

(2016) 10 AHC CK 0028

ALLAHABAD HIGH COURT

Case No: Civil Misc. Writ Petition No. 788 of 2006

Ratan Singh

APPELLANT

Vs

Dy. Director of Consolidation,
Shahjahanpur

RESPONDENT

Date of Decision: Oct. 19, 2016

Acts Referred:

- Agra Tenancy Act, 1926 - Section 29
- Constitution of India, 1950 - Article 226
- Forest Act, 1927 - Section 20, Section 3, Section 4, Section 6
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11, Section 48, Section 9A

Citation: (2016) 10 ADJ 832 : (2017) 1 AllWC 275

Hon'ble Judges: Anjani Kumar Mishra, J.

Bench: Single Bench

Advocate: C.S.C. and B.K. Mishra, Advocate, for the Respondent; Suresh Chandra Varma and S.K. Singh, Advocates, for the Petitioner

Final Decision: Disposed Off

Judgement

Anjani Kumar Mishra, J. - I have heard Shri N.B. Nigam and Shri R.K. Pandey for the petitioners in the two writ petitions filed by private parties and learned Standing Counsel for the State - respondents therein.

2. In the remaining writ petitions, filed by the State, I have heard Shri Sanjay Goswami for the petitioner Shri N.B. Nigam and Shri R.K. Pandey have been heard in opposition in these writ petitions filed by the State as also Shri B.B. Jauhari for the private respondents in writ petition no. 35831 of 2006, filed by the State.

3. The writs filed by the private respondents as also the writs filed by the State except writ petition no. 14625 of 1983 are all directed against the same impugned order. They have therefore been heard together and are being decided by a

common order.

4. Writ petition no. 14625 of 1983 arises out of proceedings under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972. However, it pertains to the land, which is subject matter of the other writ petitions. This writ petition had earlier been allowed by this Court. However, a special leave petition was filed by the State of U.P., which after conversion into a civil appeal, was allowed and remanded back for reconsideration along with the other five writ petitions, vide order dated 11.01.2016. This writ petition shall be dealt with separately at the appropriate place in this judgment.

5. The five writ petitions arise out of proceedings under the U.P. Consolidation of Holdings Act and are directed against the orders passed in these proceedings.

6. It has been submitted that respondent no. 3 in writ petition no. 35831 of 2006 filed by the State has died and, therefore, the writ petition has abated. It is not disputed by learned counsel for the parties that the respondent no. 3, Hardwari (since deceased) had been substituted along with his brother on the death of their father.

7. In my considered opinion, there is no abatement on the death of an heir, especially when another heir is already on record and he represents the estate of the original party.

8. The oral prayer for abatement of writ petition no. 35831 of 2006, is hereby refused.

9. The facts briefly stated are that plot no. 248 area 100 acres is in dispute in these writ petitions. It is the case of the private parties that portions of this plot were leased out to them, by the erstwhile Zamindar, through his karinda.

10. The petitioners in writ petition no. 788 of 2006 claim on the basis of three lease deeds. The first lease deed dated 01.06.1949 was for an area of 56.25 acres, the second lease dated 15.06.1949 was for an area of 43.75 and the third lease deed dated 25.06.1949 was for an area of 7 acres.

11. The other private respondents claim on the basis of other separate lease deeds of different areas of plot no. 248.

12. The private parties claimed title on account of their possession on the date of abolition of Zamindari, pursuant to the lease deeds executed in their favour by the Zamindar through his karinda.

13. In the basic year record, the disputed land was recorded as reserved forest. The objections filed by the private parties were dismissed on the ground that the land was a reserved forest and, therefore, the consolidation courts had no jurisdiction in the matter.

14. The orders passed by the consolidation courts were challenged by means of writ petition no. 1127 of 1973. This writ petition was allowed vide judgment and order dated 31.08.1979 and the matter was remanded back to the Consolidation Officer for to a fresh consideration, in the light of the observations made in the judgment itself. A copy of this judgment, which is available on record, reveals that the issue to be considered by the Consolidation Officer was as to whether the land in dispute, was forest land and the property of the Government on the date of notification under Section 4 of the Indian Forest Act and whether the Government had proprietary rights in this land. It was further observed that in case the land in issue was not covered by Section 3 of the Forest Act and was tenancy land of the petitioners, declaring it to be reserved forest would be without jurisdiction.

15. Consequent to this order of remand, the Consolidation Officer vide order dated 15.06.1949 accepted the lease deeds dated 15.06.1949 and 25.06.1949 in favour of the petitioners in writ petition no. 788 of 2006. However, the third lease deed dated 01.06.1949 was discarded and the petitioners were held to be bhumidhars of the land covered by the aforesaid two leases of 15.06.1949 and 25.06.1949 only.

16. The other leases set-up by the other private respondents namely Nathhu Lal, Jiwan, Pothi etc. were also accepted and these persons were declared as bhumidhars of the land leased to them.

17. Aggrieved by the order of the Consolidation Officer, three appeals were filed by the State. The 4th appeal was filed by Ratan Singh and others, in so far as the Consolidation Officer had failed to grant any benefit to them under the lease dated 01.06.1949.

18. The Settlement Officer Consolidation by his order dated 21.11.1985 dismissed all the four appeals by a common order. All the appellants went up in revision and all the four revisions were dismissed by the Deputy Director of Consolidation by order dated 27.06.2005. It is these orders, which are under challenge in this bunch of writ petitions.

19. It would be relevant to note at this stage itself that the consolidation authorities have passed orders in favour of the private parties, the objectors under Section 9A(2) of the Act, holding that the lease deeds set up by them stood proved and the lessees were found to be in cultivatory possession over the land leased to them. The claim of the petitioners in writ petition no. 788 of 2006 (Ratan Singh and others) have been negatived as regards the lease deed dated 01.06.1949 for an area of 56.25 acres, on the ground that they were not in cultivatory possession over this land.

20. Writ petition no. 788 of 2006, therefore, has been filed by the private respondents claiming that even this lease deed dated 01.06.1949 was liable to be accepted and they were liable to be declared bhumidhars of the entire 100 acres by land leased to them.

21. Shri N.B. Nigam, learned counsel for the petitioners in writ petition no. 788 of 2006 has submitted that the notification under Section 4 of the Indian Forest Act, 1927 (hereinafter referred to as the Forest Act) was issued on 22.03.1954 as regards 800 acres of land. The notification under Section 20 dated 30.08.2016 was published in the Gazette on 31.02.1967. This notification was with regard to 770 acres of land only.

22. The primary contention of Shri N.B. Nigam is that all the lease deeds were duly proved before the Consolidation Officer. He accepted only two, on the ground that the land, subject matter of the third lease deed dated 01.06.1949, was not in the cultivatory possession of the petitioners. This, he submits is illegal and the consolidation authorities have adopted double standards. He also submits that all the three courts below have recorded findings that all the leases were executed for agricultural purposes and the petitioners were recorded in 1359 Fasli.

23. Referring to Section 3 (10) of the U.P. Tenancy Act, 1939, he submits that "land" has been defined therein as land which is let out or held for growing of crops, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing singhara or other produce.

24. Referring to Section 29 of the said Act, he submits that the petitioners were hereditary tenants of the land leased to them, which fact was admitted by the Zamindar. On the abolition of Zamindari, on 01.07.1952, hereditary tenants would be deemed to be bhumidhars and the land in their possession would be deemed to be settled with them, as such.

25. The contention of learned counsel for the petitioner therefore, is that on the abolition of Zamindari, the petitioners acquired rights in the land in question, which could not be extinguished by means of notifications under Section 4 and 20 of the Indian Forest Act. These rights could be extinguished only in accordance with the provisions of Section 189 of the U.P. Zamindari Abolition and Land Reforms Act.

26. It is also contended that there was another piece of legislation, namely the U.P. Private Forest Act, 1948. Till 1976, forests were a State subject and, therefore, the provisions of the Indian Forest Act, which is a Central Act are not attracted. In support of his contention he is relied upon the judgment in the Case of **Rajeev Saran v. State of Uttarakhand AIR 2011 Supreme Court 3081**, especially paragraphs 35, 36 and 53 thereof.

27. It is additionally submitted that proprietary rights were initially governed by the North-West Frontier Province Tenancy Act, wherein four types of tenants were recognised, namely the permanent tenure holders, proprietary tenure holders, occupancy tenants and non occupancy tenants. The State was not the proprietor of the land. It was the Zamindar who was the proprietor.

28. Next came the Agra Tenancy Act, which was enforced w.e.f. 07.09.1929. The provision of this Act of 1926 provided for security of proprietary rights, especially Section 29 thereof. On the abolition of Zamindari, occupancy tenants became bhumidhars and sirdars and the State was not the owner of this land wherein they were deemed to be Bhumidhars or Sirdars.

29. It has lastly been contended that there is no evidence on record that a notification under Section 6 of the Indian Forest Act, was ever issued. Only the notification under Section 20 of the Act was filed. In the settlement year, entry of 1346 Fasli, plot no. 248 had an area in excess of 200 acres out of which 63 acres was recorded as jungle in three khatas and the remaining land was recorded in khata 127, as cultivable land. In the khatauni of 1359 Fasli, the area of this plot was recorded as 100 acres. However, in 1956 new plots were carved out but the name of the petitioners was left out and, therefore, in 1963, on the start of consolidation operations, the objections under Section 9 were filed.

30. Shri Sanjay Goswami appearing for the State submits that in 1350 Fasli, the land in dispute was recorded as jungle and that it was a natural forest. He further submits that the khasra of 1359 Fasli is missing. On 11.10.1952, the land in question was resumed by means of a notification under Section 117 of the U.P. Zamindari Abolition and Land Reforms Act and, thereafter, the notification under Section 4 of the Act was issued on 22.03.1954. After issuance of this notification under Section 4, no rights can accrue in the land which is subject matter of such a notification, in view with Section 5 of the Forest Act.

31. Section 9 of the Forest Act provides that where no claim is preferred under Section 6 claiming rights in respect of land covered by a notification under Section 4, all rights stand extinguished. The Forest Officer is required to decide the objections or claims raised before him under Section 6 and once the same have been disposed of, the final notification, under Section 20 of the Act, is issued declaring the land to be a reserved forest. He submits that the petitioners never raised any claim under Section 6 of the Act and, therefore, any claim to the contrary, is barred. He submits that courts below have wrongly granted bhumidhari rights to the private respondents as also the private petitioners in this bunch.

32. He next contends that the point for consideration is whether a private party could have acquired any rights in the land in question in the year 1949. He submits that it is no one's case that the land in question was under cultivation prior to the abolition of Zamindari. The private parties in this bunch are claiming on the basis of lease deeds said to have been executed in their favour by the erstwhile Zamindar in 1949.

33. Relying upon Section 8 of the U.P. Zamindari Abolition and Land Reforms Act, he submits that any contract which would include a lease entered after 8th August, 1946 is void from the date of lease/contract, as provided in this section. He submits

that since the land in question had been resumed by means of a notification under Section 117 issued in the year 1952, the land vested in the State and, therefore, the State was competent to have issued the notification under Section 4 of the Forest Act.

34. Elaborating further, he is submitted that it was provided by the U.P. Amendment, made in Section 3 of the Forest Act in the year 1965, that land which was a holding or was abadi, could not be declared reserved forest. In the instant case this amendment is of no consequence inasmuch as this is not applicable to the case, as this embargo did not exist on the date of notification under Section 4 of the Act regarding the land in question. He therefore submits that the private parties in this bunch of petitions, were at best, entitled to compensation.

35. It is therefore, the contention of Shri Sanjay Goswami that the courts below were required to examine as to the nature of the land, on the date of notification under Section 4 of the Forest Act. This, he submits was necessarily required to be examined in view of the directions contained in the order of remand, passed by this Court, in the year 1979.

36. The relevant portion of this order of remand is quoted herein below:-

In case, it is found that the land in dispute at the time when notification under section 4 of the Act was issued, was forest land or waste land and it was the property of the Government or in which the Govt. have the proprietary right, in that case, the notification issued under section 20 of the Act declaring the disputed land as reserved forest cannot be challenged in this proceeding. But in case, the disputed land was not covered by section 3 of the Act and was the tenancy land of the petitioners and was in their cultivation, it will not be governed by the provision issued under section 20 of the Act, declaring the land as reserved forest, will be without jurisdiction and the Civil Court or any regular court competent to decide the title of the parties, will have jurisdiction to determine the title of the petitioners and their claim will not be barred under the provisions of the Act.

37. The contention therefore is that the lease agreement between the Zamindar and the private parties in this bunch, is of a date subsequent to, 18.09.1946. This agreement is of land recorded as forest and, therefore, the agreement is rendered void, on the date of abolition of Zamindari, in view of Section 8 of the U.P. Zamindari Abolition and Land Reforms Act. The notification under Section 20 of the Indian Forest Act is not under challenge in the writ petition. Rights, if any, of the petitioners, in any case, stand extinguished in view of Section 9 of the Indian Forest Act, 1927 and any claim to the contrary is barred by Section 23 of the said Act. He lastly submits that the consolidation courts have not disputed the entries in the revenue records of 1359 Fasli.

38. Shri R.K. Pandey, who appears for the petitioners in writ petition no. 9827 of 2006 has adopted the arguments advanced by Shri N.B. Nigam. Similar pleas have

been raised by Shri B.B. Jauhari, who appears for the private respondents in writ petition no. 35831 of 2006 filed by the State.

39. I have considered the submissions made by learned counsel for the parties and have perused the record.

40. From the submissions made as also upon a perusal of the order of remand passed by this Court in the year 1979, it is clear that the matter had been remanded back with a specific direction to consider the nature of the land on the date, the notification under Section 4 of the Indian Forest Act was issued. The courts below have not adverted to this aspect of the matter, at all. The private parties have been held to be bhumidhars of a portion of land in question, merely because they were found to be in cultivatory possession, during a local inspection, made by the Consolidation Officer himself.

41. This in my considered opinion, is not substantial compliance of the directions contained in the judgment and order of remand dated 21.08.1979 as modified by order dated 01.05.1980.

42. The submissions made by Shri Sanjay Goswami relying upon Section 8 of the U.P. Zamindari Abolition and Land Reforms Act as also the contention that the U.P. Amendment in Section 3 of the Act was made w.e.f. 23.11.1965, whereby a holding, as defined in the U.P. Tenancy Act, 1939 or an abadi, could not be declared as reserved forest, has also not been considered by the courts below, while passing the impugned orders.

43. These issues are legal issues, which necessarily require consideration. This was also the mandate of the High Court while passing the order of remand in 1979.

44. In such view of the matter, the orders impugned having been passed without complying with the directions contained in the order of remand, the same cannot to be sustained and are liable to be set aside.

45. For the same reason, I do not consider it necessary to refer to case law cited by Shri N.B. Nigam or to advert to the various points argued by him.

46. In view of the above, all these petitions are allowed. The order passed by the Deputy Director of Consolidation is hereby set aside and the matter is remanded back to him for passing fresh orders in the light of the observations made herein above.

47. Ideally, the matter should have been remanded to the Consolidation Officer but this Court is remanding it only to the revisional Court, as it is the last court of fact and is competent to appreciate the evidence on record and record findings, both on facts and law, contrary to those recorded by the subordinate Courts, in view of Explanation 3 to Section 48 of the U.P. Consolidation of Holdings Act and also with a view of shorten the litigation between the parties.

48. It is provided that the Deputy Director of Consolidation, to whom the matter is being remanded, must decide the matter expeditiously and positively within a period of six months from the date, a certified copy of this order is filed before him. In case, necessity arises, he may hear the matter on a day to day basis so as to pass final orders within the time specified above.

49. Writ petition no. 14625 of 1983 pertains to the same plots as are the subject matter of the above five petitions. In this writ petition, proceedings were initiated for eviction of Ratan Singh under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972. The eviction of Ratan Singh was ordered from the same land, which is the subject matter in writ petition no. 788 of 2006.

50. Since this writ petition no. 788 of 2006 is being remanded back for a fresh decision by the Deputy Director of Consolidation, I do not find any justification for the proceedings under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

51. This writ petition is therefore, liable to be allowed and the orders impugned dated 30.05.1983 and 08.09.1981 are liable to be set aside.

52. This order shall however not prejudice the parties, in so far as their respective claims before the consolidation courts are concerned, and orders passed by the consolidation courts shall be conclusive and binding upon Ratan Singh.

53. Writ petition Nos. 788 of 2006, 9827 of 2006, 35786 of 2006, 35831 of 2006 and 35836 of 2006 are partly allowed and the order dated 27.06.2005 impugned therein is set aside and the matter is remanded to the respondent no. 1 for a decision afresh in the light of the directions/observations, above.

54. Writ petition no. 14625 of 1983 is allowed and the orders dated 30.05.1983 and 08.09.1981, impugned therein are quashed, subject to the observations made in the body of the judgment.