

(2011) 12 AHC CK 0077
In the Allahabad High Court
Case No : Writ B No. 47203 of 2009

Zafarul Haq and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 6

Citation : (2012) 1 ADJ 169

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sibghat Ullah Khan, J.—Heard learned counsel for the parties.

2. This writ petition is directed against the order dated 26.06.2009 passed by Collector/District Deputy Director of Consolidation (District D.D.C.) Kaushambi in Case No. 11 of 2009 u/s 48 U.P. Consolidation of Holdings Act (U.P.C.H. Act), State Vs. Zafarul Haq (petitioner no.1), Rajpati (petitioner no.3) Gulab Singh (since deceased and survived by petitioner nos.4 to 7) and Kamla Devi (petitioner no.2). Gaon Sabha Barethi, Kamalpura, Post Office Noorpur, Pargana and Tehsil Chail, District Kaushambi through its Pradhan respondent no.3 was opposite party no.5 in the said case no.11 of 2009. Petitioner no.8 in the writ petition is son of Rajpati petitioner no.3. Petitioner nos.9 and 10 are sons of Zamirul Haq. Copy of the order dated 26.06.2009 is Annexure-1 to the writ petition. Against the said order petitioner nos.4, 5, 6, 8, 9 and 10 filed recall application which was dismissed by the Collector/District D.D.C., Kaushambi on 17.08.2009, copy of the said order is Annexure-2 to the writ petition, which has also been challenged.

3. The matter related to plot nos.469 and 462 old number of which was 695 situate in Mauja Barethi. The case of the State, applicant before the Collector, was that the land was a pond and was entered as such in 1320 Fasli (1912-13

AD) and 1359 Fasli (1951-52 AD) when zamindari was abolished in U.P. however, during consolidation the opposite parties had got their names entered upon the land in dispute as bhumidhars with transferable rights. In the impugned order, it is mentioned that according to C.H. Form Nos.40 and 41 (comparative table) the old plot no.695/1 was newly numbered as plot no.462 area 0.571 hectare and old plot no.695/2 was newly numbered as 462 area 1.803 hectares. It was further asserted by the State before the Revisional Court that by making forgery and manipulation in the revenue records, the opposite parties had got their names entered into the revenue record. A report was called for from Settlement Officer Consolidation, Allahabad (S.O.C.) who informed the Collector through letter dated 28.05.2009 that a public interest litigation had been filed by one Nafees Ahmad in the Allahabad High Court being writ petition no.13608 of 2009 which was disposed of on 06.03.2009 and Collector was directed to decide the matter in the light of Supreme Court authority reported in Hinch Lal Tiwari Vs. Kamala Devi and Others, Before the Collector, the authority reported in Smt. Shamli Devi Vs. State of U.P. 2008 (104) R.D. 748 was also cited. Nafees Ahmad is respondent no.4 in this writ petition.

4. In view of the aforesaid authorities the Collector held that even if the Consolidation Courts had earlier passed some order setting the pond with some private persons, it was utterly illegal without jurisdiction and liable to be ignored. It was further held that in U.P. C.H. Form No. 45, the entry of names of Anwarul Haq, Basdeo, Mahaveer was utterly without jurisdiction. These persons were predecessors in interest of the petitioners.

5. In Paras 16 to 19 of the writ petition grievance has been made to the effect that no opportunity of hearing was provided to the petitioners. In paragraph-11 and 12 it has been mentioned that initially one advocate was engaged by the petitioners before the Collector thereafter he was changed and opportunity/fresh opportunity to the new counsel Sri Rahul Tripathi was not provided. In Para-20 of the writ petition it is mentioned that the first round of consolidation in the village in question started on 15.04.1961 and concluded on 23.12.1967. In Para-24 it is mentioned that the second round of consolidation started on 31.10.2007. The main case of the petitioners is that apart from plot no. 695/3, the other two sub plots of plot no.695 were never recorded as pond not even in 1359 Fasli. It has further been argued that in the first consolidation the old entry continued as no objection had been filed.

6. The anchor-sheet of petitioners' case is Annexure-14 to the writ petition which is copy of Khasra of 1359 Fasli in which plot no.695/1 area 2 bigha is recorded in the name of Anwarul and others as continuing from previous years, plot no.695/2 is recorded in the similar manner in the name of Basdeo and plot no.695/3 area 7 bigha 8 biswa is recorded in the similar manner, in the name of Mahaveer (page 106 of the writ petition). If it is compared with paragraph 26 of the writ petition then the position becomes quite clear. Para 26 of the writ petition is quoted below:-

That, in 1359 Fasli the Plot No. 695/1 was recorded in the name of Anwar (father of Jafarul Haq and Jamirul Haq) and others Badastoor (as usual); the plot No. 695/2 was recorded in the name of Basdeo Godait Badastoor (as usual) and only the undisputed plot no.695/3 was recorded as Talab. A photostat copy of Khasra 1359 Fasli of the original plots No. 695/1, 695/2 and 695/3 is being annexed herewith as Annexure No. 14.

7. In para 26 of the writ petition it has been categorically admitted the major portion i.e. plot no.695/3 area 7 bigha 18 biswa was pond. Even on page 106 it is shown to be recorded in the name of Mahaveer and thereafter it is mentioned that the entire area is pond.

8. Accordingly the case of Mahaveer since deceased and survived by petitioner nos.2 to 8 squarely falls down. As far as entry of plot no.695/2 in the name of Basdeo in the copy of Khasra 1359 Fasli Annexure-14 is concerned, no one has claimed right on his behalf. No order passed by the Consolidation Court regarding expunging of the entry of pond which admittedly existed in plot no.695/3 has been filed or stated to have been passed. photostat copy of annexure-14 is not at all legible, it is almost black, however, its gist has been given in tabular form immediately before that on page-106 photostat copy of which is on page 107. In para 10 of the counter affidavit filed on behalf of State by Consolidation Officer Kaushambi, details of opportunity of hearing provided to the petitioners by the Collector while passing the impugned order have been given.

9. Accordingly it is clear that manipulation was made in the first consolidation. By virtue of Section 6(a)(i) of U.P. Zamindari Abolition and Land Reforms Act all ponds vested in State w.e.f. 1.07.1952.

10. In Annexure 14 to the writ petition Khasara of 1359 Fasli manipulation is quite apparent. Same copy has been filed as Annexure-9 to the counter affidavit filed by respondent no.4. The figure 695/3 contains manipulation which is apparent to the naked eye. Figure 5 of 695 is clearly heavy overwriting over some other number. The manner in which area has been shown to be 7 bigha 18 biswas further strengthens the action of forgery. In other plots biswa is shown in the classical form i.e. a small vertical line denoting 5 biswas, however area of plot no.695/3 is mentioned in numerical figures written in hindi. It was never done in revenue records in U.P. Immediately above that biswas are shown in classical form.

11. According to Annexure-14, the major area of entire plot no.695 is included in its sub plot no.3 i.e. 695/3 area 7 bigha 18 biswas which is shown to be pond. Form Nos.CH-40 and CH-41 (comparative table) of the first consolidation have been filed by all the parties including petitioners (as Annexure-X1). The last entry is of new plot no.469 area 7 bigha 18 biswas and old plot number is clearly shown as 695/2. If in 1359 Fasli 7 bigha 18 biswas area had been shown as plot no.695/3, then in the Form CH-41 Annexure-11 to the writ petition, the same number should have been shown, however in the said form the number shown is

695/2.

12. Accordingly, it is abundantly clear that petitioners or their ancestors made forgery in the original records for which stern action against them and the officials/ officers who facilitated the forgery in the original records is warranted.

13. In Dina Nath Vs. State of U.P. 2009 (108) R.D. 321, I held that in consolidation proceedings unscrupulous consolidation authorities gifted Gaon Sabha properties to private persons. I directed that in the entire State an inquiry in such matters must be made. The said judgment was fully approved by the Supreme Court in SLP (Civil) C.C. 4398 of 2010 Dina Nath Vs. State which was dismissed on 29.03.2010. The Supreme Court after quoting paras 6 to 12 of my judgment observed as follows:-

In a matter like the present one, the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly enquired into and appropriate remedial action taken.

14. Supreme Court in Jagpal Singh Vs. Punjab Civil Appeal No. 1132 of 2011 decided on 28.01.2011 (relating to grabbing of a pond) held in para 20 as follows:

In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

15. Let, the land in dispute be got vacated forthwith and damages for use and occupation at the rate of Rs. 10,000/-per hectare per year shall be recovered from the petitioners since their possession till date. The plot in dispute shall at once be restored as pond and for the said purpose MNREGA funds may be utilised. Thereafter, the pond should be let out for fisheries purpose after due advertisement in newspapers and at least for Rs. 10,000/-per hectare per year in accordance with the authority reported in Ram Kumar Vs. State 2009 (107) R.D. 557.

16. Accordingly, writ petition being utterly devoid of merit is dismissed.

17. Office is directed to supply a copy of this order free of cost to Sri N.P. Pandey, learned Standing Counsel within three days.