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Aga Ali Hasan Khan alias Danish Khan Vs Board of Revenue (Member) and Others

Writ Petition No. 1282 (M/S) of 2010

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: March 19, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 226#Uttar Pradesh Land Revenue Act, 1901 â€" Section 219, 33, 39#Uttar Pradesh Tenancy Act, 1939 â€" Section 21, 29, 32, 33#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€" Section 117, 8

Citation: (2011) 3 AWC 2443

Hon'ble Judges: Rakesh Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Sharma J.

1. rd Sri V.K. Pandey, learned Counsel for the Petitioner and Sri G.S. Misra, learned standing counsel, representing Respondent Nos. 1 to 3. Sri

Namit Sharma, learned Counsel, has put in appearance on behalf of Nagar Nigam, Lucknow.

2. Through this writ petition, filed under Article 226 of the Constitution of India, the Petitioner has sought to assail the order passed by the Board

of Revenue on 22.2.2010, dismissing the revision preferred by the Petitioner, u/s 219 of the U.P. Land Revenue Act. In addition to this, the order

dated 11th November, 2009, passed by the Additional Sub-Divisional Officer, Sadar, Lucknow by which a suit filed by the Petitioner, u/s 33/39

of the U.P. Land Revenue Act, seeking correction of revenue record has been dismissed, has also been challenged by the Petitioner. Both the

courts below have recorded concurrent findings of facts to hold that the Petitioner had failed to establish as to how he had acquired the disputed

land and how the entries in the revenue records, indicating the status of the land in dispute as "Barren" (banjar) and ushar (Unfertile) land for

several years, could be demolished. The land in dispute, measuring 4.797 Hectares in Khata No. 1990. situate in village Kanausi, is within the

Municipal limits, under the area of operation of Nagar Nigam, Lucknow. It is in the close vicinity of the expanding City of Lucknow.

3. As per orders of the Court, passed on the request of the learned Counsel for the contesting parties, the records, including the revenue

records/entries were summoned from the Office of the Additional Sub-Divisional Officer, Sadar, Lucknow and from the Office of the Nagar

Nigam, Lucknow. The concerned Additional Sub-Divisional Officer. Sadar, Lucknow and the Tehsildar, Nagar Nigam, Lucknow are present in

the Court alongwith the records.

4. The Court has perused the revenue records/entries, like khasra, khatauni, Land Records and Revenue Entries of the Basic Year and other

materials necessary for adjudication of the case.

5. The Petitioner, Aga Ali Hasan Khan, through his power-of-attorney holder Sabir Ali, Son of Kalloo, had set up a case before the Additional

Sub-Divisional Officer, Sadar, Lucknow, that his name was recorded as a hereditary tenant in the revenue entries of Basic Year, that is, in 1356

fasali. He had remained recorded as hereditary tenant in the khatauni of 1356 fasali. His name was recorded in 1359 fasali also. Such hereditary

tenant, as per Section 32 of the U.P. Tenancy Act, had substantial rights, as rent free tenants, and has also power to sub let the land also. Further,

on abolition of zamindari in 1950. the Petitioner became sirdar of the disputed land and he was recorded as sirdar in the entry of 1360 fasali and

1408 fasali. Lateron, in khatauni of 1409 to 1414 fasalis, his name was struck off from the revenue entries, giving him cause of action for filing a

suit in the competent court, that is, the revenue court of Additional Sub-Divisional Officer, Sadar, Lucknow for correction of the record. The said

suit was filed u/s 33/39 of the U.P. Land Revenue Act seeking correction of the revenue entries relating to gata Nos. 1943, 1962, 1973/1,

1990/4, 1990/2, 1990/5, 2005, 1992, 2033. 2038, 2066, 2321/1 and 2, 2241/20, 2269, 2270, 2274. 2321 and 2540, measuring 41 big has,

situate in village Kanosi, Tehsil Sadar, district Lucknow.

6. The Additional Sub-Divisional Officer, Sadar, Lucknow had sought a report from the Tehsildar, Sadar, Lucknow. Thus, a report was submitted

by the Tehsildar, Sadar, Lucknow on 14th July, 2007. As per the said report, the Petitioner"s name was recorded in khatauni of 1359 fasali at

gata No. 66 relating to the said village. The khatauni entries of 1362 fasali were illegible. In 1380 to 1382 fasali. relating to khata No. 743, he was

recorded as a Class-II sirdar. However, in the revenue entries of 1409 to 1414 fasalis, relating to khata No. 1614, the whole land was found

recorded to be as "banjar" (Barren) and "usar" (Unfertile) land belonging to Nagar Nigam, Lucknow. It was found to be the property of the State

and as such stood vested in Nagar Nigam, Lucknow.

7. Much stress has been laid by the Petitioner on the revenue entry of 1359 fasali in which he was recorded as a maurusi kashtkar, that is,

hereditary tenant.

8. Learned Counsel for the Petitioner has drawn attention of the Court to Sections 21, 29 and 33 of the Awadh Tenancy Act. According to him,

the Petitioner was a Category-9 tenure holder and this entry had been followed in 1359 fasali also. Thereafter, on enforcement of the U.P.

Zamindari Abolition and Land Reforms Act, he became sirdar. These entries could not have been scored out without following due process.

Attention of the Court has been drawn to various provisions contained in the U.P. Land Revenue Manual, U.P. Land Record Manual and the U.P.

Kashtkari Adhiniyam, 1939 to demonstrate as to how the entries were made in the revenue records. The Petitioner could be treated as a asami

having rights of a hereditary tenant.

9. Sri V.K. Pandey, learned Counsel for the Petitioner has also placed reliance on the judgments in Ahmad Bari v. Ranjit Singh, 1995 (13) LCD

438 ; Bachchu Ram Singh and Another Vs. Additional Commissioner (Judicial) and Others, and Ram Samujh v. Barsoo, 1980 RD (Suppl) 228

(BR), to lay emphasis that there is a presumption of correctness of revenue entries recorded in the revenue records. The entries therein have to be

accepted as correct, unless contrary is proved. The due procedure has not been followed, while expunging the entries recorded in 1356 and 1359

fasalis in favour of the Petitioner. If these entries were found to be fictitious, only then action could have been taken against the Petitioner, that too

after obtaining a report from the concerned revenue authorities, keeping the Petitioner associated with such enquiry. The land in dispute held by the

Petitioner as a hereditary tenant was not a forest or banjar (Barren) land as alleged by the Respondents including the Nagar Nigam, Lucknow. The

land in dispute should not have been recorded under Entry-5-3-Kha as per the Revenue Manual as a Forest or banjar (Barren) land or other

category of public land. The Petitioner has always remained a tenant carrying out agricultural operations.

10. Learned standing counsel, Sri G.S. Misra and Sri Namit Sharma, learned Counsel for the Nagar Nigam, Lucknow have strongly opposed the

writ petition. According to them, the power-of-attorney holder of the Petitioner, Sabir Ali is a land grabber and property dealer, who has a tainted

record of grabbing/encroaching public lands in the Municipal limits of Lucknow. Sabir Ali claims himself to be power-of-attorney holder of Aga Ali

Hasan Khan alias Danis Khan, son of Mohammad Ali. The writ petition itself is not maintainable as the same has not been filed by Aga Ali Hasan

Khan himself.

11. The learned standing counsel has placed before the Court the concerned revenue records, including the original revenue entries relating to the

years 1369 fasali, 1403 to 1408 fasalis and 1409 to 1414 fasalis. In the revenue entries of 1356 fasali, name of one Akbar Ali Khan, son of Aga

Ali has been shown as a maurusi kashtkar only for two years. Learned standing counsel has highlighted the fact that in the Basic Year entry of

1356 fasali and thereafter in the year 1359 fasali, the name of Aga Ali (father of Akbar Ali Khan, the original tenant) has been put in a Bracket,

putting the word "Sick" against the name. Same thing appears in the subsequent revenue entry of 1359 fasali. In the entry of 1382 fasali, as per

Tehsildar"s report, Akbar Ali Khan, son of Aga Ali, the revenue entry has been described illegible. In 1362 fasali, Aga Ali Khan, father of Akbar

Ali Khan, the original tenant, had been described as "Tehsildar" of Tehsil Sandila, district Hardoi.

12. Some important material revenue entries relating to the year 1366 to 1369 fasalis were placed by the learned standing counsel before the

Court for its perusal. Interestingly, the Petitioner had avoided to place these khatauni revenue entries before this Court. However, some of these

were placed before the lower court. In these entries, khata No. 544 has been shown to contain banjar (Barren) land, that is, public land, not in the

tenancy of any one. These revenue entries continued from 1366 to 1369 fasalis and not challenged. Lateron, in the revenue entries of 1403 to

1408 fasali and 1409 to 1414 fasalis, it has been shown that the land in dispute was recorded in Category-5 (Shreni-5) as banjar (Barren) land.

Such banjar (Barren) land belong to the concerned Gaon Sabha or public land. No. rights could be claimed by any individual on a public land,

which is recorded as a banjar (Barren) land.

13. Sri G.S. Misra, learned standing counsel, has further submitted that even if it may be presumed that the Petitioner was granted a patta or

izazatnama by the erstwhile zamindars of the area, but after enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950 all such

grants/leases and pattas were declared to be void. Even in the revenue entries of 1356 and 1359 fasalis, on which much stress has been laid by the

learned Counsel for the Petitioner, the Petitioner has been shown as a maurusi tenant having lease for a specified period of two years only. Thus,

No. substantial right had accrued to him by such tenancy, that too, which was to remain operative only for two years with No. transferable or other

rights by application of law as per Section 8 of the U.P. Zamindari Abolition and Land Reforms Act. With effect from 8.7.1946, such pattas or

leases granted by the erstwhile zamindars became void. In fact the land was always recorded as banjar (Barren) land under Category-5 (Shreni-

5), that is, public land, Gaon Sabha land or in the present case Nagar Nigam, Lucknow"s land to be used for the public purposes.

14. Sri Namit Sharma, learned Counsel for the Nagar Nigam, Lucknow has placed before the Court the records maintained in the Nagar Nigam,

Lucknow. In the record of the Nagar Nigam, Lucknow, the land has been recorded as banjar (Barren) land in Category -5 (Shreni-5) as

Municipal land. A Gazette notification was issued on 11.2.1959, through which the disputed land situate in village Kanosi, Tehsil Sadar, Lucknow,

came within the Muncipal limits, that is, within the limits of Nagar Nigam, Lucknow. All the State properties, Gaon Sabha lands and public lands

etc. became lands of the Nagar Nigam, Lucknow as per Section 117 of the U.P. Zamindari Abolition and Land Reforms Act. The Gazette

notification dated 11.2.1959 has been perused by this Court. The alleged tenant, Aga Ali Hasan Khan or his father or for that matter Sabir Ali, the

power-of-attorney holder of the Petitioner, had never challenged status of the land in dispute when it stood recorded as banjar land in 1366 and

1359 fasali and on 11.2.1959 when the notification to this effect had been issued recording the land in dispute as Nagar Nigam Lucknow''s land,

that is, public land, as a result of extension of Municipal limits. For the first time, the power-of-attorney holder of the Petitioner had filed a suit on

11.11.2009 only in order to usurp the land by getting it recorded in the name of the Petitioner. No. remedy, administrative or legal, was sought by

the Petitioner in the last more than fifty years.

15. Sri Namit Sharma, learned Counsel for the Nagar Nigam, Lucknow, in addition to showing the records, has also drawn attention of the Court

that first information reports were lodged against Sabir Ali in various Police Stations at Lucknow. He has placed on record a copy of the letter sent

by the Additional Municipal Commissioner, Lucknow on 22.6.2005 to the Senior Superintendent of Police, Lucknow. According to learned

Counsel for the Nagar Nigam, Lucknow, first information reports dated 6th May, 2008, 16.10.2009, 27.11.2009 and 9.3.2010 were lodged

against Sabir Ali. In all these first information reports, the subject-matter of accusations is same that Sabir Ali, son of Bhallu was involved in

grabbing and usurping public land belonging to the Nagar Nigam, Lucknow. On several occasions, he had tried to encroach upon and grab the

land of the Nagar Nigam, Lucknow. Even on the land in dispute, he has carried out levelling, carving out plots of the land and selling out public

lands to the individuals. These first information reports have been perused by the Court.

16. Attention of the Court has further been drawn to an interim order, dated 26.11.2009, passed by the Sub-Divisional Officer, Sadar, Lucknow

in Suit No. 32 of 2009-10, Nagar Nigam, Lucknow v. Ayodhya Prasad, by which the Sub-Divisional Officer has ordered for maintaining status

quo over the land in dispute, despite that Sabir Ali has tried to disturb the status quo by encroaching upon the land by carrying out plotting and

laying roads on the public land of the Nagar Nigam, Lucknow. He has not come before this Court with clean hands and such attempts of land

grabbing must be discouraged. Lastly, Sri Namit Sharma, learned Counsel for the Nagar Nigam, Lucknow has submitted that Sabir Ali, the

attorney holder of the Petitioner, has No. locus standi or legal right to maintain this writ petition.

17. I have heard learned Counsel for the parties and perused the records brought by the concerned Revenue Authorities and by the Authorities of

Nagar Nigam, Lucknow.

18. There is substantial force in the submissions of learned Counsel for the Respondents that the revenue entries recorded in 1366, 1369 fasalis.

1403 to 1408 fasalis and 1409 to 1414 fasalis have remained unchallenged for the last more than fifty years. In these revenue entries, the land has

always been recorded as banjar (Barren) land in Category-5 (Shreni-5). This land was vested in Gaon Sabha after abolition of zamindari in 1950.

As per Section 8 of the U.P. Zamindari Abolition and Land Reforms Act, all the grants, leases and pattas issued by the erstwhile zamindars

became void after 8th July, 1946. Even if the Petitioner was recorded in 1356 and 1359 fasali, he could best be treated as a tenant for a specified

period of two years only. These revenue entries appear to be doubtful as the name of Aga Ali in 1356 and 1359 fasali was Bracketed with a note

''Sick''. Even if this note is excluded from consideration, these two entries do not confer any legal right to Aga Ali Hasan Khan, Son of Mohammad

Ali or his power-of-attorney holder, Sabir Ali to claim ownership over the public land. Now the land belongs to Nagar Nigam, Lucknow.

19. Interestingly, one more fact has come to light, the present petition has been filed by Aga Ali Hasan Khan alias Danis Khan, son of Mohammad

Ali (Age not known), represented by one Sabir Ali, while in the alleged revenue entry of 1356 and 1359 fasali, the tenant has been shown as

Akbar Ali Khan, son of Aga Ali (Sick), not Aga Ali Hasan Khan alias Danis Khan, son of Mohammad Ali. No. explanation disputing this fact that

why the entry was Bracketed in a round and the word "Sick" has been indicated in the khatauni entries of 1356 and 1359 fasali has been given by

the Petitioner or his power-of-attorney holder.

20. This Court has also noted that in the present case, 4.797 hectares of prime urban land, which is within City limits in the City of Lucknow, is

involved, but there is nothing on record to explain as to why the Petitioner did not approach any legal forum during the long fifty years, that is, in

between revenue years 1366 and 1369 fasali, when in the revenue entries the disputed land was recorded as banjar (Barren) land. No. reasonable

person would like to loose such a large chunk of urban land. Village Kanausi, where the land in dispute is situated came under the Municipal limits,

area of operation of Nagar Nigam, Lucknow on 11.2.1959, but during all these years upto 2009, the Petitioner or his power-of-attorney holder

kept mum.

21. As per the provisions contained in the relevant Nagar Nigam Adhiniyam/Act, the villages are notified in the official Gazette, which are brought

under the Municipal limits/urban limits. In the instant case, this exercise has been carried out by issuing notification on 11.2.1959 in the official

Gazette. No. such endeavour was ever made by the Petitioner to get the land in dispute recorded in his name. The land in dispute was recorded as

public land/Municipal land in the revenue records. The status of the land had remained as banjar (Barren) and uncultivable vacant land. The

Respondents'' case is supported by unchallenged documentary evidences. The Municipal and Revenue entries have been placed before the Court

to show that the aforementioned entries have remained unchallenged and, in fact, the Respondents'' case is also supported by the law laid down by

this Court in the judgment in Ahmad Bari v. Ranjit Singh. 1995 (13) LCD 438. The observations of the Court in paragraph 101 of the judgment

are being reproduced below:

101. There is a presumption of correctness of entries in the revenue records. The entries therein have to be accepted as correct, unless contrary is

proved (See Union of India and Others Vs. Rai Singh Deb Singh Bist and Another, This presumption cannot be displaced unless it is shown that

the ""entry had been introduced, surreptitiously out of ill-will or hostility"" (see Hira Lal and another Vs. Gajjan and others, (supra)). Consequently, a

heavy burden lay upon the Respondent, Ranjit Singh to disprove the correctness of this entry. He has failed to do so. He has not been able to

show that the khasra entry was made surreptitiously out of ill-will or hostility. He has not produced copy of any other revenue record wherein his

name may have been recorded. There is also No. other reliable documentary evidence in support of his claim of possession. The oral evidence led

by him is quite insufficient to displace the presumption. Accordingly, it is difficult to appreciate the observation of the learned first appellate court-

let him be recorded in the revenue records but he does not know anything about land, then how he is in possession, I am unable to envisage.

22. In the present case also, the Petitioner has failed to demolish the revenue entries, the entries recorded in various records including in the

revenue year 1366 and 1369 fasalis and in the revenue years and thereafter as well as in the latest entries of 1403 to 1408 fasalis and 1409 to

1414 fasalis. The Petitioner has also failed to prove his case either before the revenue courts or before this Court.

23. The decisions relied upon by the learned Counsel for the Petitioner do not apply in the present set of facts and circumstances of the case.

24. In view of the discussions made above, this Court is of the view that the decisions rendered by the Revenue courts, that is, the Additional Sub-

Divisional Officer, Sadar, Lucknow and the Board of Revenue, U.P. is based on documentary evidence and other materials. Concurrent findings

have been recorded by both the Revenue courts in arriving at their conclusions that the Petitioner has failed to prove his rights and the Petitioner

could not give any sufficient explanation/details about source of acquisition of the land in dispute. It was also not displayed before the Revenue

courts or before this Court as to how and in what manner the Petitioner had acquired the possession of the land in dispute, which became property

of the Nagar Nigam on 11.2.1959 and was recorded as such in the revenue and Municipal records. The judgments rendered by both the Revenue

courts do not require any interference by this Court under Article 226 of the Constitution of India. The Petitioner has failed to persuade this Court

to form a different opinion other than the one formed by the two Revenue courts. Thus, this Court also approves the findings and conclusion

recorded by both the Revenue courts, that is, the Additional Sub-Divisional Officer, Sadar, Lucknow and the Board of Revenue, U.P. Lucknow.

Accordingly, the writ petition, being devoid of merits is dismissed. However, there shall be No. order as to costs.