

(2011) 05 AHC CK 0341

Allahabad High Court

Case No: C.M.W.P. No. 28479 of 2011

Shahid Khan and others

APPELLANT

Vs

D.D.C., Gautam Buddh Nagar
and others

RESPONDENT

Date of Decision: May 23, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 114
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11A, 4(2), 48, 49, 4A
- Uttar Pradesh Land Revenue Act, 1901 - Section 28, 33
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122B, 240G, 240J

Citation: (2011) 5 AWC 4607

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

A.P. Sahi, J.

Heard Sri Manish Goyal and Sri O. P. Pandey for the petitioners and Sri R. C. Singh for the contesting respondents.

2. This petition arises out of a dispute of title over certain agricultural holdings governed by the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950 read with the U. P. Consolidation of Holdings Act, 1953 and the rules framed thereunder. For the purpose of settlement of land, the Legislature in the State of U. P. has framed the U. P. Consolidation of Holdings Act, 1953.

3. The land was recorded as a grove. The respondents predecessors in interest, Sattan and others, claimed that their names were recorded between 1359 and 1362

fails that indicated their title over the land and they were accordingly recorded in the revenue records. The dispute relates to khata No. 445 of plot No. 400, area four bighas, one biswa of Village Bilaspur. Pargana Dhankaur, Tehsil and District Gautam Buddh Nagar.

4. It appears from the records that the first round of consolidation was concluded much before and in the said consolidation proceedings the name of Sattan and others that is the contesting respondents and their predecessors in interest came to be recorded. The consolidation proceedings concluded with the preparation of final records in C.H. Form 45 in favor of the contesting respondents. The petitioners had not filed any objections then.

5. A second round of consolidation appears to have commenced and this time the petitioners filed objections alleging that they are the tenure holders of the land in dispute as they had become sirdars thereof, and that the names of the contesting respondents be expunged and that the names of the petitioners be recorded. The said objections were allowed on 31.8.1988 against which appeals were filed by the contesting respondents which were allowed on 23.6.2005 and the matter was remitted to the Consolidation Officer to decide the matter afresh. The Consolidation Officer, finally decided the matter on 4th January, 2008 allowing the objections filed by the petitioners. The contesting respondents filed an appeal which was dismissed on 14.5.2008 by the Settlement Officer of Consolidation. Aggrieved, the respondents preferred a revision before the Deputy Director of Consolidation which has been allowed by the impugned order dated 4.5.2011 setting aside the order of the Settlement Officer of Consolidation and the Consolidation Officer and upholding the entries in favor of the contesting respondents as were contained in the basic year of the khatauni.

6. While reversing the order of the authorities below, the Deputy Director of Consolidation has recorded clear findings of title and possession in favor of the contesting respondents which have been assailed by the petitioners herein on several grounds.

7. Sri Manish Goyal and Sri O. P. Pandey have in succession argued the matter on behalf of the petitioners contending :

1. That the entire claim of the contesting respondents is based on fraudulent entries and therefore fraud vitiates all solemn proceedings. Hence, the order of the Consolidation Officer and the Settlement Officer of Consolidation which ought to have affirmed, has been wrongly reversed by the Deputy Director of Consolidation. Reliance has been placed on the decision in the case of Bachan and another v. Kankar and others, 1972 RD 219 and the decision in the case of [Sonawati and Others Vs. Sri Ram and Another](#),

2. The finding of the Deputy Director of Consolidation, that the proceedings were barred under the provisions of Section 49 of the U. P. Consolidation of Holdings Act,

1953 is erroneous and reliance is placed on the Division Bench judgment of this Court in the case of Shri Ram and others v. Deputy Director of Consolidation, Allahabad and others. 2011 (4) ADJ 289.

3. The findings of the Consolidation Officer and the Settlement Officer of Consolidation on the irregularities of the entries having not been reversed, the Deputy Director of Consolidation could not have upturned their decisions which were based on facts relating to the entries being not in accordance with law.

4. The entry in favor of the contesting respondents being irregular would amount to an Illegal and fraudulent entry for which reliance is placed on the judgments referred to hereinabove and it is contended that the bar of Section 49 of the U. P. Consolidation of Holdings Act, 1953 would not operate in such matters.

5. The finding recorded by the Deputy Director of Consolidation in respect of the proceedings u/s 240G of the U. P. Z.A. and L.R. Act, 1950 are based on no material as there was no record available pertaining to the same and the order of the Sub-Divisional Officer on which reliance has been placed had no basis.

8. In sum and substance in the absence of any material the Deputy Director of Consolidation could not have reversed the findings, and reliance is placed on the certain other judgments. It is further contended that appropriate opportunity to lead evidence was not given on the conclusions drawn by the Deputy Director of Consolidation, if he was proceeding to reverse the judgments of the courts below.

9. Sri R. C. Singh for the contesting respondents on the other hand contends that the bar of Section 49 clearly operates, inasmuch as, it has not been established by the petitioners that the entries in favor of the contesting respondents were forged or fabricated or had been obtained by such methods that would attract the ratio of the judgment in the case of Bachan v. Kankar (supra). The petitioners not having agitated the matter in the first round of consolidation, will be presumed to have abandoned all claims prohibiting any future claim in the second round of consolidation.

10. He further submits that the endorsement of the order of the Sub-Divisional Officer in proceedings u/s 240G read with Section 240J are final and binding as has been upheld by the Full Bench judgment in the case of Moqbool Raza v. Joint Director of Consolidation, U. P., Lucknow and others, 1968 ALJ 89. He submits that fraud cannot be assumed and has to be established by leading evidence as held by this Court in the case of Mangaroo and others v. Deputy Director of Consolidation and others, 2011 (4) ADJ 798 , and hence there was no occasion for the authorities to consider the grievance of the petitioners in the second round of consolidation proceedings. He relies on the judgment in the case of [Ashok Kumar Vs. Deputy Director of Consolidation Allahabad Camp and Others](#), and in the case of Narender Singh and others v. Jai Bhagwan and others. 2006 (100) RD 69 : 2005 (1) AWC 7 (SC).

11. In rejoinder Sri Manish Goyal submits that the issue relating to Section 240J as raised on behalf of the respondents would not be final and he relies in the case of [Ram Autar and Others Vs. Deputy Director of Consolidation and Others](#). He further submits that the entries claimed by the respondents are not in accordance with the provisions of the Land Revenue Act and the Land Record Manual read with the supplementary laws. He therefore submits that in view of the Sections 28 and 33 of the U. P. Land Revenue Act. 1901 there being no procedure followed the entries do not confer any title on the respondents for which reliance is placed on the Supreme Court decision in the case of [Ram Harakh \(Dead\) by Lrs. Vs. Hamid Ahmed Khan \(Dead\) by Lrs. and Others](#),

12. Having heard learned counsel for the parties and perused the records, the matter can be disposed of finally at this stage itself on the basis of the existing record.

13. The main contest between the parties begins with the objection raised on behalf of the respondents that the claim of the petitioners is barred under the provisions of Section 49 of the U. P. Consolidation of Holdings Act. 1953. To appreciate the controversy. Section 49 is reproduced herein under :

Section 49. Bar to civil jurisdiction. -- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a (notification) has been issued [under sub-section (2) of Section 4] or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act :

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings u/s 122B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

14. There were conflicting views relating to the said bar operating by way of estoppels and acquiescence which came to be resolved by the Division Bench in the case of Sri Ram and others (supra). Apart from this, there is another factor which deserves to be noticed. It is undisputed that the proceedings that have given rise to the present writ petition, are in the second round of consolidation which has taken place under the provisions of Section 4A of the Act. Nonetheless, the issue is, as to whether the bar of Section 49 will come to operate or not. This Court in the Division Bench judgment in the case of Shri Ram (supra) has held as follows :

The bar u/s 49, does not come into play in context of consolidation proceedings itself. Section 49, cannot be read as containing any bar with regard to raising an objection u/s 9 or Section 9A of the Act, 1953. For consolidation proceedings which are under way no facet of Section 49 of the Act is attracted.

In Jagdeo's case the learned single Judge had relied on his earlier judgment in Mangroo v. Ram Sumer and has quoted in Paragraph 7 as under :

The purpose of consolidation is taken to be resurrection of dead (buried) dispute or revival of dormant ones. In fact this is not the spirit of Consolidation Act. u/s 9 (2) of the U. P. C.H. Act only disputes of recent past may be raised. Consolidation Act provides a new Forum for adjudication of disputes, but not a new opportunity for the same.

The aforesaid observations are not in conformity with the scheme of the Act or Sections 9 and 9A of the Act, 1953. In filing objection no kind of limitation can be read in filing objection under Sections 9 and 9A, nor there any classification on the ground of disputes of recent past or dispute of remote past. When an objection can be filed by any interested person, objection can be raised on any conceivable or valid ground and to read any prohibition in the provision that objection should relate to only recent disputes is doing violence to the express provision of the Act.

Further, the Court went on to hold in paragraphs 29 and 30 as follows :

Para 29. The legislative History as extracted above, would also indicate that even though such rights by estoppels and acquiescence had been acknowledged under the U. P. Tenancy Act. the Legislature did not include any such provision under the U. P. Zamindari Abolition and Land Reforms Act. 1950 or any other subsequent Act relating to land tenure. The omission can also be considered to be a conscious departure and, therefore, for this reason it will not be appropriate to construe that the bar u/s 49 of the 1953 Act would also include barring claims by estoppels and acquiescence that too merely on account of absence of entries.

In paragraph 7 of the judgment the learned single Judge has placed reliance on the observations made in Mangaroo's case (supra) which is to the following effect :

However, independently of all these principles, such exercise is to be nipped in the bud on the doctrine of public policy. It is against public policy to permit a person to seek reversal of state of affairs continuing for scores of years. A certain but somewhat erroneous state of affairs is better than almost correct but uncertain state of affairs. To maintain state of affairs continuing since very long which may have some elements of inaccuracy is better than to thoroughly analyze the inaccuracy after expiry of long time since inception of the said affairs and reverse the same after thorough discussion of attending circumstances at the time of start of said state of affairs.

Para 30. We are unable to subscribe to the above view. No public policy can be found out which does not permit a person to seek reversal of the state of affairs continuing for scores of years, if he has a right to do so. The view of the learned single Judge "that a certain but some what erroneous state of affairs is better than almost correct but uncertain state of affairs" can also not be approved. A person who has a right to a property which right he has neither abandoned nor relinquished can be claimed even after a lapse of considerable period, provided the claim is not barred by any law of limitation.

Law pertaining to land tenure is principally for determining rights of peasants of this country who earn their livelihood from agriculture. Most of them are not literate enough to know their rights and vigilantly assert their rights. Unless the claim of such person is barred by any law barring their objection on the principle of estoppels and acquiescence is not in accordance with the purpose and object of that Act.

The Court however further went on to caution a note against the fraudulent entries in paragraph 31 which is extracted herein below :

The entries in the revenue records raise only a presumption which is a rebuttable presumption. There is one more principle, i.e., presumption of correctness of entries can apply to only genuine not forged or fraudulent entries. If the bar is read in filing objections against such entries it would lead to injustice.

15. The ratio of the aforesaid decisions makes it clear that there cannot be a bar of filing an objection, which on the other hand does not amount to saying that the principles of res judicator and constructive res judicator will not apply. In my opinion, if in an earlier round of consolidation any adjudication has taken place then the same would amount to a decision and the principles of res judicator with all its accessories would naturally apply to subsequent proceedings as well.

16. In the instant case, the petitioners admittedly did not choose to contest the entries in favor of the contesting respondents in the earlier round of consolidation which became final and the settlement records were prepared with the notification of C.H. Form 45. With the confirmation of the consolidation scheme and its enforcement, the records relating to land tenures become final. The consequences, therefore, are that the settlement records prepared under consolidation proceedings attain finality, unless the same can be dislodged as being unlawful or fraudulent. There is a bar also created during the consolidation operations itself u/s 11A that if such objections are not raised as provided for u/s 9 of the Act, the same cannot be raised in the subsequent stage of the consolidation proceedings. Thus, the bar of Section 49 has to be understood in the aforesaid context. The petitioners will, therefore, have to further establish that there was a cause of action existing so as to allow them to file objections u/s 9A in the second round of consolidation proceedings.

17. To avoid this barrier, the contention raised on behalf of the petitioners is that, if the entries in favor of the respondents or their predecessors in interest was fraudulent, then fraud vitiates all solemn proceedings and the respondents cannot be permitted to perpetuate the said fraud on the basis of forged entries and the objections would be entertain able even in the second round of consolidation.

18. For this heavy reliance has been placed by Sri Goyal and by Sri Pandey on the Apex Court judgment in the case of Bachan and another (supra) to contend that the entries have been held by the Consolidation Officer and the Settlement Officer of Consolidation to be without any basis and therefore no right, title or interest can accrue In favor of the respondents. It has been pointed out time and again by the learned counsel that the entries are not in proper ink they are not endorsed by the appropriate authority and the order of the Sub-Divisional Officer is not based on any proceeding of the U. P. Z.A. and L.R. Act, 1950. It is also urged that a finding has been recorded by the Consolidation Officer and the Settlement Officer of Consolidation that the endorsement of the entries are not authenticated and neither the designation or the post of the official has been indicated so as to construe the entry to be a valid and lawful entry as claimed by the respondents.

19. In order to adjudicate this issue, it would be appropriate to refer to the findings of the Consolidation Officer first.

The Consolidation Officer arrived at the conclusion that the record does not indicate any entry by the Lekhpal in red ink in 1359 fails relating to sikkmi, in the remarks column in favor of the respondents. He further records that the respondents herein did not lead any evidence to indicate that the petitioners, who were claiming sirdari rights, had been dispossessed by the Zamindars and that the respondents were instead put in possession as sikkmi kashtkar. The Consolidation Officer further in relation to the entry of 1362 fails recorded that the entry does not bear the designation of the endorsing official or the date of the endorsement. On the strength of these findings the conclusion drawn by the Consolidation Officer is that the entries as claimed by the respondents are doubtful. So far as the petitioners are concerned their predecessors in interest had an entry in the remarks column of 1362 fails where the period of possession has been referred to as prior to 1360 fails which matches with the entries in 1359 fails. Thus, the petitioners claim to be sirdars on the basis of the alleged entry in their favor whereas the respondents claim themselves the sikkmis of the land in dispute on the basis of the entries in 1359 fails and 1362 fails.

20. Having perused the said finding one thing is clear that the Consolidation Officer treats the entry to be doubtful but he does not record any clear finding that the entries are forged or manipulated or any evidence in that regard being led by the petitioners. The entries, therefore, were not proved to be fraudulent or a result of any fraud or devious method based on ill-motive as held by the Apex Court in the case of Bachan and others (supra). The Consolidation Officer did not record any

specific finding of fraud or forgery. The finding appears to be merely based on the irregular nature of the entry by not being in red ink.

21. The Settlement Officer of Consolidation while affirming the said finding in favor of the petitioners reiterated the same. The Settlement Officer, Consolidation in relation to the entry of 1362 fails about the proceedings under map 101 read with Section 240J of the U. P. Z. A. and L.R. Act, simply stated that the respondents do not get any benefit out of the said entry as no evidence supported the same.

The Settlement Officer, Consolidation went a step further to record that the order of the Sub-Divisional Officer in Misil No. 101 is not an order in accordance with law and the same could not be proved by the respondents and therefore the entry in 1362 fails in the revenue record about the said order appears to be forged and hence the respondents do not get any benefit out of the same.

22. This finding of fact has been reversed by the Deputy Director of Consolidation by recording that he had summoned the original records of 1359 fails which reflected that the entry therein in favor of the respondents was similar to a large number of such other entries in favor of other tenure holders. The Deputy Director of Consolidation has therefore given a cogent reason for believing the entry in favor of the respondents in 1359 fails. As pointed out hereinabove the finding of the entry being wrong or forged by the Settlement Officer of Consolidation is not based on any evidence being led by the petitioners that the entry was a result of any devious method being adopted either by the patwari or by any official. Unless, such clinching proof is led, the petitioners cannot get the benefit of the judgment in the case of Bachan and others (supra) or the other judgments relied in this regard.

23. In the instant case, as noted in the narration of facts, the first round of consolidation passed by without any objection by the petitioners where they could have raised this issue but the same was never put to challenge. The revenue records in the first round of settlement during consolidation therefore became final and a presumption was rightly raised by the Deputy Director of Consolidation in favor of such an entry u/s 114 of the Indian Evidence Act. 1872. The burden lay on the petitioners to dislodge the same which for the reasons given hereinabove, they have been unable to do so. Apart from this, in the khasra of 1359 fails, one crop was shown to have been cultivated by the respondents. The courts below had concluded that this entry did not prove the continuous possession of full one year of the respondents. The Deputy Director of Consolidation upon perusal of the original record came to the conclusion that if there is only one crop shown in the khasra and no other crop was shown, the same cannot lead to the conclusion that the possession was only for one crop and not for full one year. The Deputy Director of Consolidation clearly recorded that if only one crop was sown by the respondents, their possession will be presumed to be throughout the year. The Deputy Director of Consolidation, therefore, in my opinion, has not committed any error in reversing the findings recorded by the courts below as he has appreciated these facts upon a

perusal of the original records which power is amply possessed by him u/s 48 of the Act.

24. The Deputy Director of Consolidation in relation to the entry in 1362 fails has concluded that all entries of other tenure holders are in similar ink and similar hand writing, on the basis whereof Adhiwasis were given their sirdari rights. This was done on the basis of Form No. 101 in proceedings u/s 240G of the U. P. Z. A. and L. R. Act. 1950. On the basis of the endorsement made, the Deputy Director of Consolidation has drawn an inference that there is a strong presumption in favor of such an entry more so when the respondents continued to be recorded after the conclusion of the first round of consolidation proceedings without any objection.

25. In my opinion, the said finding is also liable to be upheld as in view of the Full Bench judgment of this Court in the case of *Moqbool Raza v. Joint Director of Consolidation, U. P., Lucknow and others*, 1968 ALJ 89, a strong presumption is raised attaching finality to such proceedings. The petitioners did not lead any evidence to the contrary by producing any information from the record room that such proceedings had not been undertaken. In absence of any evidence to the contrary the presumption raised by the Deputy Director of Consolidation is justified and the reversal of the order of the Consolidation Officer and Settlement Officer of Consolidation is in consonance with law on a correct appreciation of facts. The finding of the Deputy Director of Consolidation cannot be said to be perverse or based on any irrelevant consideration so as to warrant interference with the same.

26. To further illustrate the said point, the finding of the Settlement Officer of Consolidation by way of a one line conclusion that the entries are forged and the conclusion of the Consolidation Officer that they are doubtful, are lacking in proof of the evidence of any fraud or forgery as indicated by the Apex Court in the case of *Bachan and others* (supra).

27. Sri O. P. Pandey who extended the arguments on behalf of the petitioners submitted that merely because the words are lacking appropriately in the judgments would not be sufficient to enable the Deputy Director of Consolidation to reverse the said findings. It is here that reference may be had to the judgments of the Apex Court in the case of [The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao](#), and the earlier decision of the Apex Court in the case of [Indian Bank Vs. M/s. Satyam Fibres \(India\) Pvt. Ltd.](#), The ratio of the aforesaid judgments reflect that fraud and forgery are not mere ornamental terms. The said allegations have to be proved on the basis of evidence. The nature of the evidence and proof required, should be as described in *Bachan's* case (supra).

28. In the instant case, no proof or evidence was available before the Consolidation Officer or the Settlement Officer of Consolidation about the ill-will, motivated approach or any devious method having been adopted by the concerned officials for recording the entries in favor of the respondents. It is this proof which was

completely lacking and therefore the Consolidation Officer and the Settlement Officer of Consolidation proceeded on mere inferences which do not travel beyond a suspicion or a doubt. As a matter of fact, the Consolidation Officer described the entries as doubtful and not forged. It is the Settlement Officer of Consolidation who drew this inference which was illogical.

29. Needless to remind that such allegations cannot be stated to have been established on mere inferences as was observed by the Privy Council in the case of *Satish Chandra Chatterji v. Kumar Satish Kantha Roy*, AIR 1923 PC 73. The ratio of the Privy Council has been gainfully extracted and referred to in paragraph 10 of a recent decision of this Court in the case of *Mangaroo and others v. Deputy Director of Consolidation and others*. 2011 (4) ADJ 798. Applying the said principles, the Deputy Director of Consolidation was perfectly justified in reversing the orders of the Consolidation Officer and the Settlement Officer of Consolidation.

30. The entries therefore having not been flinchingly established as being fraudulent or manipulated, cannot be deprived of their presumptive value as recorded by the Deputy Director of Consolidation. This being the position, the petitioners cannot get any benefit of the decisions relied upon by the learned counsel.

31. Once it has been found that the entries are not fraudulent or forged as alleged by the petitioners, then in that view of the matter, the petitioners having failed to raise this dispute in the first round of consolidation could not have raised this claim on any other ground after the first round of consolidation had become final and the settlement therein had attained finality.

32. A presumption in favor of the settlement becoming final in the first round of consolidation has to be drawn in favor of the respondents. This being the position, the petitioners would be stopped from raising any such plea. Apart from this, on facts, the Deputy Director of Consolidation having reversed the findings of the courts below on a cogent and logical reasoning, cannot be said to have committed any error and hence. I find no reason to interfere with the impugned order in the exercise of jurisdiction under Article 226 of the Constitution of India.

33. The writ petition lacks merit and is accordingly dismissed.