

(2006) 12 AHC CK 0139

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 8633 of 1987

Syed Nafisul Hasan Zaidi and
Another

APPELLANT

Vs

Board of Revenue, U.P. and
Others

RESPONDENT

Date of Decision: Dec. 18, 2006

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 143, 144, 209, 331A

Citation: (2007) 7 AWC 7132

Hon'ble Judges: Devi Prasad Singh, J

Bench: Single Bench

Advocate: Mohd. Arif Khan, for the Appellant; R.K. Srivastava and Shyam Mohan, for the Respondent

Final Decision: Allowed

Judgement

Devi Prasad Singh, J.

The controversy relates to plot No. 5378 measuring 12 biswa and 10 biswansis situated in city and district Unnao. Petitioners' father Sri Kabirul Hasan Zaidi had filed a suit for ejection against the Defendants No. 2 and 3 u/s 209 of the U.P.Z.A. and L. R. Act, on the ground that he is the recorded tenure holder possessing the bhoomidhari rights. The claims of opposite parties No. 2 and 3 was based on the adverse possession. During the course of trial, the Plaintiffs-Petitioners had filed the extract of the khatauni of 1375 & 1376 faslis as well as the decree of the District Judge, Unnao to show that they were having the co-tenancy rights over the land in question. The names of the Plaintiffs were recorded in Column I of the khatauni to indicate that they were acquiring the bhoomidhari rights. On the other hand, the case of the Defendants was that they are in possession of the land in question since 30-35 years, hence, on account of adverse possession, they have acquired the

sirdari rights. However, from the evidence on records, it appears that there is no material on record which may indicate that the names of the Defendants were recorded in Clause 9 in accordance to the provisions contained in Land Record Manual. Learned trial court had decreed the suit with the finding that the Plaintiffs-Petitioners are the bhoomidhars of the land in question. It was also pleaded by the Defendants that there are two graveyards over the land in question, hence, ejectment of the suit u/s 209 of the U.P.Z.A. and L. R. Act shall not be maintainable. The Assistant Collector, First Class, Unnao by the judgment and order dated 29th of March, 1978 (Annexure-1) has recorded a finding that though the Defendants claim that they are in possession of the land in question since 30-35 years but in the absence of any entry in the khasra or khatauni, they cannot be given the benefit of the adverse possession. It has also been held by the learned trial court that mere existence of two graveyards on the portion of land in question and it shall not change the nature of land and the suit was maintainable. It has been further held by the learned trial court that since the name of Petitioners' father was recorded as bhoomidhar in the land in question of the khatauni of certain years, they are the recorded tenure holders and the suit for ejectment was maintainable against the Defendants. It has been further held by the learned trial court that in view of law settled by this Court in a case in Anis Ahmad v. State of U. P. and Ors. 1965 ALJ 502, the existence of two graveyards on a small portion of land in question shall not change the nature of land and it shall remain an agricultural land. Accordingly, the suit shall very well be maintainable. Learned trial court had decreed the suit and passed an order for ejectment.

2. Feeling aggrieved with the judgment and order and the decree of the trial court, the private Respondents had filed an appeal which was dismissed by the judgment and order dated 29.11.1980 (Annexure-2). The Ist appellate court has also recorded a finding that in view of the entries recorded in 1375 and 1377 faslis as well as keeping in view the report submitted by the Advocate Commissioner that the land in question is an agricultural land and since Petitioners have been recorded as co-tenants, the suit was very well maintainable. The finding recorded by the trial court was affirmed by the Ist appellate court. Learned Ist appellate court has relied upon a case in Ballabh Das and Anr. v. Nur Mohammad and Anr. AIR 1936 PC 83 and held that mere existence of two graveyards over a portion of land in question shall not change the nature of land.

3. Feeling aggrieved with the findings recorded by the two courts below, the private Respondents have preferred a second appeal. The second appeal preferred by the private Respondents was allowed on the ground that since the land in question has been used for the purposes of graveyard, it amounts to change of nature of land and it cannot be treated as an agricultural land. It has been held by the I Ind appellate court that the land has not been used for agricultural, horticulture or for animal husbandry purposes and no declaration has been made in accordance to the provisions contained in Section 143 and Section 144 of the U.P.Z.A. and L.R. Act. The

trial court should have framed issues relating to the nature of land. Learned I Ind appellate court has further recorded a finding that since the land in question has been used for graveyard, it shall amount to change of nature of land and the provisions contained in Section 331A of the U.P.Z.A. and L.R. Act shall be attracted. Though the finding of facts recorded by the two courts below that mere existence of two graveyards shall not change the nature of land has not been reversed, but even then, the Board of Revenue has reversed the finding relying upon the provisions contained in Section 331A of the U.P.Z.A. and L. R. Act.

4. Learned Counsel for the Petitioners while assailing the impugned orders passed by the appellate courts proceeded to submit that "cause of action" is to be determined by applying the principle of "pith and substance". It has further been submitted that once from the entries in the khatauni, Petitioners have been recorded as co-tenants and bhoomidhar and from the perusal of the Advocate Commissioner's report, it is obvious that the land has been used for agricultural purposes, the suit was very well maintainable u/s 209 of the U.P.Z.A. and L.R. Act.

5. A Full Bench of this Court in a case of Ram Padarath and Ors. v.I Ind Addl. D.J., Sultanpur and Ors. LCD 565 held that while determining the "cause of action", the pith and substance is to be seen and not the language used in statute to oust the jurisdiction of the Court. The "relief" is not the part of cause of action nor it is related to the defence set up in the case. Relevant portion from the Full Bench judgment of Ram Padarath (supra), is reproduced as under :

14. It is the real "cause of action" which determines the jurisdiction of the Court to entertain particular action notwithstanding the language used in the plaint or the relief claimed. The strength on which the Plaintiff comes to the Court does not depend upon the defence or relief claimed which could determine the forum for the entertainment of claim and grant of relief. It is the pith and substance which is to be seen and not the language used which may even have been so used to oust the jurisdiction of a particular Court.

15. The expression "any relief" used in Section 331 of the Act is too of wide import and would not only mean the relief claimed but would also include any relief arising out of the cause of action which let the Plaintiff to invoke the jurisdiction of a court of law. The word "relief" is not a part of cause of action nor the same is related to the defence set up in the case. The relief is a remedy which the Court grants from the facts asserted and proved in an action.

6. In another case in Anis Ahmad and Ors. v. State of U. P. and Ors. 1967 RD 75, the dispute was as to whether the suit shall be maintainable where on a portion of land, the cultivator has constructed a house and mosque. In the case of Anis Ahmed (supra), it has been held by the Division Bench of this Court that mere existence of a mosque or house on a small portion of plot or chak shall not change the nature of land and shall not oust the jurisdiction of the Court under the U.P.Z.A. and L.R. Act.

The plot or a chak shall be a land within the meaning of Zamindari Abolition and Land Reforms Act. It is immaterial that on a portion of it stand a mosque and houses exist.

7. The Board of Revenue in a case in Smt. Dulari v. Prabhu Dayal, 1974 RD 132, held that whereas a person has been recorded as bhoomidhar in the khatauni, using of land for other purposes shall not create any bar u/s 331A of the U.P.Z.A. and L.R. Act.

From the facts, circumstances and evidence on record as discussed hereinabove, it appears that mere existence of two graveyards shall not change the nature of land, more so when the Plaintiffs were recorded as bhoomidhars in the khatauni.

8. Section 331A of the U.P.Z.A. and L.R. Act provides that whenever a question arises as to whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, then the Court concerned shall refer the matter to the Assistant Collector in-charge of the sub-division to frame relevant issue. For convenience, Section 331A of the U.P.Z.A. and L.R. Act is reproduced as under :

331A. Procedure when plea of land being used for agricultural purposes is raised in any suit.--(1) If in any suit, relating to land held by a bhumidhar, instituted in any Court, the question arises or is raised whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and a declaration has not been made in respect of such land u/s 143 or 144, the Court shall frame an issue on the question and send the record to the Assistant Collector in-charge of the sub-division for the decision of that issue only :

Provided that where the suit has been instituted in Court of Assistant Collector-in-charge of the sub-division, it shall proceed to decide the question in accordance with the provisions of Sections 143 or 144, as the case may be,

(2) The Assistant Collector-in-charge of the sub-division after reframing the issue, if necessary, shall proceed to decide such issue in the manner laid down for making of a declaration u/s 143 or 144, as the case may be, and return the record together with his finding thereon to the Court which referred the issue.

(3) The Court shall then proceed to decide the suit accepting the finding of the Assistant Collector-in-charge of the sub-division on the issue referred to it.

(4) The finding of the Assistant Collector-in-charge of the sub-division on the issue referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Court which referred the issue.

9. The provisions contained in Section 331A of the U.P.Z.A. and L.R. Act seems to be mandatory in nature. According to Maxwell "words and sentences of a statute must be construed in their natural and ordinary meaning, unless there is something to

modify, to alter or qualify that meaning.

The principle of Sruti lays down that when a sentence is complete and explicit in sense and grammar, no attempt should be made to strain or twist its meaning.

Mimansa Rules of Interpretation further provides that "a statute ought to be so construed, that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant." (K. L. Sarkar's Mimansa Rules of Interpretation-Second Edition by Justice M. Katju (Pages 35 and 36).

While interpreting the provisions contained in Section 331A of the U.P.Z.A. and L.R. Act, it is evident that the Legislature has created a duty on the part of the Court to frame specific issues relating to use of land whenever a suit is filed relating to the land held by the bhoomidhar. The provisions contained in Section 331A of the Act are mandatory in nature and cast duty on the Courts to frame issues and record a finding in accordance to the provisions contained in Section 331A of the Act depending upon the pleadings on records.

10. In the present case, it appears that a ground was raised by the Defendants that the land in question has not been used for agricultural purposes on account of existence of two graveyards. Needless to say that mere existence of two graveyards on a portion of land in question shall not change the nature of land, more so, when a person has been recorded as bhoomidhar in the khatauni. Report of the Advocate Commissioner also reveals that the land in dispute has been used for agricultural purposes. Accordingly, finding recorded by the two courts below relating to use of land for agricultural purposes, seems to be based on well appreciation of evidence. The I Ind appellate court has also not turned down the findings recorded by the two courts below that the land in question is an agricultural land which has been recorded as bhoomidhar land in favour of the recorded tenure holders, i.e., Plaintiffs. The only ground on which the I Ind appellate court seems to remand the case is relating to existence of two graveyards and non-framing of specific issues in accordance to provisions contained in Section 331A of the Act.

11. So far as the provisions contained in Section 331A of the U.P.Z.A. and L.R. Act is concerned, it is mandatory in nature. Its non-compliance may be fatal under the facts and circumstance of a particular case. But in the present case, as is evident from the discussion made hereinabove, the Plaintiff's were recorded tenure holders having the bhoomidhari rights. The Advocate Commissioner's report also reveals that it is an agricultural land and mere existence of two graveyards shall not change the nature of land as discussed hereinabove. The case was tried by the Assistant Collector, Ist class, Unnao, himself who is the competent authority in view of the provisions contained in Section 331A of the U.P.Z.A. and L.R. Act. Accordingly, necessary finding required u/s 331A of the Act is already on record, though no categorical issue was framed. Since, the controversy has been pending between the parties since more than two decades, it shall neither be just nor proper to remand

the matter for re-trial before the trial court, more so when a finding is already on record keeping in view the letter and spirit of the provisions contained in Section 331A of the U.P.Z.A. and L.R. Act.

12. In view of above, the writ petition deserves to be allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 28.5.1987, passed by the Board of Revenue, U.P., Allahabad as contained in Annexure-3 to the writ petition with consequential benefits. The judgments and order passed by the trial court as well as the Ist appellate court are affirmed.

13. The writ petition is allowed accordingly. No order as to costs.