

Court No. - 18

Case :- WRIT - B No. - 705 of 1977

Petitioner :- Brij Kishor

Respondent :- D.D.C. And Others

Counsel for Petitioner :- A.R. Khan,A.R.Khan,Aasif Razzaque

Khan,Ishwar Dutt Shukla,Onkar Nath Pandey

Counsel for Respondent :- R.N. Mishra,D.C.

Mukherjee,J.P.Mathur,Lakhkhi Chand

Tyagi,P.K.Keshari,R.P.Shukla,S.C.Mishra

Hon'ble Manish Kumar,J.

1. Heard.

2. Shri R.P. Shukla, Advocate has filed his vakalatnama on behalf of respondent nos. 2/2/1, 2/2/2, 2/2/3 and 2/2/4, which is taken on record.

3. Present writ petition has been preferred for quashing of the impugned revisional order dated 24.12.1976 passed by the Deputy Director of Consolidation.

4. During the pendency of the present writ petition, some respondents have expired and in their place, their legal heirs have been substituted and they will now be referred hereinafter as 'the respondents'.

5. Learned counsel for the petitioner has submitted that the dispute involved in the present petition is with regard to the Khata Nos. 259, 64, 57 & 58 on which the respondent no. 2 had claimed her co-tenancy rights on the basis of succession being the daughter of late Behari.

6. It is further submitted that lautoo was the original tenure holder. He had two sons namely Bhawanibhikh and Behari. Bhawanibhikh had five sons and the petitioner is the son of Manbodh i.e. the second son of Bhawanibhikh.

7. It is further submitted that Behari-the second son of Lautoo died issueless and Ram Jhuri is not the daughter of Behari hence she cannot claim any co-tenancy right for half share of the land, as mentioned above.

8. It is further submitted that in the second settlement i.e. in 1299-1300 Fasli, the land was settled in the name of both sons of Lautoo i.e. grandfather of the petitioner late Bhawanibhikh and late Behari, the brother of Bhawanibhikh. In the third

settlement i.e. in 1344-45 Fasli i.e. in the year 1937-38, the name of grandfather of the petitioner late Bhawanibhikh was only entered in the revenue records and it was continued and no one had filed any objection against the same till the consolidation proceedings started in the village in the year 1970s and for the first time, Ram Jhuri-respondent no. 2 alleged herself to be the daughter of late Behari i.e. after about more than 32 years.

9. It is further submitted that after the third settlement, the U.P.Z.A. & L.R. Act, 1950 (hereinafter referred to as, the Act, 1950) had come into force on 01.07.1952 and the basic entry was intact in favour of Bhawanibhikh, the grand father of the petitioner and it was not disputed by anyone.

10. It is further submitted that if Ram Jhuri-respondent no. 2 was the daughter of late Behari, then she would have filed her claim or challenged the entry in the name of grandfather of petitioner late Bhawanibhikh under the provisions of Oudh Rent Act, which was applicable at that time and U.P.L.R. Act, 1901.

11. It is further submitted that after the Act, 1950 has come into force, the respondent no. 2 had not challenged the entry made in the name of the grandfather of the petitioner under the provisions of the Act, 1950 or had never filed any suit either for partition or declaration.

12. It is further submitted that it is for the first time, the respondent no. 2 had raised her claim for co-tenancy in the above mentioned Gatas/Khatas by filing an objection under Section 9A (2) before the Consolidation Officer when the village had come under consolidation in 1970s i.e. after about more than 32 years.

13. It is further submitted that while respondent no. 2 claiming herself to be the daughter of late Behari after 32 years before the Consolidation Officer had not enclosed any document i.e. Kutumb Register or Voter I.D Card or any other documentary evidence to establish that she was the daughter of late Behari and the only evidence which was adduced was the statement of Ram Jas, the then Pradhan, who was nephew of Ram Jhuri, who had given a statement that she was the daughter of late Behari. The Consolidation Officer and the Settlement Officer had rightly rejected the claim of the respondent no. 2 that no evidence had been adduced by the respondent no. 2 to prove that she was the daughter of late Behari.

14. Against the order passed by the Settlement Officer Consolidation in the appeal, the respondent no. 2 preferred a

revision under Section 48 of the Act, 1953 before the Deputy Director of Consolidation and he had allowed the claim of the respondent no. 2 by passing the impugned judgment and order dated 24.12.1976, mainly on the ground that petitioner had not disclosed that whose daughter Ram Jhuri was, if she was not the daughter of late Behari and secondly on the ground that the statement was given by the petitioner before the court below that the share of Ram Jhuri was given on *Batai* by the petitioner and placing reliance on the statement of the Pradhan had given a finding that Ram Jhuri was the daughter of late Behari, ignoring completely that the court below i.e. the Consolidation Officer and the Settlement Officer Consolidation had given a specific finding in their orders that the respondent no. 2 had not adduced any documentary evidence like Kutumb Register, Voter ID Card or *Khasra* etc.

15. It is further submitted that the finding given in the revisional order that the petitioner used to give share of respondent no. 2 on *Batai* was discussed in the judgment of the Consolidation Officer and a specific finding has been given by recording the statement of petitioner wherein the petitioner had denied the claim of Ram Jhuri and due to some typographical error while recording the statement, the word "not" has been left to be mentioned but if the statement would be read in totality, inference could be drawn that the word "not" has been left to be transcribed at the time of recording the statement. The said finding in the judgment of Consolidation Officer has not been dealt with by the revisional Court rather made it a basis for passing the order in favour of respondent no. 2.

16. On the other hand, learned Counsel for the respondent no. 2/2/1 to 2/2/4 has submitted that in absence of any documentary evidence, the evidence which was admissible i.e. the statement of the Pradhan and the statement of respondent no. 2 herself and from both the statements, it has come out that respondent no. 2 was the daughter of late Behari and it is an admitted case of the petitioner also that he used to give share of the respondent no. 2 on *Batai*, hence, there is no illegality in the orders passed and the writ petition is liable to be dismissed.

17. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that dispute is with regard to the Khata Nos. 259, 64, 57 and 58 between the petitioner and the respondent no. 2. The property belongs to Lautoo, who was the original tenure holder and after his demise in the second settlement, the same was mutated in favour of his two sons namely, Bhawanibhikh and Behari. Bhawanibhikh is the grandfather of the petitioner and Behari was alleged to be father

of the respondent no. 2. In the third settlement i.e. 1344-45 fasli i.e. the year 1937-38 in the records, only the name of Bhawanibhikh was entered and it was continued. The Act, 1950 has come into force on 01.07.1952. Even at that time the said entry was intact in the 1359 Basic Fasli Year.

18. On being asked from the learned counsel for the private respondents whether the respondent no. 2 had ever challenged the entry made in third settlement either under the provisions of Oudh Rent Act or Land Revenue Act, 1901, he has very fairly submitted that it was not challenged by the respondent no. 2.

19. On being further asked from the learned counsel for the respondent no. 2 whether after the Act, 1950 has come into force, any proceedings were initiated by the respondent no. 2 under the provisions of the Act, 1950, he has very fairly submitted that it was not challenged by Ram Jhuri and has submitted that it is for the first time, the respondent no. 2 had raised her claim when the village had come under consolidation proceedings by moving application under Section 9 A(2) of the Act, 1953, meaning hereby, the entries settled in favour of the grandfather of the petitioner way back in the year 1937-38 was challenged after about more than 32 years, when the village had come under the consolidation proceedings and not before that.

20. The finding given by the Consolidation Officer and the Settlement Officer Consolidation that the respondent no. 2 had not filed the copy of Kutumb Register, Voter I.D. or any other document to establish her case that she was the daughter of late Behari and produced Ram Jash as a witness who was 50 years of age whereas Ram Jhuri was 80 years of age then how Ram Jash could ascertain or having knowledge about the birth of respondent no. 2.

21. It is also discussed in the order that Ram Jash had not disclosed that who had made the *Sijra* of Ram Jhuri. There is a specific finding in the appellate order dated 28.10.1974 that the respondent no. 2 had also not filed the copy of khasra or any revenue receipt and there is no explanation that after second settlement why she had not made any effort for entry of her name in the revenue records.

22. There is a reference of compromise produced by the respondent no. 2 before the Consolidation Officer and the Appellate Authority to establish her claim on the above mentioned property/land. Even that was not accepted by the Consolidation Officer, as the said compromise was not signed by the petitioner, hence, it is not binding upon the petitioner.

23. There is a specific finding in the order of the Consolidation Officer that after reading the whole statement of the petitioner wherein he denied the claim/share of the respondent no. 2 and also denied that she is the daughter of late Behari and it has further been stated therein, that the land of the petitioner was given on *Batai* by him is nothing but some typographical mistake as after reading the statement of petitioner in totality it appears that word "not" has been left to be mentioned that means the Consolidation Officer had read & appreciated the statement of petitioner in totality, he has well explained the statement of the petitioner rightly finding that the word "not" seemed to be missed to be written. He rightly drawn his conclusion by reading the whole statement and not reading one line alone. This observation of the Consolidation Officer has not been considered by the Revisional Court.

24. The respondent no. 2 for the first time had raised objection after about 32 years which could not be raised at such a belated stage in the light of the law laid down by this Court in the case of Ramnath Singh and another vs. D.D.C. reported in [2014(32) LCD 659]. The relevant para is quoted hereinbelow:-

"It is specifically mentioned by the Deputy Director of Consolidation that in Khasra 1359 Fasli, name of Nawab as main tenure holder and Aniruddh Singh as sub tenant was entered, same position was there in Khasras of 1361 and 1362 Fasli, Khasra of 1360 Fasli was not available, however since 1363 Fasli name of Aniruddh Singh was entered as main tenure holder and name of Nawab Singh was expunged. 1363 Fasli corresponds to 1955-56 A.D. Objections were filed in 1993 i.e. after about 38 years. Absolutely no reason was given for this undue delay and silence. The lower revisional court allowed the revision placing reliance upon section 20 of U.P.Z.A. & L.R. Act and U.P. Land Reforms amendment Act 1954. Under Section 20 it is provided that every person who on the date immediately preceding date of vesting was a sub tenant shall be called Adhiwasi. Thereafter through operation of law Adhiwasis became Sirdars. 1359 Fasli ended on 30.06.1952 and U.P.Z.A. & L.R. Act was enforced w.e.f. 01.07.1952. Accordingly section 20 was squarely applicable. The Settlement Officer of Consolidation decided the matter in favour of the petitioners on the ground that it was not shown that entry of 1359 and 1363 were correctly made. In case of old entries particularly for applying section 20 of the Act it is not necessary to see whether the entries are correct. In any case it was for the other side to show that entry was wrong. After such long time it is almost impossible to file supporting orders, documents etc. to prove correctness of entry. Entries can not challenged after a long time vide Sahibdar Khan Vs. Sadllo

Khan, A.I.R 2003 S.C.2073. Moreover in following authorities it has been held that correctness of the entries for the purposes of section 20 can not be doubted or questioned and even in correct entry (unless shown to have been made fraudulently or surreptitiously) will be sufficient to confer the right of Adhivasi/Siradar/Bhumidhar upon the person shown to be defacto occupant, in preference to de jure occupant.

1.Amba Prasad Vs. Abdul Noor Khan, A.I.R. 1965, S.C. 54.

2.Smt. Sonawati vs. Sri Ram A.I.R. 1968, S.C. 466

3.Nath Singh and others Vs. The Board of Revenue and others, A.I.R. 1968, S.C. 1351

4.Wali Mohammad Vs. Ram Surat, A.I.R. 1989, Supreme Court 2296

5.Hira Lal and another Vs. Gajjan and others, 1990 (3) S.C.C. 285.

6.Chandrika Prasad Vs. Pullo, A.I.R. 2000, Supreme Court 1785.

7.Ram Avadh and others Vs. Ram Das and others, 2008 (8) S.C.C. 58.

In the last authority of 2008 it has been held that if entry is continuing for 11 years since before start of consolidation then it can not be questioned in consolidation proceedings.

Learned counsel for the petitioners has cited the following 3 authorities which do not support his contention:

1.1464 R.D. Page 208, Shri Ram Vs. Pilau Singh.

2.1963 R.D. Page 111, Phagu Vs. Sita Ram.

3.1997 C.C.C. 480, Gurumukh Singh Vs. D.D.C."

25. It is also to be noted that if the conflict is between the earlier and subsequent settlement entries then as per the law settled in catena of judgments of this Court, the later entry would be preferred over the earlier entry unless contrary is proved by cogent strong evidence, this view is supported by the judgments i.e. **Lal Behari vs. Ram Adhar; 1985 LCD 415, Anjuman Islamia Lakhimpur vs. Chandra Prakash Pitaria; 2007 [25] LCD 721 and Niazu vs. D.D.C., 2015 [128] RD 797.**

26. The Respondents could not prove by any cogent much less strong evidence discussed in preceding paragraphs.

27. In view of the facts, circumstances and discussion made hereinabove, the present petition is allowed.

28. The impugned order dated 24.12.1976 passed by the Deputy Director of Consolidation is hereby quashed.

Order Date :- 23.5.2024

Ashish