

Neutral Citation No. - 2023:AHC-LKO:84131

RESERVED ON 18-12-2023

DELIVERED ON 22-12-2023

Court No. - 18

Case :- WRIT - B No. - 265 of 1999

Petitioner :- Deokali Singh

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

Counsel for Petitioner :- H.S.Sahai,U.S.Sahai

Counsel for Respondent :- Chief Standing

Counsel,Jai Kumar,N.K.Dwivedi,Pankaj

Gupta,R.N.Gupta,Ram Kumar Singh

Hon'ble Shree Prakash Singh,J.

1. Heard Sri U.S.Sahai, learned counsel for the petitioner, Sri Ram Kumar Singh, learned counsel for the opposite party no. 2 , Sri Hemant Pandey, learned Standing Counsel for the State, Sri Pankaj Gupta, learned counsel for the Gaon Sabha.

2. By means of instant petition, the petitioner has assailed the impugned order dated 09-04-1999 passed by the District Director of Consolidation,Gonda.

3. The contention of learned counsel for the petitioner is that the name of original tenure holder namely, Mathura Prasad was recorded as Sirdar in 1362 Fasli Khatauni and it was continued uptill the date of vesting and the land, which is in dispute, is plot nos.

8/0.24,14/0.33,23/0.61,56/0.41,79/0.46,80/0.57,150/0.20, 164/0.34, 165/0.32,179/0.33 and 180/0.37, acres of Village-Rampur, Pargana-Gwarich, Tehsil-Tarabganj, (now Tehsil-Colonelganj),Gonda. Original tenure holder, Mathura Prasad died leaving behind his sole daughter namely, Smt. Rajpati and Smt. Rajpati was his sole legal heir and the land in dispute of Mathura Prasad, was unlawfully declared as 'Matrook' alongwith the other Sirdars/Bhoomidhars, namely, Paras Nath, Smt. Parvati, Ayodhya Prasad, Ram Achal, Lalta Prasad, Tunmun, Munna, Sundar Lal, Babu Lal, Ram Khelawan, Chhote Lal, Dan Bahadur Singh and once the consolidation proceedings commenced in the years 1969-1970, of this village, objection was filed by Smt. Rajpati, under section 9(A) (2) of Consolidation of Holdings Act,1953(hereinafter referred to as '**Act, 1953**'). On such objection, the Consolidation Officer vide order dated 26-12-1979, passed in Case No. 8048, expunged the entry of 'Matrook' and the name of Smt. Rajpati was restored in the records of the land as well as the entry of 'Matrook' with regard to the abovesaid persons, have also been expunged and their names were also recorded in the revenue records, but, the entry in case of Smt. Rajpati was challenged only by the State and Gaon Sabha as the then officials were inimical with the petitioner.

4. Adding his arguments, he submits that infact in the entry, in CH,Part-I (Khata No. 338), the order dated 26-12-1979 was endorsed. After the aforesaid, Smt. Rajpati, executed a registered will in favour of the

petitioner and she died, thereafter, the petitioner applied for the mutation under section 12 of the 'Act,1953', which was allowed vide order dated 29-10-1985 by the Consolidation Officer in Case No. 72 and the name of the petitioner was recorded as Bhoomidhar in 1403-1408 Fasli Khatauni and Khasra of 1404 Fasli.

5. On 28-01-1999, the report of the Assistant Consolidation Officer, affirmed that the order dated 26-12-1979 was passed by the Consolidation Officer and the order dated 29-10-1985 was also passed by the Consolidation Officer and the certain area of 'Bachat land' was directed to be expunged from the 'Bachat land' and was recorded in the name of Smt. Rajpati. He submits that the Village-Rampur was de-notified under section 52 of the 'Act,1953', on 17-08-1985. He added that the orders dated 26-12-1979 and 29-10-1985, were not assailed in any appeal or revision and the same became final. On 20-12-1987, without following any proceeding, on the basis of a complaint made by one Raj Kumar Singh(opposite party no. 2), the alleged order dated 20-12-1987 was passed by the D.D.C. and even the notice was also not issued to the petitioner and under the garb of the aforesaid order, the name of the Gaon Sabha was recorded in the revenue records.

6. Further argued that the order dated 20-12-1987, has never seen light of the day and it was never produced by the State in this writ petition, though, several orders were passed by this court. He also added

that the order dated 20-12-1987 was also not found in the revenue records.

7. He submits that in the Counter Affidavit dated 16-01-2023, the Khatauni of 1362 Fasli, is annexed in respect of Khata nos. 64 and 164 respectively, but, none of the plot numbers are tallied to the petitioner's gata number.

8. Concluding his arguments, he submitted that infact, there is no such order dated 20-12-1987 and the petitioner was never informed with respect to any proceeding by issuing the notice and the order, if any, is passed behind the back of the petitioner, which was running from the long back and the entry in the name of the Gaon Sabha is corrected on place of the petitioner, which is not permissible under the law. He submits that no interpolation has ever been done and contrary to it, the State has committed illegality and thus, the order, which has been passed on 09-04-1999 by the D.D.C., Gonda is erroneous and perverse and the same is liable to be set aside.

9. Per contra, learned Standing Counsel appearing for the State has vehemently opposed the contentions aforesaid and submitted that infact the land of Khata no. 164 is recorded in the Khatauni of 1362 Fasli in the names of Munna & Devta, S/o of Swami Prasad. He has drawn attention towards Annexure no. 1 appended with the Counter Affidavit, which is Khatauni of 1362 Fasli. He further submitted that so far as the Khatauni of 1377 to 1380 Fasli is concerned, that also demolishes the story of the petitioner. He next

submitted that the State, being the custodian of records, is placing the Khatauni of 1362 Fasli, which shows the tenure holders as Munna and Devta at Khata no. 164, whereas the present petitioner and the tenure holder has claimed his right as being the tenure holder, on the basis of Khatauni, which has been annexed as Annexure No. 1 to the writ petition, wherein, the name of Mathura Prasad, the original tenure holder is mentioned. He added that the burden of proof lies upon the petitioner to prove that the copy of the Khatauni, which the petitioner has annexed as Annexure No. 1, is the copy obtained from original record, to which the petitioner has failed. He added that it prima-facie seems that late, Mathura Prasad, who was the then Lekhpal, made certain interpolation by preparing fabricated Khatauni of 1362 Fasli and therefore, the story, which was concocted, has been demolished. He next added that the revisional authority has considered that on the basis of the order dated 26-12-1979, passed by the Consolidation Officer, the name of Smt. Rajpati was got recorded, whereas vide order dated 20-12-1987, the land in question was expunged/struck off from the name of Smt. Rajpati and was recorded in the name of Gaon Sabha. Therefore, submission is that there is no erroneousness or perversity in the order dated 09-04-1999 passed by the District Deputy Director of Consolidation.

10. Considering the submissions of learned counsel for the parties and after perusal of material placed on records, it transpires that a dispute arose after the

death of the original tenure holder namely, Mathura Prasad as vide order dated 26-12-1979 passed by the Consolidation Officer, the land in question was struck off from the name of the Gaon Sabha and it was recorded in the name of Smt. Rajpati and when this fact was brought before the Deputy Director of Consolidation, he invoking the powers under section 48 of the 'Act,1953', proceeded in the matter and considering the order dated 20-12-1987, passed the order on 09-04-1999.

11. When this court examines the matter in the facts and law, it emerges that the Khatauni of 1362 Fasli produced/annexed as Annexure No. 1 to the writ petition is not tallied with the Khatauni, which has been placed by the State, who is the custodian of the records. In the Khatauni which is annexed as Annexure No. 1, the Khata no. 164 contains the names of Munna and Devta, S/o Swami Prasad, whereas the Khatauni, which has been annexed by the petitioner, is showing the name of Mathura Prasad at Khata no. 164. The petitioner merely emphasized on the Khatauni.

12. This court is of the considered opinion that since the State is custodian of the records and therefore, the petitioner has to prove his case that the record, which he has obtained, is the copy of the original records or it is not forged one, though, the petitioner has failed to do so. Further, the order dated 20-12-1987, as per the report, has already been weeded out in the year 2015, and therefore, it is not possible for the State to produce the same, whereas, in the year, 1999, the Deputy

Director of Consolidation, Gonda has taken note of the order dated 20-12-1987 and had passed order impugned.

13. I have also taken note of the fact that the order dated 20-12-1987 was passed against the petitioner, but, the same is not assailed by the petitioner at any stage and the petitioner tried to belie the existence of the order dated 20-12-1987. Further the finding, which is recorded in the order dated 26-12-1979, is apparent that on the oral statement of late, Rajpati, land in question was recorded in her name though, the record of Khatauni of 1362 Fasli, contrary to the same.

14. In view of the aforesaid submissions and discussions, this court finds no merit in the instant petition, hence, the writ petition is hereby **dismissed**.

15. Consigned to records.

16. No order as to costs.

Order Date :- 22-12-2023

AKS