

Neutral Citation No. - 2023:AHC:207380

Judgment Reserved on 26.10.2023

Delivered on 31.10.2023,

Court No. - 48

Case :- WRIT - B No. - 312 of 1978

Petitioner :- Lurkhu

Respondent :- D.D.C. And Others

Counsel for Petitioner :- S. Rai, Vinod Kumar Rai

**Counsel for Respondent :- R.N. Singh, Anil Kumar
Rai, S.C., S.N. Singh, Vishnu Singh**

Hon'ble Saurabh Shyam Shamschery, J.

1. Heard Sri Vinod Kumar Rai, Sri Ashok Kumar Singh, learned counsel for petitioner, Sri Vishnu Singh, learned counsel for contesting respondents and Sri A.K. Rai, learned Additional Chief Standing Counsel on behalf of State.
2. This case is arising out of title proceedings decided during consolidation proceedings.
3. Original petitioner has claimed his right over Khata No.50 i.e. Plot Nos.164, 165 and 166 situated in Village-Garthauli, District-Varanasi being 'Rent Free Grantee' as well as revenue entries of 1356 Fasli and at least upto 1361 Fasli, whereas original contesting respondents have claimed their right on basis of revenue entries of 1362 Fasli and at least till start of consolidation proceedings.

4. Objections filed by original petitioner were rejected by the Consolation Officer vide order dated 13.1.1977 mainly on ground that respondents have substantiated their rights being recorded on basis of an order dated 24/30.4.1954 passed by concerned Tehsildar and thereafter they continued in possession. The Consolation Officer has also returned a finding that since possession of contesting original respondents continued for more than 12 years and original petitioner has never taken any steps to evict them, therefore, original contesting respondents have perfected their right.

5. An appeal filed by original petitioner was allowed vide order dated 5.4.1977 and a finding was returned that order passed by Tehsildar in the year 1954 was surrounded by clouds of doubt as well as no benefit of irrigation slips could be granted to original respondents since they were in unauthorised possession. Relevant part thereof is extracted hereinafter:

" वाद बिन्दु नंबर 2 व 3 लरखुर की तरफ से नकल खतौनी 1356 फ० 1359 फ० 1361 फ० 1362 फ० दाखिल किया गया है ओंकारनाथ व लरखुर गवाहो के ब्यान हुए है। द्वितीय पक्ष की तरफ से नकल गोशवारा मुकमाद नम्बर ८३४ लरखुर बनाम हरी दिनांक ३०.०४.५४ नकल खसरा १३६६ फ० से १३७३ फ० दाखिल किया गया है तथा हरी व फुल्लन के गवाहो के ब्यान हुए है। खतौनी १३५६ फ० १३५९ फ० १३६१ फ० व १३५९ फ० के सबी विवादित नम्बरो पर लरखुर का नाम दर्ज है। खतौनी १३६२ फ० मे सर्व प्रथम हरी का नाम विवादित भूमि पर दर्ज है और तभी से बराबर दर्ज चला आ रहा है खसरा १३६६ फ० से १३७३ फ० मे विवादित भूमि पर हरी का नाम दर्ज है। लरखुर ने अपने ब्यान जिरह में कहा है कि उन्होने विवादित भूमि का लगान कभी भी नहीं दिया है। उन्होने यह भी स्वीकार किया है कि उन्हे नाम न दर्ज होने की जानकारी चकबन्दी मे हुयी थी किन्तु इस बात पर विश्वास नहीं किया जा सकता क्योकि श्री लरखुर

मालगुजारी नहीं दे रहे थे तो उन्हें यह पता लगाना चाहिए था कि मालगुजारी उनसे क्यों नहीं वसूल की जा रही है खतौनी १३६१ फ० में विवादित भूमि की माल गुजारी १३ रु० १ आना ११ पाई दर्ज है ओंकारनाथ गवाह को भूमि के बारे में पूरी जानकारी नहीं है इस प्रकार यह स्पष्ट हो जाता है कि विवादित भूमि पर लरखुर का कब्जा काफी समय से नहीं है। हरी का नाम विवादित भूमि पर १३६२ फ० में किस प्रकार दर्ज हुआ इसका कोई स्पष्टीकरण नहीं है नकल गोसवारा से स्पष्ट नहीं होता कि मुकदमा नम्बर ८३४ किस कानून के अंतर्गत चला था नकल खसरा तथा गवाहों के ब्यानों से यह स्पष्ट हो जाता है कि विवादित भूमि पर हरी का कब्जा १२ साल से अधिक समय से लगातार चला आ रहा है इस प्रकार हरी भूमि के सीरदार होते हैं। लरखुर का अधिकार समाप्त हो जाता है दोनों वाद बिन्दुओं का निर्णय इस प्रकार हो जाता है।

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मैंने पक्षों के विद्वान अधिवक्ताओं के तर्कों का श्रवण किया और पत्रावली का अवलोकन किया।

खतौनी १३५६ फ० में खाता नम्बर ३३ व ३२, ५७, ८२, ११०, १३५ पर उक्त भूमि पर लरखुर पुत्र अलियार के नाम विला लगान का दर्ज है। १३५९ फ० में ऐसा ही इन्द्राज दर्ज था। १३६१ फ० में लरखुर का नाम सीरदारी में उक्त भूमि के खाता नंबर १२ पर दर्ज हुआ। १३६२ फ० में हरी पुत्र शिववरन गोसाई का नाम पूर्व १३६० फ० में दर्ज हुए। तब से हरी के नाम इन्द्राज है अपील कर्ता का कथन है कि उक्त भूमि पर उनका नाम चढ़ना चाहिए। उत्तरवादी के विद्वान अधिवक्ता का तर्क है कि १३५६ व १३५९ फर्म लरखुर का नाम विल एवज माफी दर्ज थी अतः धारा १८ ज उ. कानून में भूमिधर हुए। १३६१ फ० में लरखुर के नाम सीरदारी का इन्द्राज मिलता है। १३६२ फ० के खतौनी में एक कितावत की गलती के कारण हरि को पूर्व १३६० ही लिख दिया गया। यह इन्द्राज गलत नहीं है क्योंकि तहसीलदार महोदय के आदेश से यह इन्द्राज हुआ था। उत्तरवादी के इस कथन को सही मान ले तो तहसीलदार महोदय का अमल दरामद १३६१ फ० की खतौनी में होना चाहिए अथवा आदेश की नकल देनी चाहिए किन्तु ऐसा कोई अमल दरामद १३६१ फ० की खतौनी में देखने को नहीं मिलता। यह सही है कि हरि खुद इस भूमि का लगान अदा कर रहे हैं किन्तु यह अनाधिकार जिसके नाम इन्द्राज हुआ और वह अनाधिकार रूप से लगान जमा कर रहे

है तो इसका अर्थ यह नहीं है कि इस भूमि के मालिक हरी है तहसीलदार महोदय को धारा ३४ यू.पी. लैन्ड रिवन्यू एक्ट ३९ में हरी को भूमिधर दर्ज करने का अधिकार नहीं है।”

(Emphasis Supplied)

6. In the aforesaid circumstances, original contesting respondent herein filed a revision petition which was allowed vide order dated 5.12.1977. The Revisional Authority not only placed reliance on an order passed by Tehsildar, but has also taken note that original petitioner has failed to file any irrigation slip or any other documents to prove their continuous possession, whereas it was further held that original respondents have been able to prove their continuous possession on basis of documents. This order is impugned in present writ petition.

7. Learned counsel for the petitioner has vehemently placed his case that a well reasoned order passed by Appellate Authority was lightly and erroneously interfered by the Revisional Authority, without appreciating oral evidence as well as revenue records that original petitioner was recorded from 1356 Fasli to 1361 Fasli and thereafter contesting original respondents were recorded without any basis.

8. Learned counsel for the petitioner further submitted that Revisional Authority has unnecessarily given importance to non-submission of irrigation payment slips without considering that original respondents were in unauthorised possession of land in dispute since their names were recorded in revenue records, therefore receipts were issued in their name.

9. Learned counsel for the petitioner has referred order passed by the Settlement Officer of Consolidation that order passed by Tehsildar was never placed on record and even details as mentioned in Goshwara it was a case filed by original petitioner and not by original contesting respondents.

10. Learned counsel for petitioner has placed reliance upon a judgment passed by this Court in **Ram Naresh and Ors. Vs. Dy. Director of Consolidation and Ors, 1978 RD, 118.**

11. Above submissions were opposed by Sri Vishnu Singh, learned counsel for respondents that even before basic year, name of original contesting respondents was recorded in the revenue records and they remained in continuous possession and in support of above submission, irrigation and rent slips were filed before Consolidation Authorities. He further submitted that in order to prove original petitioner's possession, he ought to have filed documents, however, no document was filed. Even in case he was a Rent Free Grantee, the original petitioner has to pay rent at least after Zamindari Abolition, but no such slip was placed on record.

12. Learned counsel for the respondents referred at length judgment passed by the Revisional Authority. He further submitted that no suit under Section 209 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'Act of 1950') was filed.

13. In rejoinder learned counsel for petitioner has referred para 13 of the rejoinder affidavit, which is reproduced hereinafter:

"The paragraph 13 of the counter affidavit is not admitted. The averments made in paras 15 and 16 of

the writ petition are reiterated as correct. Hari opp. party was never in possession over the land in dispute and he never irrigated the disputed land from any sources. The Opp. party has not filed the copy of the irrigation slips, revenue papers, and oral evidence as alleged. No document of irrigation has been filed to show that disputed land was irrigated by the Opp. parties. The fictitious and got up irrigation slips were inadmissible evidence. Those slips were never followed by any irrigation payment dues receipts. Their genuineness is self exposed. The unauthorised entry in the revenue papers could not confer any title on the Opp. party. The illegal entry in the revenue papers, are inadmissible evidence. Therefore, findings based there in, are vitiated by manifest error of law. The reasons recorded in the judgment of Deputy Director of Consolidation shall alone be looked into. The Deputy Director Consolidation has not considered the entire material evidence on the record. The findings Deputy Director Consolidation is perverse. It is incorrect to say that the petitioner was in possession over the disputed land. There is no explanation for the revenue entries in favour of petitioner in Khasra and Khatauni 1356, and 1359 Fs. Before the date of vesting. Petitioner's name was also recorded in khasra and khatauni of 1361 F. Petitioner's name was wrongly removed from the revenue papers abruptly in unauthorised and illegal manner thereafter. There is nothing on record to show that the petitioner ever surrendered the holding. The consolidation officer and Deputy Director Consolation have wrongly based their findings on the illegal and unauthorised entry in the revenue papers, made from 1362F. Onwards without any knowledge to the petitioner. It is incorrect to say that the Opp. Party has been irrigating the disputed land from tube-well for the last 12 years. There is no tube-well in the vicinity. The petitioner has not produced the documentary evidence to prove the irrigation of the disputed land from the government tube-well. The consolidation authorities have wrongly observed otherwise. The Opp. party has not filed the said document, relating to irrigation before this Court for perusal. It is incorrect to say that the Opp. parties are in possession for more than 30 years."

14. Heard learned counsel for parties and perused the records.

15. Petitioner's claim was based on revenue entries of the year 1356 Fasli to 1361 Fasli being rent free grantee, whereas claim of contesting respondents was based on revenue entries of 1362 Fasli till the consolidation proceedings commenced as well as on receipts of irrigation slips of payment of rent. Their claim was further supported by an order dated 24/30.4.1954 passed by Tehsildar.

16. The Appellate Authority has accepted claim of original petitioner on ground that revenue entries were in his favour as well as no benefit could be granted to original contesting respondents of an order passed by the Tehsildar. Appellate Authority has returned a finding that in terms of Section 18 of the Act of 1950, original petitioner has become Sirdar.

17. Above findings were set-aside by the Revisional Authority that order dated 24/30.4.1954 passed by the Tehsildar was recorded in Khatauni and Register Malkaan and therefore there was no reason to dispute it. Further finding was returned that original petitioner has failed to submit any irrigation slips. Relevant part of said order is mentioned hereinafter:

“ इस संबंध में निगरानी कर्ता के विद्वान अधिवक्ता द्वारा स्पष्ट किया गया है कि दिनांक २४.०४.५४ के तहसीलदार के सन्दर्भित आदेश की नकल अब प्राप्त होना संभव नहीं है क्योंकि निर्धारित अवधि बीत चुकी है वह अभिलेख अभिलेखागार द्वारा नष्ट किया जा चुका है फिर भी खतौनी व रजिस्टर मालकान आदि के इन्द्राज तथा निगरानी कर्ता के कब्जे के समर्थन में प्रस्तुत रसीद लगान और परचा आवपासी तथा विपक्षी द्वारा इसका खण्डनात्मक साक्ष्य न दिए जाने के कारण यह माना जाना चाहिए कि उक्त आदेश के आधार पर निगरानी कर्ता काबिज और दखील व अंकित हुआ था। निगरानी कर्ता की ओर से यह भी कहा गया कि दिनांक ०८.०७.५३ की अधिसूचना द्वारा सभी तहसीलदारों

को सहायक कलक्टर प्रथम श्रेणी का अधिकार प्रदान किए गए थे और अपील न्यायालय का यह निष्कर्ष गलत है कि सेहत कागजात के मुकदमे के अन्तर्गत निगरानी कर्ता को लरखुर के स्थान पर बतौर भूमिधर दर्ज करने का तहसीलदार को कोई अधिकार नहीं था निगरानी कर्ता ने यह भी कहा है कि उसने १३६२ फ० से आज तक अपने कब्जे का पर्याप्त साक्ष्य न्यायालय के समक्ष प्रस्तुत किया है और रसीद लगान आवपासी आदि से स्पष्ट है कि कब्जा उसी का है जबकि विपक्षी लरखुर ने इसके जवाब में अपना कब्जा प्रमाणित करने के लिये कोई रसीद लगान परचा आवपासी या खसरा आदि की नकल नहीं प्रस्तुत की। विपक्षी की ओर से कहा गया है कि १३५६ फ० व १३५९ फ० में लरखुर ही आराजी निजाई पर दर्ज था व १३६२ फ० के रजिस्टर मालकान की नकल फरजी है। मूल रजिस्टर के इन्द्राज से मिलान के बाद यह आरोप असत्य पाया गया। इसके अतिरिक्त विपक्षी यह नहीं बता सका कि यदि वह बदस्तूर १३५९ फ० से काबिज व दखील चला आ रहा है तो उसने अपने कब्जे के समर्थन में व निगरानी कर्ता के दावे का खण्डन करने के लिए रसीद लगान परची आवपासी या खसरे की नकलें क्यों नहीं प्रस्तुत की। वह यह नहीं बता सका कि १३६२ फ० से चले आ रहे निगरानी कर्ता के नाम की जानकारी उसे क्यों नहीं हो सकी। यदि वास्तव में कब्जा व दखल स्वयं उसी का था। विपक्षी का यह भी तर्क है कि हरी बिना किसी सक्षम न्यायालय के आदेश के सीधे खसरे के असल खाने में दर्ज हो गया था और ऐसे गलत और अनाधिकृत इन्द्राज के आधार पर उसे कोई हक नहीं मिलता और न ऐसे इन्द्राज को कायम रखा जाना चाहिए। मैं उक्त विवेचना की दृष्टि से इस तर्क में कोई बल नहीं पाता। चकबन्दी न्यायालय कब्जे के आधार पर ही काश्तकारी अधिकारों का निर्णय करता है और खसरा आदि साक्ष्य से निगरानी कर्ता हरी का कब्जा ही प्रमाणित रहा है। विपक्षी आलोच्य अवधि में अपना कब्जा साबित नहीं कर सका और आधार वर्ष में निगरानी कर्ता ही अंकित भी है। विपक्षी की ओर से प्रस्तुत जबानी सहादत में भी कोई बल नहीं है अतः मैं १३६२ फ से चले आ रहे आधार वर्ष के इन्द्राज को निरस्त करने के लिए यथेष्ट औचित्य नहीं पाता। अपील न्यायालय का आदेश इन तथ्यों की विवेचना के बिना पारित हुआ है और तदनुसार निरस्त होने योग्य है। मैं इसे निरस्त करता हूँ और निगरानी स्वीकार करते हुए चकबन्दी अधिकारी का निर्णय दिनांक १३.०१.७७ व और आधार वर्ष का इन्द्राज बदस्तूर रखे जाते हैं।"

(Emphasis Supplied)

18. As referred above, doubt created by the petitioner before Revisional Authority in respect of entries was rejected by specific reasons, therefore, at this stage, on basis of order passed by the Tehsildar dated 24/30.4.1954, no dispute

could be raised in respect of revenue entries in favour of original petitioner or original respondents, therefore revenue entries made in favour of petitioner were from 1356 Fasli to 1361 Fasli whereas from 1362 Fasli till the commencement of consolidation proceedings revenue entries were in favour of contesting respondents.

19. Section 18 of the Act of 1950 provides settlement of certain lands with intermediaries or cultivators including 'Rent Free Grantee' as Bhumidhar and for such settlement relevant date would be the date of vesting i.e. 1.7.1952 and corresponding Fasli Year would be 1359.

20. As referred above, revenue entries were in favour of original petitioner since 1356 Fasli. However, in the subsequent year i.e. 1362 Fasli and till the consolidation proceedings commenced, revenue entries were in favour of contesting respondents and for such a long period admittedly the original petitioner has never taken any steps i.e. neither filed a suit under Section 209 of the Act of 1950 nor any other proceedings were initiated. There is no documentary evidence with the original petitioner that the land was in possession of original petitioner subsequent to 1362 Fasli.

21. Even if it is assumed that by virtue of Section 18 of the Act of 1950, the original petitioner became Bhumidhar still since original contesting respondents were recorded in pursuance of an order dated 24/30.4.1954 passed by Tehsildar which was duly recorded in records and they were able to prove their possession from 1362 Fasli to at least till basic year, therefore, it could not be held that their possession and revenue entries were without any legal basis.

In these circumstances, act of original petitioner for not taking any proceedings to evict them would be adverse to his claim.

22. In the aforesaid circumstances only on the basis of revenue entries in favour of original petitioner in the Fasli year 1356 to Fasli year 1361 and in absence of any document that he was in possession of land in dispute thereafter or has taken any attempt to evict the original contesting respondents, the Court could not upset finding returned by the Revisional Authority, therefore, there is no ground to interfere with the impugned order.

23. Writ petition is accordingly dismissed.

Order Date:31.10.2023.

SB