

Court No. - 48

Case :- WRIT - B No. - 126 of 1978

Petitioner :- Ram Deo

Respondent :- D.D.C.

Counsel for Petitioner :- R.C. Singh

Counsel for Respondent :- R.N. Singh,A.K. Rai,S.C.,S.N.

Singh,Vishnu Kr.Singh

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Rituvendra Singh Nagvanshi, learned counsel for petitioner, Sri Narendra Shankar and Sri Vishnu Singh, learned counsel for contesting respondents and learned Standing Counsel for State.

2. This writ petition is pending since 1978. During long pendency of this writ petition, original petitioner and some of original respondents have died and their respective legal heirs have already been brought on record.

3. Counsel for parties are in agreement that the case is arising out of determination of shares among parties of a land at khata No.3 of concerned village.

4. There is not much in dispute that a large area of land was occupied by occupants and by virtue of provisions of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, they firstly became *Adivasi* and later on *Sirdar*. There is no much dispute in regard to shares of respective parties and that revision petition filed by petitioner was substantially allowed.

5. Sri R.C. Singh, learned Senior Counsel assisted by Sri Rituvendra Singh Nagvanshi, learned counsel for petitioner has referred the paragraph Nos.5, 14, 16 and 20 of writ petition that allotment of share was not conducted in accordance with availability of land. The said paragraphs are reproduced hereinafter:-

"5. That Har Govind and Madho (Father of Opp. parties nos. 6 and 7) claimed himself to be transferee from Shist Narain to the extent of 5/13 share in the ½ share of Shist Narain. In this way they claimed 5/26 share in the entire holding.

14. That the petitioner had filed khatauni of 1362 F. of the joint holding consisting of 78 Khata 13.09 Acres area, out of which several plots were declared Adhiwasi and Sirdari plots of different persons. This fact was noted in the said khatauni. A true copy of the khatauni 1362 F. is annexed herewith and is marked as Annexure VI.

16. That after deducting the total area of the land held by Adhiwasi and sirdar, shown in the list mentioned-above, the joint holding of the petitioner, Chhabboo and Shist Narain opp. party comes to those 6.17 Acres. Admittedly Shist Narain has only ½ share in the holding. Therefore , Shist Narain would have been entitled to 3.8 acres land. However, Shist Narain has transferred his 5/13 share to Har Govind and Madho (father of opp. parties 6 and 7), through sale deed. Therefore, out of 3.8 acres land belonging to Shist Narain, the share of Shist Narain would be 8/13 th and the share of Har Govind and Madho (father of respdts. 6 and 7) shall be 5/13.

20. That the petitioner has also filed the compensation roll to show that the petitioner Chhabbo (deceased) and Shist Narain, all the joint tenure holders had received the compensation for the plots in respect of which Adhiwasi and sirdari rights were conferred on different persons. This fact was noticed by Deputy Director Consolidation himself in his judgement."

6. Learned Senior Counsel for petitioner has also referred the paragraph Nos.14, 15, 16 and 17 of counter affidavit and submitted that specific averment made in aforesaid paragraphs of writ petition were vaguely replied. The relevant paragraphs are mentioned hereinafter:-

"14. That the contents of paragraph 16 as stated are not admitted. In reply it is submitted that this opposite party along with his transferees had 4.4 acres of land in the Khata in dispute.

15. That in the copy supplied by the petitioner, paragraphs 17 and 18 are missing. That there appears to be confused calculation which do not appear to be correct. If those contents clarified, suitable reply should be given at the time of argument.

16. That the contents of paragraph 19 are emphatically denied.

17. That the contents of paragraph 20 as stated are not admitted."

7. Learned Senior Counsel further submits that it will be appropriate if the matter be remitted back to Revisional Authority to decide it afresh after considering the averments made hereinabove.

8. Learned counsel for contesting respondents submits that calculation was made on basis of record and since original petitioner has executed many bainamas out of his land, therefore, a large part of his share has already been sold though he fairly submits that there may be certain ambiguity or wrong calculation in determination of share too, however, at this stage i.e. after four and a half decade, if the matter is remitted to the Deputy Director of Consolidation, to decide afresh, it could cause prejudice to other parties, since much water has flown.

9. Learned counsel for contesting respondents also refers that in reply to a certain application, the above paragraphs of writ petition has been countered and he refers paragraph No.9 of it, which is reproduced hereinafter:-

"9. That the contents of paragraph 8 of the affidavit to the extent of the order of this Hon'ble High Court are admitted, and rest of the contents are emphatically denied. It is further stated that the theory set-up by the petitioners that there were two groups of khata; one consisting of 5.49 acres and the other consisting of 2.66 acres, is

wrong. The fact is that originally this khata had an area of 13.9 acres. After excluding the area which had gone to 'adivasi', only an area of 8.9 acres remained, in which the petitioner had half share, and the half share belongs to the deponent. The petitioner has sold away his entire share and that the deponent's half share, including the shares of the transferees remained intact. In fact, this Hon'ble High Court, at the time of the arguments on the stay application, heard both the parties at great length and after hearing both the parties this Hon'ble Court came to the conclusion that Rs.1000/- was a reasonable compensation which the petitioner should pay per year for the land which he has in his possession in excess of his share. It is absolutely wrong to say that the proportionate compensation would be only Rs. 200/- per year."

10. Heard counsel for parties and perused the record.

11. As referred above, this case is arising out of a dispute of allocation of shares among parties. There is not much dispute about specific share of parties and that substantial part of grievance of petitioner has already been satisfied, however, a dispute which still remains for consideration is in regard to method of calculation of share *vis-a-vis* to area of land available and manner in which it has to be determined and as contended by learned Senior Counsel for petitioner that his share ought to have been at least 1/2 (though claim is of 2/3 share) i.e. at least more than three acre of land area, whereas he has been settled only to extent of less than one acre of land area.

12. Per contra, the argument of learned counsel for contesting respondents is that in whatever way, calculation was made by the Deputy Director of Consolidation, the substantial grievance of petitioner was already addressed.

13. I have carefully perused the order impugned in this writ petition. The Deputy Director of Consolidation has made a detailed calculation

in order to determine shares and even granted share of Chhabbu (since deceased) to petitioner, however, it appears that only ambiguity that remains is in regard to land available for the purpose of allotment of share after deducting the land which has been occupied by occupants as well as effect of bainamas executed by respective parties and a clarification in regard to determination of share would be in the interest of all parties also, therefore, despite this writ petition is pending for last more than four and a half decade, I am of considered opinion that matter requires re-consideration at the stage of Deputy Director of Consolidation, therefore, impugned order is set aside and matter is remitted back to Deputy Director of Consolidation to decide afresh.

14. Parties are directed to file their respective claim of share, accurately and in a proper manner within six weeks so that Deputy Director of Consolidation may decide the case expeditiously, in accordance with law after hearing the rival parties.

15. Counsel for parties are directed to place amended cause title before the Deputy Director of Consolidation within a period of three weeks from today and thereafter the Deputy Director of Consolidation shall decide the revision petition within a period of six months, if there is no legal impediment.

16. This writ petition is accordingly, **disposed of**.

Order Date :- 2.11.2023

P. Pandey