

(2005) 05 AHC CK 0174

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8056 of 1981

Umesh Chandra

APPELLANT

Vs

Joint Director of Consolidation, Settlement Officer
Consolidation, Ram Khilauni and Smt. Kanta Devi

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131, 134,
134(1), 134(2), 137

Citation : (2005) 4 AWC 3391 : (2005) 99 RD 87 : (2005) 2 RD 87

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : S.L. Yadav, for the Appellant; R.P. Goyal, Prem Babu Verma and
Sudhir Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri S.L. Yadav learned counsel for the petitioner and Sri Prem Babu Verma appearing for the respondents.

2. Briefly stated the facts of the case are that during the consolidation operation the petitioner filed objection u/s 9 -A (2) of the Act claiming bhumidhari rights over the land in dispute on the basis of registered sale deed dated 9.6.1972 alleged to have been executed by Smt. Ram Pyari the recorded tenure holder in his favour. The respondent No. 3 also filed objection claiming rights as legal heirs of smt. Ram Pyari.

3. Smt. Ram Pyari who was recorded as sirdar over the land in dispute made an application on 9.6.1972 u/s 134 of the Act for grant of bhumidhari sanad and deposited ten times of the land revenue on the same day as required by the said Section. She also executed a registered sale deed in favour of petitioner on the same date i.e. 9.6.1972. Smt Ram Pyari died on 17.6.1972 whereas bhumidhari sanad was granted on 24.6.1972.

4. Respondent No. 3 filed an application u/s 137A of the Act for cancellation of bhumidhari sanad on the ground since Ram Pyari died on 17.6.1972 as such sanad could not have issued in name of a dead person. The application was allowed on 15.7.1973 however an appeal against the said order filed before the Commissioner was abated due to consolidation operation.

5. Consolidation Officer vide order dated 27.2.1976 allowed the claim of the petitioner in respect of disputed plot Nos. 69, 70 and 71 and directed that his name be entered as bhumdhar. Feeling aggrieved respondent No. 3 filed an appeal which was allowed by the Settlement Officer Consolidation vide order dated 26.12.1976. The revision filed by the petitioner was dismissed by the Deputy Director of Consolidation on 26.3.1981.

6. The Settlement Officer Consolidation and Deputy Director of Consolidation dismissed the objection of the petitioner on the ground that since Smt. Ram Pyari was dead before grant of sanad and no bhumidhari sanad could be issued in the name of a dead person as such she was only a sirdar on the date of execution of sale deed and thus had no right to transfer the property.

7. The question which arises for adjudication is whether the bhumidhari sanad issued u/s 134 (1) of the act would relate back to the date of making application or would be effective from the date it had been issued.

8. Section 134 and 137 of the Act as it stood at the relevant time read as under,

"Section 134. Acquisition of bhumidhari rights by a sirdar- (1) If a sirdar belonging to the class mentioned in Clause (a) of Section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land for which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he, has acquired the rights mentioned in Section 137 in respect of such land:

Provided that the rights to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I. In this subsection "land" includes shares in land.

Explanation II.- For the purpose of this section the land revenue payable shall-

(a) in respect of land referred to in the proviso to Clause (a) of Sub-section (1) of Section 246 be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to Section 247 applies, be an amount determined at hereditary rates under that section.

(c) The amount referred to in Sub-section (1) may be paid in cash or, if the State

Government so prescribes, in form of bonus or otherwise. "

Section 137. Grant of certificate-

(1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in Section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate, under Sub-section (1), the sirdar shall, from the date on which the amount referred to in Sub-section (1) of Section 134 has been deposited.

a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted, and

b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, one-half of the amount of land revenue payable or deemed to be payable by him therefore on date of application:

Provided further that in the cases referred to in Explanation II of Section 134 the sirdar shall during the period a reduced amount is payable in accordance with Section 246 or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation:- For the purposes of Clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount.

(2-A) Where the amount referred to in Sub-section (1) of Section 134 is deposited on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under Clause (b) of Sub-section (2) for the remainder of the agricultural year in which the amount is deposited shall be determined in such manner as may be prescribed".

9. A plain reading of Section 134 indicates that on an application being made and deposit of ten times of land revenue a sirdar becomes entitled to the declaration of having acquired the rights mentioned in Section 137 i.e. bhumidhari right, with effect from the date the amount has been deposited. Similarly, Section 137 (2) provides that upon the grant of certificate under Sub-Section -1, the sirdar shall be deemed to be bhumidhar from the date on which amount referred to in Section 134 (1) has been deposited.

10. A conjoint reading of the two provision shows that point of time when sirdar acquires bhumidhari right has been fixed by the legislature as being the day when amount required by Section 134 (1) is deposited by him. The date on which the declaration u/s 137 is made is immaterial as the statute prescribes that declaration u/s 137 (1) will have retrospective effect and would relate back to the date of deposit made u/s 134 (1) of the Act. The view finds support from

the decision of the Hon. Apex Court in the case of Deo Nandan and Another Vs. Ram Saran and Others, .

11. In view of the aforesaid legal position it is clear that Smt. Ram Pyari acquired bhumidhari rights on the date i.e. 9.6.1972 when she made application u/s 134 (1) of the Act and deposited the requisite amount. The view taken by the Settlement Officer Consolidation and Deputy Director of Consolidation that since declaration u/s 137 (1) was granted subsequent to the execution of the sale deed and she was only a sirdar on the date of execution of the deed is illegal and cannot be sustained.

12. Other ground on which Settlement Officer Consolidation and Deputy Director of Consolidation have non suited the petitioner is that since Smt. Ram Pyari was dead on the date of grant of declaration u/s 137 (1) of the Act no certificate could have issued in the name of the a dead person. The Settlement Officer and Deputy Director of Consolidation have relied upon the decision of this court. The view taken by this court in the case of Raghunanadan Singh and Anr. v. Vashwant Singh 1978 RD 183 was that in case an applicant dies before the order for grant of certificate is passed, such an order is nullify arid no rights or benefits could accrue on its basis. However, Hon. Supreme Court in the case of Dev Nandan v. Ram Saran (supra) has considered the decision of this court and has taken contrary view. it has been observed by the Hon"ble Apex Court as follows;

13. In our opinion, the said decisions run counter Jo the plain language and meaning of Section 134 and 137 as they stood at the relevant point of time. When a certificate is issued u/s 137, it in fact recognizes the position as on the date when the application was made and the payment contemplated u/s 134 (1) was deposited. The certificate, in other words will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed u/s 134 (1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed u/ s 137, it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja, learned counsel for the appellants, as an analogy, has drawn our attention to Order 22 Rule 6, C.P.C. which provides that if any of the parties to a suit dies after hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act.

14. Thus the view taken by this court stands overruled by Hon. Apex court. Since the certificate will have retrospective effect and would relate back to the application, the death of tenure holder between the period of making application and issuance of certificate will have no effect and such a tenure holder would be deemed to have required bhumidhar rights on the date of making application, even though he may have died before grant of certificate.

15. Thus the second ground for rejecting the claim of the petitioner by the Settlement Officer Consolidation and Deputy Director of Consolidation also cannot be sustained.

16. In view of the aforesaid discussions the claim of the petitioner on the basis of sale deed executed by Smt. Ram pyari was liable to be allowed and was rightly allowed by the Consolidation Officer. The impugned judgment of the Settlement Officer Consolidation and Deputy Director of Consolidation are unsustainable and are hereby quashed. The writ petition stands allowed. However, there shall be no order as to costs.