

Reserved on 04.08.2023

Delivered on 17.10.2023

**In Chamber**

**Case :-** WRIT - B No. - 3363 of 1979

**Petitioner :-** Raghav Prasad Singh

**Respondent :-** D.D.C. And Others

**Counsel for Petitioner :-** Namwar Singh, Anil Kumar Rai, Sanjiv Singh, Vishnu Singh

**Counsel for Respondent :-** S.C.

**Hon'ble Anjani Kumar Mishra, J.**

1. Heard Shri Vishnu Kumar Singh, for the petitioner.
2. The writ petition arises out of an objection under Section 9A(2) of the U.P. Consolidation of Holdings Act filed by the Gaon Sabha regarding plot No. 63 having a total area of 43.60 acres. The objection pertains to three acres of this plot which was recorded in the basic year Khatauni under Class 4, in favour of the petitioner.
3. The objection of the Gaon Sabha was rejected on 28.08.1973 ostensibly on the ground that there existed an ex parte decree in a suit under Section 229B of the U.P. Z.A. & L. R. Act, passed in favour of the petitioner.
4. The Gaon Sabha preferred an appeal which was allowed vide order dated 17.05.1976 with the finding that although the petitioner claimed sirdari rights over three acres of land on the basis of a settlement from the Zamindar, no evidence in this regard had been filed. The petitioner's claim was based on an ex parte decree in a suit under Section 229B of the U.P. Zamindari Abolition Act filed by him. This ex parte decree has been discarded because at the time, the suit was filed, the petitioner was himself the Gram Pradhan and, therefore, the suit was not contested and an ex parte decree was permitted to be passed.
5. The consequential revision of the petitioner was also dismissed by the Deputy Director of Consolidation vide judgment dated 26.03.1979 and hence this petition.
6. The Deputy Director of Consolidation has observed that the land

in question belongs to the Gaon Sabha. The Deputy Director of Consolidation has also observed that objection was filed by various tenure holders claiming sirdari rights different area of the same plot no. 63 which has a total area of 43.6 acres. All these claims were rejected except the claim of the petitioner. It has also been observed that although it was claimed that the Zamindar had leased out the land in favour of the petitioner on 05.05.1939 and he was in possession on this basis, no evidence of any such settlement or patta by the Zamindar was filed by the petitioner. Reliance was placed only on the judgment passed in the declaratory suit which was found to be fraudulent as the petitioner Pradhan had filed the case against himself and then did not contest the proceedings.

7. Another fact which emerges from the record is that the plot in question was in fact land of public utility being used as pasture land. It is settled law that no adverse possession can be claimed over Gaon Sabha land and definitely not over the land which is land of public utility.

8. Upon hearing learned counsel for the petitioner at length, I do not find any good ground to interfere in the impugned orders. It is no doubt true that the Consolidation Courts have no right to set aside any decree be it an ex parte decree, which was passed by the Revenue Court but the fact which is writ large on the face of the record is that the ex parte decree is clearly obtained by fraud. Fraud vitiates all proceedings. Moreover, the petitioner is before this Court in its equity jurisdiction and this Court is well within its rights to refuse interference which will lead to perpetuation of a fraud by the petitioner. For this reason also, no interference is called for.

9. Accordingly, the writ petition is dismissed.

**Order Date :- 17.10.2023**

Aditya Tripathi