

(2011) 07 AHC CK 0239

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1091 (M/S) of 1996

Brijanand Pandey and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision: July 5, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 132

Citation: (2012) 6 AWC 5584

Hon'ble Judges: Shabihul Hasnain, J

Bench: Single Bench

Advocate: Mohd. Arif Khan and Mohd. Aslam Khan, for the Appellant; R.N. Gupta and S.C., for the Respondent

Final Decision: Allowed

Judgement

Shabihul Hasnain, J.

Heard Sri Mohd. Arif Khan, senior advocate, assisted by Sri Mohd. Aslam Khan. learned counsel for the petitioner and the learned standing counsel for the State of II. P. and Sri R.N. Gupta, for Gaon Sabha. The petitioner No. 1 Brijanand Pandey and petitioner No. 3 Janardan Pandey, have died and their legal heirs have been substituted in the writ petition. The writ petition was filed on 20.5.1996 Time was granted to the learned standing counsel for State and Sri R.N. Gupta, for Gaon Sabha to file counter-affidavit on 21.5.1996 itself. Almost fifteen years have passed, State has not filed any counter-affidavit. However, counter-affidavit filed by Gaon Sabha is on record.

Parties have been heard at length.

2. The petitioners have challenged the judgment and-order dated 8.9.1995 passed by the Board of Revenue; the order dated 3.8.1990 passed by the Record Officer, Balia and the order, dated 13.8.1985 passed by the Assistant Record Officer, Balia

contained in Annexures-13, 11 and 9 respectively, to the extent that they have =took the auction and became the sole zamindar of the said village and he was recorded as Zamindar in the Khewat on the basis of sale certificate dated 1.11.1934 as auction-purchaser. On account of this incidence, litigation between Maharaj of Dumareon and the ancestor of the petitioners, viz. Ram Sahodar Pandey was started in the civil courts. The said suit was ultimately decided in terms of compromise arrived at between the parties in which the petitioners accepted Maharaja of Dumareon as Zamindar of the said village and Maharaja of Dumareon accepted the petitioner as his tenants (Kastkars) and executed patta istamarari dated 28.5.1951 in favour of the petitioners.

4. The order of the Board of Revenue dated 8.9.1995 has been vehemently challenged on the ground that it has been passed without application of mind, on conjecture and surmises In a most arbitrary and casual manner. I have gone through the revisional order passed by the Board of Revenue. Learned member has given a short assessment of the facts of the case. In the beginning, learned Member has stated that coast of river Ganga. on the border of State of Bihar and U.P., has always been changing, from North to South and vice versa. He also states that by virtue of Trivedi Award in the year 1968. boundaries of the both the States were demarcated and boundary pillars were also placed for the purposes of identification. He further says that due to this unique historical and geographical situation, proper documentation and record, could not be maintained of this area, either by the State of Bihar or by Uttar Pradesh Government. He maintains that in the absence of authentic khataunis, the ownership and title of the said land, could not be decided. Rather, it was impossible to decide the same. Due to this reason, U.P. Land Laws (Amendment) Act, 1982 was legislated. Paragraph 10 of the extract of the Statement of Object and Reasons, as attached to the Bill, is necessary to be reproduced here:

10. Complete land records in respect of certain villages transferred from Bihar to Ballia have not been received from the Bihar Government. Consequently, it has become difficult to recognise the tenurial rights of the persons occupying the land which was transferred from Bihar. It is being provided that in such villages, the occupants shall be conferred "asami" rights if the land under their possession falls under any of the categories mentioned in Section 132 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and in other cases, the occupants shall be made bhumidhars with transferable rights.

By virtue of this amendment in Chapter-VII Section 3A was Incorporated, which is given below:

Chapter VII

AMENDMENT OF THE UTTAR PRADESH LAWS (EXTENSION TO TERRITORIES TRANSFERRED FROM BIHAR) ACT, 1976

25. Insertion of Section 3A,- After Section 3 of the principal Act, the following section shall be inserted, namely:

3A. (1) Conferment of tenurial rights on certain occupants.- Where any person is in occupation of any land, situate in a Scheduled village, on October 15, 1976 as well as on the date of commencement of this section, and such land is a land to which the provisions of Section 132 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950:

(a) apply such person shall, with effect from the date of such commencement become and be deemed to have become an asami holding land on behalf of the Gaon Sabha concerned;

(b) do not apply, such person shall, with effect from the date of such commencement, become and be deemed to have become bhumidhar with transferable rights in respect of such land.

(2) The provisions of this section shall have effect, anything to the contrary contained in any law for the time being in force notwithstanding.

5. In the Second Schedule village Shobhapur finds place at serial No. 19. It is clear that finally ownership and title was to be given to the persons who could demonstrate their possession between 15.10.1976 to 11.5.1982. Coming back to the finding of the judgment of the revisional court, the learned Member, Board of Revenue has accepted at internal page-2 of his judgment, that the Record Officer and the Assistant Record Officer, have declared ownership of land measuring 33.14 acres in favour of Shridhar Pandey and others against their claim of 178 acres.

6. In subsequent paragraph of the impugned order, he says that although subordinate officers have given a finding that out of 178 acres, 33.14 acres of land belong to the petitioners, yet since nature of the land is mixture of sand and water, hence it should be presumed that the land belongs to Gaon Sabha. Learned Member does not give any reason as to why he should disbelieve the finding of the Record Officer/Assistant Record Officer. His argument that the petitioners have not been able to show documents in their favour, is a contradictory and unreasonable argument. He, himself, admits that "1982 Bill" was introduced because the Govt. failed to maintain any relevant revenue record. The object and reasons, itself, declares that it was impossible to maintain any record. In such a situation, what record could be produced by the petitioners to satisfy their ownership is not understandable. On this ground, of non-production of any documentary evidence In their favour, the Board of Revenue has come to the conclusion that the revisionists have no right and revision has no merit. On page 3, he says that revision Nos. 561 to 601 are without merits, because the revisionists have not been able to show any documentary evidence of their possession between 1976 to 1982. This Court wonders as to what evidence could have been produced by revisionists/petitioners, when no official record was maintained by the State. Further the Board of Revenue

has disbelieved the findings of the Assistant Record Officer/Record Officer, who are Field Officer and have given their conclusion on the basis of their findings.

7. At page 3, once again the Board of Revenue, repeats its argument and gives reason for legislating the Amendment Act, 1982 and again in subsequent paragraph, at page 3, itself, learned Member has given opinion that bitter-gourd grows automatically, hence its cultivation cannot be a proof of possession of the petitioners. The petitioners claim that they have cultivated their crop, has not been accepted by the learned Member of the Board of Revenue. But, the reason is not convincing. By simply stating the scientific facts, arguments in the form of proof of ownership, cannot be brushed aside. He further refuses to accept that out of 178 acres, an area of 16 acres can become cultivable. This is his personal assumption not based on any fact. In the first few lines at page-4, he argues that the whole area of 178 acres should be treated as "under water". The petitioners have pointed out that these are all conjecture and surmises and the personal imagination of the member of the Board of Revenue, rather than any facts based on evidence. A little later, he quotes a paragraph from the report of the Record Officer. The Record Officer has stated that it is impossible to find out as to who was in possession between 15.11.1976 and 11.5.1982. On the basis of the findings of the Record Officer, the Board of Revenue has come to the conclusion that the land should be treated to have been vested in the Gaon Sabha.

8. Lastly, the learned Member has said that the finding of the Assistant Record Officer as well as Record Officer, is not reliable, hence he has rejected their finding and recommendation. He says that "mujhye bataya gaya hai ki aaj bhi us kshetra ka bahut bada bhaag nadi mein dooba hua hai" This finding again is not based on documents or the evidence and does not stand to reason.

9. The Court feels that the order of the Board of Revenue, rejecting the finding of the Assistant Record Officer and the Record Officer is based mostly on conjecture and surmises. It is an admitted fact by the Board of Revenue and the objects and reasons given in the Amendment Act, 1982, that no revenue record could be maintained in the area due to unique historical and geographical reason. When there are no official documents either with the petitioner or with the State, then the strict proof of possession being demanded by the State can only be arbitrary. The learned member of the Board of Revenue, has rejected the finding of the field officer without giving any specific contradictory finding. He has not ordered any reinvestigation and simply rejected the claim of the revisionist on technicalities. The Board of Revenue has not discussed anything about the oral evidence and the statement made by the revisionist. No discussion has been made about the evidence laid by the petitioners about their possession with regard to proceedings u/s 145, Cr.P.C. In the peculiar circumstances of the case, when the State of Bihar as well as Uttar Pradesh, itself do not have any documents regarding the land, strict documentary proof of possession can hardly be expected from the villagers living on

the bank of river. Such villagers depend solely on the land and the water available to them by nature. The order dated 8.9.1995 passed by the Board of Revenue does not inspire confidence and it is accordingly liable to be set aside. It is accordingly quashed. Writ petition is allowed to that extent.