsequent plea that the order was not available which is sought to be substantiated with the aid of the documents filed alongwith the supplementary affidavit indicating the non-availability of the order dated 17.9.1994 is an afterthought. If the Petitioner had knowledge of the order dated 17.9.1994 as admitted by him in his own objection dated 16.2.1996 then it was all the more necessary for the Petitioner to have assailed the same and in case, the order was not available, he could have applied for reconstruction of the same. The Petitioner did not admittedly make any attempt either to challenge the order dated 17.9.1994 or get it restored or otherwise take appropriate steps in that regard.

14. Accordingly, I do not find any merit in the claim of the Petitioner to allow him to contest the issuance of Sanad in favour of contesting Respondent.

15. The writ petition lacks merit and is accordingly dismissed.