

(1992) 03 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10167 of 1992

Vikram Singh Junior High School

APPELLANT

Vs

District Magistrate (Finance and Revenue) and Others

RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Evidence Act, 1872 — Section 114

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 28, 49, 5, 7

Uttar Pradesh Land Revenue Act, 1901 — Section 218, 34

Uttar Pradesh Revenue Court Manual — Rule 39

Uttar Pradesh Tenancy Act, 1939 — Section 180

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198, 198(2)

Citation : (1992) 2 AWC 665

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : A.N. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard learned Counsel for Petitioner. On the basis of a resolution of the Gaon Sabha, dated 15-8-1973, Petitioner is claiming land in dispute. On the basis of this resolution name of Petitioner was recorded by the Sub Divisional Officer vide order dated 4-2-1975. The order of the S.D. O was challenged in revision Board of Revenue vide order dated 15-2-1977 quashed the order of the S.D.O. dated 4-2-1975 on which basis name of the Petitioner was recorded in revenue papers and the Petitioner Vikram Singh Junior High School Prithvipur was directed to first obtain approval of the Sub Divisional Officer regarding the resolution of the Land Management Committee dated 15-8-1973. This order of the Board of Revenue was challenged in this Court. This Court vide order dated 18-1-1992 dismissed the writ petition. However, it was left open to the Petitioner to approach the consolidation authorities as the village has been brought under consolidation. The order passed by this Court dated 8-1-1992 has been filed as Annexure VI to this writ petition. It appears that in the mean time

the land in dispute was allotted in favour of Respondents Nos. 6 to 18 and the revenue authorities have directed that their names may be mutated in the revenue papers. The orders of the authorities granting mutation in favour of Respondents Nos. 6 to 18 dated 18-11-1991, 13-11-1991 and 26-12-1991 have been challenged by means of this writ petition.

2. Learned Counsel for Petitioner has submitted that by the order dated 13-10-1987 objection of the pradhan was dismissed in default and name of Petitioner continued on record, and the entry in favour of Petitioner has become final. Chak carved out in his favour has also become final. Claim of the state and Gaon Sabha is also barred u/s 49 of the U.P. Consolidation of Holding Act. It has been further submitted that the allotment proceedings in favour of Respondents nos. 6 to 18 have been made behind the back of Petitioner and they are void proceedings. My attention has also been invited to the fact that proceeding u/s 198 for cancellation of allotment in favour of the Petitioner was dismissed by order dated 13-7-1982 by the Collector.

3. Learned Counsel for Petitioner has also referred to various cases, viz. Badal v. Dy. Director of Consolidation 1970 RD 240 (FB); Lalsa v. State of U.P. 1972 RD 367 (DB); Ashfaq Ahmad v. Dy. Director of Consolidation Allahabad 1978 AWC 470 and Gram Sabha Kodra v. Noor Mohammad Khan 1974 ALJ 516 (DB).

4. I have considered the submissions made by the learned Counsel for Petitioner and I have also perused the record and gone through the cases cited in support of the submissions. Consolidation of Holdings Act deals with the tenure holders. Section 7(ii) defines it to mean Bhumidhar, sirdar and inter alia Asami. It provides for adjudication of their rights for allotment of chaks to them and for delivery of possession over such chaks to the concerned tenure holders. In the present petition now it has to be seen whether the Petitioner could be a Bhumidhar, Sirdar or Asami in respect of the plots in dispute.

5. The undisputed facts are that Gaon Sabha by a resolution dated 15-8-1973 proposed to let out the plots in dispute in favour of Petitioner. The Sub Divisional Officer by his order dated 4-2-1975 directed to record the name of the Petitioner in revenue papers. This order of the Sub Divisional Officer was challenged in revision u/s 218 of the U.P. Land Revenue Act which was referred by the Additional Commissioner to the Board of Revenue where it was registered as Reference No. 303-304 (L.R.) of 1975-76. The Board of Revenue after hearing the parties found that the impugned order of the Sub Divisional Officer was passed on the application dated 9 1-1975 moved by Vikram Singh, manager of the Petitioner school for grant of permission to the Land Management Committee for execution of the lease in favour of Petitioner in respect of the land in dispute in pursuance of the aforesaid resolution of the Gaon Sabha. However, the Sub Divisional Officer illegally treated the application as an application for mutation and directed for recording of the name of Petitioner in revenue papers. It was also noticed that two of the plots were already allotted in favour of hospital. However, no notice was issued to the hospital nor any proclamation was issued

for mutating the name of Petitioner. The Board of Revenue took the view that the order of the Sub-Divisional Officer dated 4-2-1975 is wholly without jurisdiction and illegal in every respect and cannot be maintained. With these findings the revision was allowed and the order dated 4-2-1975 passed by the Sub-Divisional Officer was set aside and the Petitioner was directed to obtain the approval of the Sub-Divisional Officer regarding the proposal of the Land Management Committee dated 15-8- 1973. It will be relevant to quote the operative part of the order dated 15-2-1977 passed by the Board of Revenue:

...Accordingly agreeing with the Additional Commissioner, I allow the present revision petitions filed separately by Bharat Singh and Nawab Singh and quash the S.D.O.'s impugned order dated 4-2-1975. The Vikram Singh Vidyalaya shall first have to obtain the S.D.O.'s approval, as under the Law regarding the L.M.C.'s proposal dated 15-8-1973 to lease out the suit plots to the Vidyalaya without charging any rent, without such approval as under the Law and grant of a lease deed in pursuance of the same, no proceedings u/s 34 U.P. Land Revenue Act can be undertaken.

6. It cannot be disputed that without prior approval of the Assistant Collector First Class, Incharge of the Sub-Division a lease cannot be granted by Land Management Committee under the provision of U.P. Act No. 1 of 1951 and the Rules framed thereunder. The learned Counsel for the Petitioner has not placed any material on record showing that after order of the Board of Revenue dated 15-2-1977 the Petitioner ever obtained the required approval of the Sub Divisional Officer and in pursuance thereof any lease was executed in its favour. The effect of the order dated 15-2-1977 passed by the Board of Revenue was that the entries made in favour of the Petitioner in pursuance of the order dated 4-2-1975 passed by the Sub Divisional Officer Chhibra Mau became without any right, title or interest. Such entry even if continued on papers could not confer any right on Petitioner. In fact, in pursuance of the order of the Board of Revenue under Rule 39 of the U.P. Revenue Court Manual, revenue records ought to have been corrected. However, it appears that it was not done. The provisions of Rule 39 have been held to be mandatory by a Division Bench of this Court in case *Nanhun v. Dy. Director of Consolidation* 1973 RD 146. The Division Bench observed as under:

In the instant case it has not been stated in the writ petition that no order as required by Rule 39 aforesaid was issued. The provisions of the said rule are mandatory and in view of illustration (e) to Section 114 of the Evidence Act it can safely be presumed that such an order was issued. The decree and the order issuing parwana for delivery of possession read with the mandatory requirements of Rule 39 aforesaid had the effect of requiring necessary correction being made in the records as contemplated by Explanation III aforesaid. Consequently even if the correction may not have been incorporated in the records it would be immaterial and the entry of 1356F would be deemed to have been corrected before the date of vesting. Such an entry on the face of it could not confer any

Adhivasi rights on the Appellant.

7. If the ratio of the aforesaid Division Bench is applied to the present case, the alleged entry in favour of Petitioner ought to have been corrected in pursuance of the order dated 15-2-1977 passed by the Board of Revenue. Even if it was not corrected, it shall be deemed to have been corrected. In view of the aforesaid legal position, the orders passed by Collector, dated 6-4-1991 by which the name of Petitioner has been expunged from the revenue papers in respect of the plots in dispute is only a consequential order for correcting a wrong entry continuing in the: revenue records and in pursuance of the order of the Board of Revenue dated 15-2-1977, the Petitioner cannot have any grievance against such an order. The order dated 15-2-1977 has become final. It was challenged before this Court in Writ Petition No. 16908 of 1991 and the writ petition was dismissed on 8-1-1992 refusing to interfere with the order dated 15-2-1977.

8. The submission of the learned Counsel for the Petitioner, however, is that as his name continued in basic year and the chak has been allotted in his favour which has become final, the Collector could not pass the order directing to expunge the name of the Petitioner. In my opinion, the submission of learned Counsel for Petitioner is wholly misconceived. As noted above, the Petitioner was neither Bhumidhar nor Sirdar nor Asami of the land in dispute. The alleged resolution dated 15-8-1973 relied on by the Petitioner continued to be a waste paper as there was no prior approval of the Assistant Collector First Class in charge of the Sub Division and the resolution could not convey any title whatsoever in favour of Petitioner. The entry in revenue papers must have a legal origin. The Petitioner cannot claim my title over the land in dispute merely on the basis of a wrong entry which continued in his favour due to negligence or failure of the revenue officials to correct the record in time. The consolidation authorities had no authority to allot any chak in favour of Petitioner as he was not a tenure holder of the land in dispute. It was for the Petitioner to obtain approved of the Sub Divisional Officer for obtaining a valid lease from the Land Management Committee and then only he could make a claim before the consolidation authorities for allotment of a chak. Admittedly, the Petitioner has failed to obtain any such approval which was a mandatory requirement and in absence of which the entire proceedings before the consolidation authorities regarding allotment of chaks etc. would be treated as void abinitio as the same were based on a non-existent right in respect of the plots in dispute.

9. The authorities relied on by the learned Counsel for the Petitioner are distinguishable and cannot be applied in the facts and circumstances of the present case. However, a brief mention of the cases cited by the learned Counsel for Petitioner would be appropriate which is as under.

10. In case *Lalsa v. State of U.P.* 1972 RD 367, the question involved was regarding the proprietary rights over the land. Zamindars had obtained decree of ejectment u/s 180 of the U.P. Tenancy Act which was not put to execution and in the meantime the U.P. Zamindari Abolition and Land Reforms Act intervened and

extinguished the proprietary rights. As intermediaries their title became defunct and they could not establish any right as Bhumidhar, Sirdar or Asami before the consolidation authorities. In the present case the facts are entirely different. Gaon Sabha and the State continued to be the owners of the land in dispute and Petitioner has no right whatsoever.

11. Learned Counsel for Petitioner has placed much reliance on the order dated 13-10-1987 by which objection of the pradhan was dismissed in default and pleaded bar of Section 49 of the U.P. Consolidation of Holdings Act. In my opinion it does not improve the case of the Petitioner in any manner. There is no title in his favour. By order dated 13-10-1987 no adjudication of title has taken place indicating any change in the status of the revenue entries. The bar of Sections 5 and 49 can be pleaded only when there is a necessity of adjudication of title by consolidation authorities for allotment of chaks in favour of a tenure holder and for delivery of possession u/s 28 of the U.P. Consolidation of Holdings Act. As in the present case there is no basis on which the Petitioner may claim adjudication of title, bar of Section 49 cannot be applicable. Similarly, the rejection of the restoration application also by order dated 27-12-1988 does not affect the aforesaid position. Learned Counsel for the Petitioner has also relied on the orders dated 13-7-1982 and 29-11-1982 by which proceedings u/s 198(2) of UP ZA and LR Act initiated by Bharat Singh were dismissed in default. In my opinion, these orders in no way help the Petitioner as no valid allotment had ever come in existence and there was no occasion for cancellation of the lease. The interest in the proceedings might have been given up in view of the fact that there was no allotment whatsoever in favour of the Petitioner.

12. The other case relied on by the Petitioner is *Ashfaq Ahmad v. Dy. Director of Consolidation, Allahabad* 1978 AWC 470, in which the question of condonation of delay in filing objection by Gaon Sabha was involved. The title was already adjudicated in favour of the recorded tenure holder by consolidated authorities. The case does not help the Petitioner in any manner.

13. In Full Bench case of *Badal v. Deputy Director of Consolidation* 1970 RD 240, has also no bearing so far as the present dispute is concerned. Similar is the position of the case *Gram Sabha Kudra v. Noor Mohd. Khan*, 1974 ALJ 516.

14. From a perusal of writ petition No. 16908 of 1991 it is clear that Petitioner claimed relief for quashing the proceedings for allotment of the plots in dispute in favour of other persons. Petitioner also claimed quashing of the order of the Collector, dated 6-4-1991 contained in CH Form 23 Part I which was Annexure "15" to the aforesaid writ petition. The same document has been filed in this writ petition as Annexure 4, in which the order dated 6-4-1991 of the Collector has been incorporated. The Petitioner also sought quashing of the order of the Board of Revenue dated 15-2-1977. This Court rejected the writ petition by order dated 8-1-1992 saying that the order dated 6-4-1991 and the proceedings for allotment are consequential. In my opinion, in view of the order dated 8-1-1992, passed by this Court, Petitioner is not entitled for any relief in this petition also in which the

orders dated 18-11-1991, 13-11-1991, 26-12-1991 and 23-5-1991 which pertain to allotment proceedings, in respect of which relief claimed by the Petitioner was already refused by the aforesaid order passed by this Court. Learned Counsel for Petitioner has also submitted that no hearing has been given to the Petitioner before passing the orders impugned in the present writ petition. In my opinion, in view of the order dated 15-2-1977 passed by the Board of Revenue and the order dated 8-1-1992 even this grievance is not open to the Petitioner. After the order dated 6-4-1991 passed by the Collector all the other orders making allotment in favour of Respondents Nos. 6 to 18 are consequential. The Petitioner has no right over the plots in dispute. The revenue records have rightly been corrected.

15. So far as the submission of learned Counsel for Petitioner that orders could not be passed by the Collector under the provisions of U.P. Land Revenue Act in view of the pendency of the consolidation in the village, has also no legs to stand. It cannot be denied that the Collector is also District Deputy Director of Consolidation under the provisions of U.P. Consolidation of Holdings Act and he could correct the wrong entry continuing in the revenue papers in that capacity in exercise of his powers u/s 48 of the U.P. Consolidation of Holdings Act. It is well-known that exercise of power by an authority mentioning a wrong provision cannot invalidate the order if it can be shown to be within its power under any other provision. The Collector being custodian of the revenue records under law has twin capacity to correct the record and in my opinion the orders impugned in the writ petition do not suffer from any error of law, or jurisdiction. For the aforesaid proposition, reliance can be placed on *Indian Aluminium Company Vs. Kerala State Electricity Board*, and *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, .

16. For the reasons recorded above, this petition has no force and is accordingly dismissed in limine.