

(2005) 07 AHC CK 0034
In the Allahabad High Court
Case No : C.M.W.P. No. 23334 of 2001

Vidyawati Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 33

Citation : (2005) 4 AWC 3445

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Ram Sheel Sharma, for the Appellant; Suresh Chandra Verma, Sita Ram Vishwakarma, Narendra Kumar Sharma, S.P. Srivastava and S.C., for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—Pleadings are complete and the counsel for the parties agree that the petition, may be finally disposed of under the Rules of the Court.

2. Heard learned Counsel for the parties.

3. These three Scheduled Caste ladies, two being widows, have filed this petition challenging a laconic order dated 10.11.2000, passed by the Board of Revenue.

4. Anang Pal Singh son of Shiv Nath Singh was the original recorded tenure holder of plot No. 272 having an area of 2 bighas 15 biswas. In proceedings under the U.P. Imposition of Ceilings on Land Holdings Act, the aforesaid disputed land was declared to be surplus on 10.10.1975 and after its possession was taken, it vested in the Gaon Sabha. The Gaon Sabha allotted the disputed land in favour of the Petitioners, who are landless Scheduled Caste persons. In the year 1979, at the time of delivery of possession to the Petitioners, Respondent No. 5 instituted a title suit No. 93 of 1979 u/s 229B of the U.P.

Zamindari Abolition and Land Reforms Act (hereinafter referred as Act) claiming to have perfected his title over the disputed land by adverse possession. Though the Gaon Sabha was impleaded as one of the Respondents in the suit, the Petitioners were not impleaded. However, after contest, the said suit was dismissed by order and judgment dated 17th June, 1980. Against the order of the Sub-Divisional Magistrate, an appeal u/s 33 of the Act was preferred before the Commissioner, which was also rejected by a, reasoned order dated 23.7.1990. Not satisfied, the Respondent No. 5 preferred a Second Appeal No. 66 of 1989-90 before the Board of Revenue which also rejected the second appeal vide its order and judgment dated 8.7.1996.

5. Nevertheless, an application for recall of the order and judgment dated 8.7.1996 was made on 7.9.1996, inter alia, alleging that his counsel was not heard, but no steps were taken for effecting service on the Respondents before the Board, thus the application was rejected vide order dated 18.3.1999. Again another application for recalling the order dated 8.7.1996 and 18.3.1999 was made which was also rejected on 23.9.1996 for non-prosecution. The Respondent No. 5 waited for about four years and made yet another restoration application dated 25.10.2000 which has been allowed by the impugned order dated 10.11.2000.

6. In spite of the aforesaid facts, the Respondent No. 5 is audacious enough to contend that the Petitioners not being parties to the proceedings either before the Sub-Divisional Magistrate, Commissioner or the Board of Revenue, have no locus standi to maintain this petition.

7. The Petitioners, the underprivileged class of our society who were allotted the surplus land in furtherance of one of the cherished objects of imposition of ceilings on agricultural land have yet to taste the fruit of that allotment made way back in 1979. They are pitted against the mite of the Respondent No. 5, who, conveniently sets up a claim of adverse possession moment the land is declared surplus, with or without the connivance of the ex-land holders using the law as his maiden. He has been able to keep at bay the Petitioners on one hand and manoeuvred the prolonging of their woes by getting the final order recalled without challenge. The powers under writ jurisdiction are wide enough to hear the broodings of the Petitioners and intervene to prevent their deprivation. On the facts of this case, it cannot be said that the Petitioners are stranger to the dispute, their precious rights are involved and they would be aggrieved party. It is common knowledge that in such proceedings the Gaon Sabha does not take pains to challenge such orders for various, reasons, may be with motive. Thus, the preliminary objection of the Respondent No. 5 is without any substance and is rejected.

8. Learned Counsel for the Petitioners has urged that a bare perusal of the impugned order would show that no reasons whatsoever have been given why the order dated 8.7.1996 and the other orders were recalled and the suit decreed. A perusal of the impugned order shows that there is a recital that the

reason given in paragraph 7 of the affidavit dated 7.8.1996 were sufficient when examined in context of the facts of this case to recall the order. The impugned order does not only recall the dismissal order on merit, but it decrees the suit of the contesting Respondent holding that in spite of service none has appeared on behalf of the other party, namely, the Gaon Sabha and the original owner Anang Pal Singh. Neither the facts of the case have been noticed nor any reason for disagreeing with the judgment of the Deputy Collector and Commissioner have been given and neither their orders have been specifically set aside, but in a most arbitrary and motivated manner, the suit of the Respondent No. 5 has been decreed and directions issued for entering his name in the revenue records. The order not only stinks of arbitrariness but is a slur on the institution of the Board of Revenue. It would be worthy to note that the application was moved on 25.10.2000 but there is nothing in the impugned order or the counter-affidavit filed on behalf of the Respondent No. 5 to show whether any notice was issued or served on the Gaon Sabha. Within fifteen days of moving the recall application, the suit of the Respondent No. 5 has been decreed. Though the Court refrains from making any observations but it cannot restrain itself from saying that the reasons are not far to be found.

9. The three revenue authorities recorded categorical findings that the Respondent No. 5 had hopelessly failed to show his possession over the disputed property at any time much less for twenty years. The Courts had examined in detail the revenue documents and oral statements recorded on behalf of the parties in coming to the aforesaid conclusion. The Courts also found that consolidation operations had intervened when the Respondent No. 5 claims to have perfected his title by adverse possession, but he never lodged any objections to get his name mutated in the revenue records or for seeking declaration before the consolidation courts, therefore, the suit was also hit by the bar u/s 49 of U.P. Consolidation of Holdings Act.

10. The impugned order is against all settled principles of procedure and law which cannot be sustained and is to be quashed and the orders of the Deputy Collector and Commissioner have to be restored. The Petitioners have been kept out of possession since 1979 by the Respondent No. 5 and as such he would pay Rs. 25,000 as compensation to each of the Petitioners within a period of three months from today, and in case of failure, the Collector, Kanpur Nagar, is directed to recover the amount from Respondent No. 5 Sri Deo Narain as arrears of land revenue within a further period of one month and pay it to the Petitioners. The Collector is further directed to forthwith put the Petitioners in possession of their respective plots within a week from the receipt of a copy of this order.

11. The Registrar is directed to send a copy to the Collector, Kanpur Nagar, Kanpur, forthwith for compliance.

12. With the aforesaid directions, this petition succeeds and is allowed. The impugned order dated 10th November, 2000, is hereby quashed.