

(2011) 03 AHC CK 0382
In the Allahabad High Court
Case No : Writ-B No. 18510 of 2011

Vishwanath Singh and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 9A(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C

Citation : (2011) 4 AWC 4065 : (2011) 113 RD 98

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—The contention on behalf of the Petitioners is that they have not been afforded an appropriate opportunity to raise their pleas in relation to the claim of possession as also the recorded entries in their favour and, therefore, the impugned order is in violation of principles of natural justice. Learned Counsel for the Petitioner submits that the impugned order seeks to dislodge the Petitioners in a summary fashion without holding a proper trial and without giving opportunity to the parties to adduce evidence.

2. The claim of the Petitioners appears to be on the strength of an order stated to have been passed by the Consolidation Officer in proceeding u/s 9-A(2) dated 8.9.1998 (Annexure-1 to the writ petition) A perusal of the same demonstrates that the Consolidation Officer had directed that the names of the Petitioners should be recorded as Bhumidhars as there was an order of the Tehsildar Dumriyaganj, Basti, dated 7.11.1975 declaring them as Sirdars. The said order further indicates that the proceedings before the Tehsildar were under 115-C of the U.P.Z.A. & L.R. Rules. The Petitioners through out contested the matter for getting the said order implemented and their names recorded, and since the Respondents have expunged the names so recorded in favour of the Petitioners without dealing with the controversy, it is, therefore, contended that the order

impugned be set aside.

3. Sri Tiwari further submits that as a matter of fact no ejectment proceedings were undertaken by the Gaon Sabha and, therefore, the Petitioners have prescribed their right over the land in dispute.

4. The impugned order categorically records mat in the settlement records of the previous consolidation proceedings of the year 1962, CH Form-45, which was prepared on the conclusion of the consolidation operations, records the plot in dispute as Khalian (Threshing Floor). The impugned order further records that the Petitioners' name was recorded in Column-4 which came to be expunged as the disputed plot No. 643 is clearly a public utility land as defined u/s 132 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. It is for this reason that the entry in favour of the Petitioners was expunged.

5. Having heard learned Counsel for the parties, it is evident that the Petitioners have been unable to dispute the status of the said land which stands recorded as Khalian in the previous consolidation proceedings and which partakes the nature of public utility land as defined u/s 132. The provisions of the U.P.Z.A. & L.R. Act as well as U.P. Consolidation of Holdings Act make no provision for either changing the nature or the status of such public utility land nor any such allotment can be made in favour of any private person. Further no rights can accrue as claimed in proceedings under Rule 115-C of the U.P.Z.A. & L.R. Rules and the Tehsildar has no such power to issue any such declaration. Thus, the very foundation of the claim of the Petitioner has no legal basis and no estoppel can be pleaded against the statutory provisions. Any amount or long standing possession that is being claimed by the Petitioners, therefore, cannot allow the Petitioners to acquire any right against public utility land as defined u/s 132 of the Act. Since the Petitioners do not have any substantive claim over the land in dispute and no rights have accrued in their favour, the issue relating to violation of principles of natural justice becomes irrelevant as the Petitioners have failed to demonstrate any violation of law.

6. The writ petition, therefore, lacks merits and is, accordingly, dismissed.