

(2004) 04 AHC CK 0080

In the Allahabad High Court

Case No : C.M.W.P. No's. 48629 and 49090 of 2002

Ved Pal and Others

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(1), 48, 9A

Citation : (2004) 3 AWC 2519 : (2004) 97 RD 12

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; Pankaj Bharti, Vinay Malaviya, Anuj Kumar and Shireesh Gopesh, Anuj Kumar, Addl. S.C. and Prakash Chandra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Present petition is directed against the order dated 17.10.2002, passed by Joint Director of Consolidation, Lucknow, by which the orders passed by the Consolidation Officer and Settlement Officer Consolidation were set aside and the area of plots comprising in Khata No. 301 were directed to be recorded on the basis of area recorded in basic year khatauni.

2. The facts bearing on the controversy are that plots comprising in Gata No. 2069, area 1 bigha 11 biswa, 2130 area 1 bigha 13 biswa, 2131, 11 biswa, 2133, one bigha one biswa, 2134, 19 biswa, 2193, 11 biswa, 2195, 1 bigha 7 biswa, 2197, 3 bigha 1 biswa, 2203 1 bigha 9 biswa and 2204 1 bigha 9 biswa were recorded in the basic year in the name of the petitioners. The entries in relation to area of the aforesaid plots were altered on the basis of survey ordered by the Consolidation Officer pursuant to notification u/s 4 (1) of the U. P. Consolidation of Holdings Act and following entries in relation to area came to be recorded against the aforesaid plots :

2069, 1 bigha 14 biswa, 2130, 1 bigha 17 biswa, 2131, 12 biswa, 2133, 1 bigha

6 biswa, 2134, 1 bigha 2 biswa, 2193, 14 biswa, 2195, one bigha 12 biswa, 2197, 3 bigha 4 biswa, 2293, 1 bigha 18 biswa, 2204, 1 bigha 14 biswa.

Likewise in the Writ Petition No. 49090 of 2002 tagged with this petition, Ghata Nos. 2143, 2149, 2151, 2154, 2155 and 2159 were also found to have areas excess of what was recorded in the basic year.

3. The order passed on the basis of resurvey by the Consolidation Officer was taken in challenge by respondent Nos. 4 to 7 in appeal before the Settlement Officer of Consolidation. It is claimed by the petitioners that the Consolidation Officer passed the orders after sedulous scrutiny on resurvey by field to field partial and therefore, the order of the Consolidation Officer received affirmance in appeal. This led the opposite parties to prefer revision before the Joint Director of Consolidation. The Joint Director of Consolidation and in the case of connected writ petition, the Deputy Director of Consolidation upturned the orders of the two courts below and directed entries of the settlement year to be resituated in the revenue records. It is in this perspective that the present petition has been instituted.

4. I have heard Sri Sankatha Rai, appearing for the petitioners and also learned counsel representing the opposite parties including Vinay Malviya, Pankaj Bhartiya, etc, Sri Sankatha Rai, premised his submission by urging that the plots in question were resurveyed by field to field partial at the behest of Consolidation Officer and both the Consolidation Officer as well as Settlement Officer of Consolidation rightly gave their imprimatur to the entries relating to areas so recorded against the plots in question on resurvey. He further canvassed that the Settlement Officer of Consolidation rightly did not interfere with the order of the Consolidation Officer in appeal reckoning into consideration various factors including consideration that the accretion to the areas in plots concerned had been made consequent upon resurvey and field to field partial and it is nobody's case that the increase in the area was at the cost of others and that the Deputy Director of Consolidation in directing recording of areas as embodied in the settlement year, acted as extra vetting authority and his action was not informed with any provisions of law or in consonance with the provisions of the U. P. Consolidation of Holdings Act. To shore up his arguments, the learned counsel drew upon various provisions of the U. P. Consolidation of Holdings Act and the Rules framed thereunder namely, Rules 16, 17 and 18 of the U. P. Consolidation of Holdings Rules. He further submitted that after notification u/s 4 of the U. P. Consolidation of Holdings Act, had been publicised field to field partial was undertaken and if accretion to the area of plots in question had been without any valid basis, the Consolidation Authorities undertaking field to field partial would certainly have excised the increased areas out of the plots in question and Consolidation Authorities having found no surpluses, rightly maintained the entries in relation to areas found on the spot at the time of field to field partial. Per contra, Sri Vinai Malviya, representing the opposite parties canvassed that the U. P. Consolidation of Holdings Act was enacted for consolidation of small

pieces of land for the development of agriculture and under the scheme of the U. P. Consolidation of Holdings Act, unless a tenure holder of a holding claims his right in certain land, he is entitled to get valuation of his original holding for allotment of a chak by consolidating all chaks at place. He further canvassed that petitioner is not claiming any right on the basis of adverse possession and his claim is in relation to his original plots only. It was further submitted that the Consolidation Officer and Settlement Officer of Consolidation wrongly passed orders thereby increasing area of a plot recorded in the basic year without any authority of law and that the Deputy Director of Consolidation rightly set aside the said orders and directed to slash the area to make it commensurate with basic year entry which is also concordant with settlement year entry.

5. Upon taking into reckoning the arguments advanced across the bar, the first and foremost question that begs consideration in this case is (1) whether any consolidation authority could add to or slash the area of a plot on the basis of survey made after notification u/s 4 (1) of the U. P. Consolidation of Holdings Act? and (2) whether order passed by the Deputy Director of Consolidation directing to maintain basic year entry and in consequence, reversing the order passed by subordinate Consolidation Authority allowing to increase area of plots mentioned above was justified in the facts and circumstances of the case?

6. Before scanning the merits of the arguments advanced across the bar, it is essential to delve into the intendment of the Legislature while enacting the U. P. Consolidation of Holdings Act. In this regard, Section 4 (1) of the U. P. Consolidation of Holdings Act is very relevant and may be quoted below to have grasp of its implication :

"4. Declaration and notification regarding consolidation.--(1) (a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, make a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation :

(i) to enter upon and survey, in connection with rectangulation or otherwise and to take levels of any land in such area,

(ii) to fix pillars in connection with rectangulation, and

(iii) to do all acts necessary to ascertain the suitability of the area of consolidation operations."

The purpose of survey on notification is to secure rectangulation. Section 3 (8A) defines the word "Rectangulation" which means the process of dividing the area of a unit into rectangles and parts of rectangles of convenient size with a view to regulating the allotment of chaks during consolidation. The main object as embodied in the U. P. Consolidation of Holdings Act is to facilitate consolidation of small plots. The word "consolidation" means rearrangement of holdings in a unit along with several tenure holders in such a way as to make their respective

holdings more compact. Sections 7 and 8 of the Act make provision for revision of village map. It also unfolds that revision of map is for provisional consolidation scheme for a unit. Section 8 also makes it clear that upon revision of map u/s 7, the District Deputy Director of Consolidation may cause to be revised the field book of the unit after field to field partial and the current annual register after its test and verification and there is also provision for valuation of each plot after taking into consideration its productivity, location and availability of irrigation facilities, and also trees, wells and other improvements. It is for the purpose of ascertaining share of each owner in a Joint holding and prepare a khasra chakbandi in the form prescribed and a statement showing the mistakes and disputes discovered during the test and verification of the annual register and in the course of the field to field partial. On publication of record in Section 9 giving the details mentioned above, any person may file objection claiming his right and liability in relation to the land ; mistakes and disputes discovered u/s 8 and other matters mentioned above. Rule 24 of the U. P. Consolidation of Holdings Act is very relevant in this connection also. Initially, the consolidation courts were not competent to decide title but subsequently it was felt that in determining valuation unless the claim of the title of a person is decided, whole purpose of the Act will be frustrated and therefore by subsequent amendment, jurisdiction to decide title was also bestowed upon consolidation authorities so that the orders passed in proceedings under Sections 9A and 9B be incorporated in consolidation records and valuation of land of each tenure holder be determined. It was done with the avowed object of consolidating the small pieces of land of original holding into a compact chak for the development of agriculture, to remove boundaries, fences etc., to make agriculture holding more economical and beneficial. From a perusal of the preamble of the Act and other relevant provisions of the U. P. Consolidation of Holdings Act, it would crystallise that unless a tenure holder claims any right in a plot and/or part of a plot not recorded in the basic year, he cannot get any right/title, if a person claims his right in a land in proceeding arising out of Section 9A of the Act. The intention of the Legislature leaves no manner of doubt that survey and spot verification of the map, on notification issued u/s 4 (1) is to ascertain the land, fit for consolidation. In spot verification proceedings, such lands which are not fit for consolidation as mentioned in Section 2 of the Act shall be mentioned in Form 2A of the Forms under the U. P. Consolidation of Holdings Act. It is thus clear that only those lands, which are fit for consolidation, shall be included in the consolidation scheme. The land not fit for consolidation like abadi, grove, land affected by fluvial action and intensive soil erosion and land mentioned u/s 132 of the U.P.Z.A. and L.R. Act or land subject to prolonged water logging, usar, kallar and rihala plots, land used for growing pan, rose bela, jasmine and kewra and other land should be determined. In case, a plot is measured and verified from the original map and its area increases or decreases on spot verification, the intention of Legislature in making spot verification is not to increase or decrease the area of a plot but to correct the area recorded in basic year for the purposes of allotment of chak on the basis of entitlement of a tenure holder and

to allow tenure holder to get the valuation of entire land for which he has title. If out of two adjoining plots, area of one plot on spot verification increases or the other decreases unless the tenure holder stakes claim by filing objection on publication of record u/s 9A of the U. P. Consolidation of Holdings Act to the land on the basis of adverse possession but not recorded in the basic year, otherwise than in accordance with law and establishes his adverse right u/s 210 of the U.P.Z.A. and L.R. Act, only then he could get any right in relation to area recorded in excess to the actual area reported during survey or spot verification and such determination of valuation of land could only be made u/s 9A (2) of the U. P. Consolidation of Holdings Act if any objection is filed in relation to claim of a land and adjudication takes place in accordance with law. The consolidation authorities are wholly incompetent either under the U. P. Consolidation of Holdings Act or under any provisions to authenticate entry in relation to a bhumidhar for more area than the area specified in basic year or previous record in a specific plot recorded in the basic year unless any rights are claimed. It is worth noticing that if a plot is recorded with specific area in the basic year, the area cannot be increased or decreased unless right for increased area as against the area specified in the basic year or previous record in a plot is claimed on objection u/s 9A of the U. P. Consolidation of Holdings Act. If a tenure holder does not claim in accordance with law, any right for excess area not recorded in the basic year or previous record, the consolidation authorities in consolidation proceedings are bound to correct the record and also to correct the area if found in excess or deficient. In case no adverse right/rights are claimed, the consolidation authorities shall restore the same on basis of area enumerated in the basic year or previous record. If a tenure holder does not claim in accordance with law any right for area in excess of what is recorded in the basic year or previous records, the consolidation authorities are bound to rectify the record and restore the area accordingly if found in excess or deficient. In case no adverse rights or legitimate rights are claimed in the land for the area in excess, the consolidation authorities shall record the correct area for which a person was recorded in the basic year or previous record. After making requisite search for the reason for such mistake. The decrease or increase in the area may be attributable to various reasons, it may be owing to trespass, etc. It is settled position that no one can derive bhumidhari rights on the increased area by committing trespass unless he has matured his right by adverse possession u/s 210 of the U. P. Z. A. and L.R. Act. If a tenure holder has not claimed increased area on the basis of his title or any entitlement in law, the basic year entry in the record shall have to be given finality. It is also worthy of notice that on the date of abolition of Zamindari by State Legislature, fresh rights were conferred in the name of bhumidhari/sirdari/asami, etc, with a particular area in a particular plot. The rights so accruing to a person shall be considered to be legitimate right to be recorded as bhumidhari for, which he was declared bhumidhari on the date of vesting. On the other hand in case consolidation proceedings had commenced and concluded, the final records prepared under the Consolidation scheme shall be the basis of recording the correct area of a plot in the subsequent

consolidation proceedings. In the course of arguments, it was brought to my notice by the learned counsel for the opposite parties that after the date of vesting, the survey operation under the U. P. Land Revenue Act was undertaken at some places and the area was decreased or increased by the Record and Survey Operation officials. As a matter of fact the proceeding in record and survey operations are on all counts proceeding in summary manner for certain purposes and those authorities are wholly incompetent to render adjudication on title. If there is any discrepancy or any such document which impinges upon the right of a person under the U. P. Z. A. and L. R. Act on the date of vesting, the same shall not be taken into reckoning and the settlement of rights on date of vesting which is the basis providing bhumidhari/sirdari/asami rights shall be looked into. The object of survey and record operation is not to decide title and as such, it is intended for other purposes, not having any nexus with adjudication on title.

7. As stated supra, the consolidation authorities on the basis of spot inspection are wholly incompetent to increase or decrease area of a plot recorded as bhumidhari/sirdari/asami rights, now bhumidhari with transferable and non-transferable rights under any of the provisions of the U. P. Consolidation of Holdings Act. As in the present case, none of the petitioners are claiming any rights on the basis of their being in possession otherwise than in accordance with law and no objection u/s 9A of the U. P. Consolidation of Holdings Act having been filed for right to area in excess, they cannot be declared bhumidhar of area in excess for which they were not declared bhumidhar in law.

8. The intention of Legislature while enacting U. P. Consolidation of Holdings Act is not to authenticate entry of excess area of a particular plot of a bhumidhar unaided by any right accruing to a person otherwise than in accordance with law but to maintain correct record.

9. Notwithstanding Court's specific queries whether there is any provision under the U. P. Consolidation of Holdings Act or under the U. P. Zamindari Abolition and Land Reforms Act under which a person who is a recorded tenure holder of a particular holding with particular area could get any right of any increased area merely on the basis of a survey not supported by any law, the learned counsel for the petitioner could not point out any law on the basis of which the consolidation authorities could declare rights in favour of a person who is not claiming any right on the basis of adverse possession or otherwise u/s 9A of the U. P. Consolidation of Holdings Act, in a land which was not recorded in his name in the basic year.

10. We are governed by Constitution and the law of constitutional scheme is rule of law. Unless law so permits nobody could get any right other than the right given by law. A bhumidhar is a bhumidhar with a particular holding and his right cannot be recognised over an area more than the area of a specific plot unless he has legitimate right recognised under law as bhumidhar. Admittedly, as in the present case no adverse right was claimed by the petitioner for the, excess land

on spot verification, they cannot be recorded as bhumidhar of such excess land. They simply say that by reason of spot verification, some area is reported to have been enhanced in a particular plot should be subsumed with that area as bhumidhar and accordingly, be recorded as reported by the subordinate consolidation officer.

11. The distillate of what has been stated and discussed supra, is summed up. Unless a person claims and establishes a right arising out of proceeding u/s 9A of the U. P. Consolidation of Holdings Act, in relation to an area in excess to the area of a plot for which he is not recorded in the basic year khatauni, that excess area cannot be added in his name as bhumidhar and the area of a particular plot cannot be increased or decreased. A tenure holder is entitled to get valuation in lieu of his original holding recorded in the basic year record for the purposes of consolidation scheme only.

12. As a result of foregoing discussion, I am of the view that the order passed by the Deputy Director of Consolidation was rightly passed in accordance with law.

13. In the result, both the petitions fail and are dismissed and in consequence, the consolidation authorities are directed to maintain basic year entry fortified by entry of settlement year.