

(2016) 11 AHC CK 0143
In the Allahabad High Court
Case No : Writ-C No. 30866 of 2016

Yogendra Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132

Citation : (2017) 121 ALR 697 : (2017) 134 RD 51

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Ramesh Chandra Upadhyay, Advocate, for the Petitioners; C.S.C, for the Respondents

Final Decision : Disposed Off

Judgement

Anjani Kumar Mishra, J. - Heard Sri R.C. Upadhyay, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Sri Govind Krishna & Sudhakar Pandey, who have appeared for the respondent No.2, the contesting respondent.

2. Although, there is yet another private respondent, namely, respondent no.3. However, this writ petition is being decided without issuing notices to the said respondents because it appears to have been upgraded to the respondent no.2.

3. The petition arises out of a suit for declaration, under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act filed by the respondent.

4. By the orders impugned, an application filed on behalf of the State of U.P. for setting aside the ex parte judgment and decreed dated 23.05.1960 in the aforesaid suit has been rejected and the order affirmed in revision.

5. The contesting respondent no.2 has filed a short counter affidavit / objection regarding maintainability of the writ petition running into 198 pages. A counter affidavit on behalf of the same party has also been filed which runs into 276

pages.

6. A rejoinder affidavit has also been filed on behalf of the petitioner and the petitioner has also furnished written arguments. A supplementary rejoinder affidavit on behalf of the petitioner is also available on the record.

7. The respondent no.3, in the writ petition, Sri Narheji Vidyalaya, which appears to have been upgraded to Sri Narheji Mahavidyalaya, filed a suit, under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act seeking to be declared bhumidhar of two parts of plot no.8/2/1 plot nos.1542/1 as also 1542/5 totalling four plots, having total area of 36.54 hectares. This suit was numbered as 1269-4-4-1960 and pertained to the land situated in village Narhi, Pargana Sikandrapur Garvi, Tehsil Rasra, District Ballia.

8. This suit, as stated above, was decreed ex parte on 23.05.1960.

9. When the writ petition initially came up before this Court for admission, in view of the submission that the suit regarding more than 36 hectares of land had been decreed, ex parte, by a 3 line cryptic order, it was directed that the record of the suit be produced. The same has been produced by the learned Standing Counsel. The Court has retained the said record, while reserving judgment in this case on 01.09.2016, after hearing the parties.

10. The suit was instituted in the year 1960 by the respondent alleging therein that the plot in question were recorded as Banjar and Bhita. These plots have been given to the plaintiff by the Zamindar for cultivation, construction of a school, its play ground and for planting grove. The plaintiff was in possession but its name was not incorporated in the revenue records by the Lekhpal. On coming to know of this fact, the suit was filed praying that the plaintiff be recorded as bhumidhar thereof.

11. Perusal of the original record produced by the learned Standing Counsel reveals that the suit has been decreed by the following order -

"Case called several times. The defendants are absent. The plaintiff is present and has proved his case ex parte. The suit is therefore, decreed ex parte with costs.

Sd/-

J.O.Rasda

23.05.1960"

12. An application was filed by the State of U.P. for recall of this order on 05.03.2013. The Sub Divisional Magistrate, Rasra, by his order dated 02.09.2014, dismissed the restoration application, holding it to be the hopelessly barred by time.

13. It was stated in the order that the restoration application have been filed after a lapse of 53 years. The judgment and decree sought to be recalled had

been passed after due notice. In 1977, ceiling proceedings regarding this land were drawn under Imposition of Ceiling Proceedings on Land Holdings Act and an area of 1.60 hectare of plot no.872 was declared surplus. During these proceedings, the original records must have been examined by the State Authorities and they must have acquired knowledge about the ex parte decree.

14. It was also stated that a revision arising out of proceedings under the U.P. Land Revenue Act was pending consideration before the Board of Revenue, wherein also, the State must have acquired knowledge of the ex parte decree. Despite such knowledge, there was no justification for filing a restoration application in the year 2013. The delay, therefore, could not be condoned.

15. Aggrieved by the aforesaid order, dismissing the restoration application as barred by time, a revision was preferred on behalf of the State of U.P. through the Govt. Advocate, Revenue, before the Commissioner, Azamgarh Division, Azamgarh.

16. This revision has been dismissed vide order dated 11.02.2016 reiterating the findings returned by the trial Court. It has been categorically observed that the summons of the suit were received by the Collector, Ballia, on 18.04.1960. It has also been observed that the applicant must have necessarily acquired knowledge of the ex parte judgment and decree, prior to 2011, but the restoration application was not filed immediately thereafter. An additional observation had been made on the merits, which is that the land in question was recorded as Banjar, wherein rights could accrue in favour of the plaintiffs on the basis of possession.

17. This writ petition therefore, challenges the order dated 02.09.2014, dismissing the restoration application and the order dated 11.02.2016, whereby the consequential revision has also been dismissed. Additionally, the ex parte judgment and decree dated 20.03.1960 has also been impugned.

18. The submission of counsel for the petitioner is that the ex parte judgment and decree was obtained by the erstwhile Manager of the institution, in collusion with the Tehsil Authorities. He was Pradhan of the village in question and was therefore, able to manipulate the ex parte decree in his favour.

19. It is further contended that the judgment and decree in the suit is ex parte and without assigning reasons. No issues were framed nor only decided. The order is therefore, not a judgment in the eye of law and by it, a declaration has been granted with regard to more than 36 hectares of land, belonging to the Gaon Sabha and the State. This judgment and decree was therefore, necessarily required to be set aside on the restoration application filed and the Courts below have committed patent illegality in refusing to-do-so, on purely technical considerations.

20. Counsel appearing for the respondent no.2 have submitted that the writ petition has been filed on behalf of Yogendra Yadav, the Ex-Pradhan of the Gaon

Sabha, Narhi. He has no locus to file the writ petition.

21. Even otherwise, a writ petition on behalf of the Gaon Sabha can be filed through its Pradhan and not by an Ex-Pradhan. Besides, the writ petition having been filed also on behalf of Yogendra Yadav in his individual capacity, the Panel lawyer, for the Gaon Sabha, cannot appear for him. Detailed submissions have been made castigating the conduct of Yogendra Yadav. Along with the counter affidavit and the short counter affidavit a host of documents have been annexed and an attempt has also been made to show that the writ petition was fraudulently filed on behalf of Yogendra Yadav. His Vakalatnama and his identity proof have been obtained by the Panel Lawyer with regard to another case but the same has been used for the purposes of filing this instant writ petition. It has also been averred that a first information report has been lodged against Yogendra Yadav and he is being prosecuted on its basis.

22. On the merits, it has been submitted that the petitioner has not come to this Court with clean hands. Attention of the Court has been invited to Annexure A-7 to the counter affidavit, on page 74 to 78 thereof, to show that the restoration application was filed long after the State Authorities obtained knowledge of the ex parte decree. Attention has also been invited to Annexure A-9 of the counter affidavit, on page 81 thereof, which is an order, wherein it has been noticed that a Public Interest Litigation with regard to a dispute being raised before the Board of Revenue has also been filed before the High Court.

23. Very detailed arguments have also been raised pointing out the various developments that have taken place, as regards, the institution itself as also the various orders that have been passed in ceiling proceedings, whereby certain land was declared surplus.

24. It has also been submitted that although, consolidation operations intervened, no objection was raised on behalf of the Gaon Sabha or anyone to the ex parte judgment and decree in favour of the plaintiff respondent.

25. I have considered the submissions made by the parties and have perused the record as also the original file of the proceedings before the Courts below.

26. This Court finds that the suit was decreed by a three line order, which states that the defendants have not refuted the plaint allegations, which stand proved by the documentary evidence on record as also the oral testimony.

27. This Court also finds that the oral testimony, on record, namely the statement of one Shiv Das Ram, merely reiterates the plaint allegations. The documentary evidence filed on record is Form PA-11, the intakhab Khatauni of 1366 fasli, wherein the plots in question are recorded under class 5; plot nos. 8/2/1 and 1542/1 are recorded as Banjar while, plot no.1542/5 is recorded as Bhita having an area of 5.92 hectares.

28. As already noticed above, the claim of the plaintiff in the suit as also in the counter affidavit filed on record is that the land had been gifted by the Zamindar

and other respectable members of society, to the plaintiff institution, for constructing a school and also for agricultural purposes and for planting grove. This being the crucial allegation and the basis of the suit, the same, in my considered opinion, was necessarily required to be proved. However, there is no evidence in this regard available on the record of the suit. No specific izzazat nama by the Zamindar or any gift deed by him or by any respectable member of society has been alleged or proved. Documentary evidence in this regard, in my opinion, was necessarily required to be adduced.

29. Even otherwise, this Court fails to understand as to how the documentary evidence referred to above, namely, the Intakhab khatauni, in any manner, proved the plaintiffs case.

30. I also find substance in the contention of counsel for the petitioner that the judgment, which a 3 line order, is absolutely cryptic and the suit has been decided without framing any issues therein and is therefore not a judgment in the eye of law. It does not fulfil the requirements of a judgment as provided in the Civil Procedure Code.

31. The second glaring feature, which emerges from the record is that one of the four plots, in issue, was recorded as Bhita. Bhita by definition is the raised land situated on the periphery of a pond. This peripheral land is elevated as compared to the surrounding land because of mud deposited on the periphery of the pond, while cleaning it. A bhita therefore cannot exist separate from a pond. It has been held that a bhita is therefore, part of the pond itself.

32. This being the case and since a pond is land, governed by Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, a bhita which is part and parcel of the pond itself, must also be held to be land governed by the provisions of Section 132 of the Act. Section 132 provides that no rights can accrue in favour of any person over land, governed by it.

33. In so far as the submission of counsel for the respondents on the question of locus of the petitioner to file this writ petition and also the allegations as regards, the fraudulent action and forgery committed by him, regarding which a criminal case has been registered, I do not consider it appropriate or expedient to enter into the controversy.

34. In case, a criminal prosecution has been lodged against the petitioner, the same shall be proceeded with and taken to its logical conclusion. Any observations in its regard may prejudice the criminal proceedings. This Court is also not inclined to enter into this controversy, for reasons that will be given in the later part of this order.

35. The submission that the State acquired knowledge during ceiling proceedings wherein the title of the contesting respondent has been decided finally, in my considered opinion cannot be accepted.

36. It is settled law that ceiling proceedings do not determine the tile. They are

only for the purposes of determining as to whether the land recorded in the name of a person is within the ceiling limits or not and in case, some area is found to be beyond the applicable ceiling limits, the same is vested in the State. In my considered opinion, no declaration of title is, therefore, entailed in such proceedings.

37. The other proceedings regarding which, voluminous evidence has been filed along with the short counter affidavit, as also counter affidavit are documents pertaining to proceedings before the Education Authorities regarding the institution itself.

38. Neither the Education Authorities are competent to decide the title of the land over which an educational institution exists, nor has any such order being passed. Even if such an order has been passed, the same is necessarily, to be held to be beyond jurisdiction.

39. The other proceedings to which, counsel for the respondent have referred, are proceedings, under the U.P. Land Revenue Act. It is settled law that such proceedings are summary proceedings, which do not determine the title of the parties thereto.

40. I also do not find any merit in the submission that since consolidation operations had intervened, the restoration application cannot be filed for setting aside a prior, ex parte judgment and decree, in a declaratory suit.

41. In any case, a restoration application does not abate on the start of the consolidation operations, as no declaration of title or correction in the revenue records, is entailed in the restoration application.

42. Besides, in my considered opinion, an ex parte judgment and decree can always be set aside on a belated application, in case, it is found that the cause shown for the delay, is sufficient. However, I find that the restoration application has been dismissed for cogent reasons, which reasons cannot be said to be either arbitrary or perverse.

43. Accordingly and also because serious issues of locus of the petitioner to file the writ petition have been raised, in my considered opinion, the impugned orders do not call for any interference.

44. At the same time and in view of the observations made herein above, regarding the prima facie, lacuna in the ex parte judgment and decree, I consider it appropriate to direct the Collector, Ballia, to ensure that an appeal is filed against the ex parte judgment and decree, on behalf of the State of U.P., along with an application for condonation of delay. When such an appeal is filed, the Court concerned is expected to consider the delay condonation application, liberally.

45. This order is being passed because it has been alleged on behalf of the petitioner in the instant writ petition that the suit was decreed ex parte and by a

cryptic and non speaking order, on account of the influence wielded by Sri Krishna Pandey, erstwhile Manager of the Institution, who was also the Pradhan of the village. This allegation has not been adverted to in the impugned orders, but is, in my considered opinion, a potent ground for condoning the delay in filing the appeal itself, which has been directed to be filed, herein above.

46. Besides, it is clear from the record that the restoration application had been filed by the State of U.P., as was the consequential revision.

47. This Court fails to understand as to why the State authorities did not choose to file this writ petition and it was left to an erstwhile Pradhan to prefer the writ petition. This has resulted in generating unnecessary controversy about the locus and antecedents of the petitioner.

48. Looking into the facts and circumstances of the case, this Court is constrained to observe that the Collector, Ballia and the subordinate revenue staff have not cared to protect the interest of the Gaon Sabha and the State. However, this Court is not ordering an enquiry into this aspect of the matter because the matter is extremely old. However, it is now expected that the authorities, including the Collector, shall exercise due diligence in filing the appeal, as directed above, and in prosecuting the same.

49. It is however clarified that the observations made in the body of the judgement may not be construed, as binding. They are mere observations for the guidance of the authorities and the Court which may be seized of the appeal to be filed by the State.

50. However, this Court does direct that the appeal, to be filed, be examined on its merits and the observations that the orders passed by the Education Authorities, the orders passed during ceiling proceedings and any order passed in summary proceedings under the U.P. Land Revenue Act are of no consequence while deciding the question of right, title and interest in agricultural land are not to be ignored.

51. Further, the observations, made by the Commissioner, while dismissing the revision that the suit pertains to land which was recorded as Banjar alone, is perverse and wrong and the same should be ignored by the Court, hearing the appeal.

52. Accordingly and for the reasons given above, this writ petition is disposed of with a direction to the District Magistrate, Ballia, respondent no.1 to ensure that an appeal is filed against the ex parte judgment and decree dated 23.05.1960, within a period of one month from the date, a certified copy of this order is placed, before him.

53. Learned Standing Counsel is directed to ensure that the certified copy of this order is dispatched to the District Magistrate, Ballia within one week from today.

54. The original record of the proceedings, which is in the custody of this Court,

be transmitted by the Registrar General, in sealed cover, to the District Magistrate, Ballia, along with a certified copy of this order within one week from today. The District Magistrate shall thereafter ensure safe custody of the record for its production before the Court, where the appeal is to be filed, in pursuance of the directions, contained herein-above.