

Court No. - 18

Case :- WRIT - B No. - 167 of 1982

Petitioner :- Bhagwan Bahadur And Others

Respondent :- Deputy Director Of Consolidation And Others

Counsel for Petitioner :- R.A.Upadhyay,Ajay Pratap Singh,B.L.Shukla,Nishant Shukla,Prabhakar Vardhan Chaudhary,S.H.Tewari,T.N.Gupta

Counsel for Respondent :- C.S.C.,Avinash Mishra,D K Tiwari,Kripa Shankar Shukla,U.P.S. Kushwaha

Hon'ble Manish Kumar,J.

1. Heard.
2. The present writ petition has been preferred for quashing of the impugned revisional order dated 31.12.1981 passed by respondent no.1-Deputy Director Consolidation Faizabad under Section 48 of Uttar Pradesh Consolidation and Holdings Act, 1953 (hereinafter referred to as "Act, 1953) in Revision No. 1517 titled as Ram Naresh vs. Ram Bahadur and others.
3. Learned counsel for the petitioners has submitted that the dispute with regard to the 32 trees entered in favour of the ancestors of the petitioners and 9 trees in favour of the ancestors of the respondents on gata no. 1906 area 4 bigha 7 biswa 10 biswansi in 1337 fasli i.e. in Khasra of the year 1930. It is further submitted that the gata no. 1906 belonged to zamindar Azam Ali Khan. In 1344-45 fasli i.e. year 1937-38, the name of the ancestor of the petitioners was continued and the name of the zamindar was deleted. It is further submitted that the name of the ancestor of the petitioner was continued and he was covered by Section 18(1)(e) of the U.P. zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as Act, 1950), which has come into force on 01.07.1952 and prior to that the ancestors of the petitioners had become grove holder.
4. It is further submitted that since the year 1937-38, the respondents had not raised any objections by filing either any case under the provisions of Oudh Rent Act 1886 (hereinafter referred to as "Act, 1886) read with amended Oudh Rent Act, 1921 (hereinafter referred to as "Act, 1921), U.P. Land Revenue Act, 1901 (hereinafter referred to as "Act, 1901") or under the Act, 1950. It is submitted that the village had come under the consolidation in the 1970's and after about 30 years, for the

first time the respondents filed an objection under Section 9(A) (2) claiming co-tenancy right against the 9 trees.

5. It is further submitted 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 and in support of his submission, learned counsel for the petitioner has relied upon the judgment 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.**

6. It is further submitted that the basis of claim of co-tenacy by the respondents were on two grounds firstly, there name was entered in Khasra of 1337 fasli and secondly, a compromise was entered between the parties in the proceedings under Section 107/116 Cr.P.C.

7. It is further submitted that the compromise which has been relied is in the proceedings under section 107/116 Cr.P.C. which is preventive in nature and the compromise if any, made under those proceedings is not binding in the proceedings under the Act, 1953.

8. It is further submitted that the respondents in their objection before the consolidation officer or before the appellate authority had not challenged the subsequent entry of 1345 fasli much less proved it to be a wrong entry by any evidence whatsoever, rather not a word has been said about the subsequent entry except claiming their co-tenacy right as per the two counts as submitted above.

9. On the other hand, Shri Hemant Kumar Pandey, learned State Counsel and Shri Avinash Mishra, learned counsel for the private respondents have submitted that the name of the ancestors of the respondents were entered in the khasra of 1337 fasli against 9 trees but in the 1345 fasli, their names were not there though they are legally entitled for their co-tenancy rights on the 9 trees in pursuance of entry made in the 1337 fasli and they have rightly filed an objection under Section 9(A)(2) during the consolidation proceedings before the consolidation officer.

10. It is further submitted that the compromise was entered and once it is accepted by the ancestors of the petitioners in the compromise regarding the co-tenacy rights of the respondents then they cannot take a u-turn rather they are bound by the same

as the said compromise was entered before the Sub-Divisional Magistrate in the criminal proceedings under Section 107/116 Cr.P.C. It is further submitted that the older the entry, more credible it is, as a general rule.

11. It is further submitted that the settlement entry can be rebutted only by documentary evidence. It can even be rebutted by an oral evidence and in support of his submission, the learned State Counsel has relied upon the judgment dated 28.01.1996 passed by this Court in the case of **Sant Bux Singh vs. Joint Director of Consolidation and Others; 1986 RD 216.**

12. After hearing the learned counsel for the parties and going through the records of the case, it is an undisputed fact between the parties that the name of the ancestors of the petitioners i.e. his maternal grandfather was entered in the Khasra of 1337 fasli against 31 trees and the name of the ancestors of the respondents was entered against the 9 trees situated at gata no. 1906. In the settlement entry of 1344-45 fasli, the name of the zamindar Azam Ali Khan as well as the name of the ancestors of the respondents was deleted but the name of the ancestors of the petitioners was retained and intact in the settlement year 1344-45 fasli i.e. year 1937-1938.

13. The respondents had never filed any case under the the Act, 1886 and the Act, 1901 against the settlement entry in 1344-45 fasli in favour of the ancestors of the petitioners. Thereafter, the Act, 1950 has come into force w.e.f. 01.07.1952 and at that time, the entry of 1344-45 fasli was intact and the entry in the name of the ancestors of the petitioners is protected by Section 18 of the Act, 1950. For convenience, the same is quoted hereinbelow:-

"18. Settlement of certain lands with intermediaries or cultivators as Bhumidhar.-(1) Subject to the provisions of Sections 10, 15, 16 and 17, all lands-

(d) held as such by-

(i) an occupancy tenant;

(ii) a hereditary tenant;

(iii) a tenant or Patta

[possessing the right to transfer the holding by sale,]

Dawami or Istamrari referred to in Section 17;

(e) held a grover holder,

on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, [lessee, tenant, grantee or grove-holder,] as the case may be, who shall, subject to the provisions of this Act, be entitled to take or retain possession of this bhumidhar thereof."

14. The submission of the learned counsel for the petitioners that as per Section 57, U.P. Land Revenue Act, 1901 (hereinafter referred to as "Act, 1901") which deals with the presumption as to entries, the provision is quoted hereinbelow:-

"57. Presumption as to entries. All entries in the record-of-rights prepared in accordance with the provisions of this Chapter shall be presumed to be true until the contrary is proved; and all decisions under this Chapter in cases of dispute shall, subject to the provisions of sub-section (3) of Section 40, be binding on all Revenue Courts in respect of the subject-matter of such disputes; but no such entry or decision shall affect the right of any person to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers prescribed by [* *] Section 32."*

15. Section 18 of the Act, 1950 provides that all land held by a grove holder on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary [lessee, tenant, grantee or grove holder], who shall subject to the provisions of this Act, be entitled to take or retain possession as bhumidhari thereof and Section 57 of Act, 1901 provides all entries in the records of rights prepared in accordance with the provisions of this chapter shall be presumed to be true until the contrary is proved. It is an undisputed case of the respondents that they had not led any evidence either documentary or oral to prove the subsequent entry made in the 1345 fasli is a wrong entry on any ground.

16. Learned counsel for the private respondents had very fairly submitted that the objections were filed on two grounds firstly, on the basis of the entry in the 1337 fasli and secondly, on the basis of compromise entered into between the parties in the criminal proceedings lodged under Section 107/116 Cr.P.C. and they had not questioned the subsequent entry of 1345 fasli. The respondents were claiming for co-tenancy rights on the basis of entry in 1337 fasli as their names were recorded in the khasra. Once it is an admitted case that there was no effort to prove that the entry in 1345 fasli was wrong then as per Section 57 it would be presumed that the entry was rightly made. The judgments relied by the learned counsel for the petitioner on this point are quoted hereinbelow:-

(i) The relevant para of the judgment passed in the case of **Lal Behari (supra)** is quoted hereinbelow:-

"5. It is well settled that under Section 57 of the Land Revenue Act the entries in the current records of the latest settlement are presumed to be correct unless rebutted by cogent evidence. However, in this connection the question which sometimes arises for consideration is, whether the entries made in the subsequent settlements, which are different with those of the earlier settlements, would stand rebutted by the earlier settlement entries or not? It goes without saying that at each settlement the entries are made in accordance with the prescribed procedure contained in Chapter IV of the U. P. Land Revenue Act. Therefore, the entries in the record-of-rights prepared in accordance with the provisions of Chapter IV would be presumed to be true unless the contrary is proved as provided under Section 57 of the Act. Thus, where the entries made at the earlier and subsequent settlements are conflicting, the entries made in subsequent settlement can be given preference with those of the previous settlement unless the contrary is proved by cogent and strong evidence. During the course of every subsequent settlement proceeding the then existing entries in the record-of-right are checked and verified and the same are corrected, if found to be wrong, after following the prescribed procedure under Chapter IV of the Land Revenue Act. Thus, the entries at the latest settlement would be presumed to be correct and the earlier conflicting settlement entries would not be enough evidence to rebut the correctness of the subsequent settlement entries. The entries in the record of rights of the latest settlement would, therefore, be presumed to be correct unless rebutted by cogent evidence and the same cannot be discarded merely on the ground of conflicting entries in the earlier settlement records."

(ii) The relevant para of the judgment passed in the case of **Anjuman Islamia Lakhimpur (supra)** is quoted hereinbelow:-

"16. This Court has held in a decision as reported in 1985 (3) LCD 415, *Lalbihari and others v. Ram Adhar and others*, that as per provisions of Section 57 of the U.P.L.R. Act, 1901, entries in concurrent records of latest settlement are presumed to be correct unless rebutted by cogent evidence. The appellant has failed to produce any cogent evidence in support of their claim. As per Sections 101 and 102 of the Evidence Act, 1872, the burden of proof certainly rested on the plaintiff appellant to demonstrate that the land in dispute was a Kabristan or it was dedicated as a waqf. This Court finds strength from a recent decision of Hon'ble Supreme Court of India as reported in (2006) 5 SCC 588, *Anil Rishi v. Gurbaksh Singh* (paras 8 and 9) in deriving the above conclusion."

(iii) The relevant paras of the judgment passed in the case of **Niazu (supra)** is quoted hereinbelow:-

"14. The SOC allowed the objection of the petitioner relying upon the settlement entry of 1365 fasli and the entries in the subsequent years. He has categorically recorded that the entry of 1365 fasli was a settlement entry and, therefore, liable to be relied upon and that no evidence had been adduced to rebut these entries. He has also referred to the admission in the statements of -Saffaq and Faizanda, who have admitted the possession of the petitioner over the land in question. He further recorded that the contesting respondent, namely Saffaq was present in the Court, as admitted by his witness Faizanda but did not care to appear and depose before the Court. On the aforesaid reasoning and evidence the claim of adverse possession as set up by the petitioner was accepted."

15. The DDC, on the contrary, has not taken into consideration the fact that the entry under class 9, in favour of the petitioner was a settlement entry. What has been recorded by the DDC for rejecting the claim of the petitioner, is true only for normal revenue entries and the said reasoning will not apply to a settlement entry. This view is fully fortified by the judgment relied upon by the learned Counsel for the petitioner in the case of Lal Behari (supra). The case law cited on behalf of the respondents does not deal with settlement entries and, therefore, the same has no application in the facts and circumstances of the case.

16. Accordingly and for the reasons given above, I am of the considered opinion that the order passed by the DDC is vitiated as the revisional authority has misdirected himself. It has further failed to consider the reasoning given by the appellate authority while deciding in favour of the petitioner, in his judgment of reversal. The revisional order, therefore, cannot be sustained and is liable to be set aside.

17. Accordingly I allow the writ petition and set aside the order passed by the DDC on 7.6.1984 and affirm the order passed by the SOC. No order as to costs."

17. As far as the submission regarding agreement entered into between the parties before the Sub-Divisional Magistrate in the criminal proceeding lodged under Section 107/116 Cr.P.C. is concerned, the same could not be said to be binding between the parties in the proceedings initiated under the Act, 1953. The proceedings under Section 107/116 Cr.P.C. are preventive in nature and not adjudicated by the judicial court and the rights of parties are not adjudicated by the criminal court. It is a compromise just to give an undertaking that in future the parties shall maintain peace and would not be involved in criminal activity. The judgments relied by the learned counsel for the petitioners quoted hereinbelow:-

(i) The relevant para of the judgment passed in the case of **Adi Pherozshah Gandhi vs. H. M. Seervai** reported in **AIR 1971 SC 385** is quoted hereinbelow:-

"35. Now in disciplinary proceedings the advocate was not estopped from questioning the charge that he was guilty of corrupt practice. In a civil proceeding the decision of a criminal court is not res judicata. To give an example, if a person is involved in a traffic offence in which some one is injured he may in the criminal court receive a light sentence but if he is sued in a civil court for heavy damages he can plead and prove that he was not negligent or that accident was due to the contributory negligence of the defendant. The decision of the criminal court would not preclude him from raising this issue before the civil court."

(ii) The relevant portion of the judgment passed in the case of **Rajinder vs. State of Haryana** reported in **[1991] 1 Crimes 873- PH** is quoted hereinbelow:-

"Security proceedings under section 151 were on the same facts, as the

impugned FIR enumerates. Security proceedings cannot be equated with a criminal prosecution. That was a proceeding for preventive measure and the impugned FIR was registered with respect to the substantive offence committed by the petitioners."

(iii) The relevant para of the judgment passed in the case of **Shaikh Piru Bux vs. Kalandi Pati** reported in **AIR 1970 SC 1885** is quoted hereinbelow:-

"11. In our opinion the High Court was right in coming to the conclusion that the compromise was not binding on the Hindu community. The learned Additional Sub-Judge had misdirected himself in law in coming to the contrary conclusion. The compromise was not arrived at in a suit fought in a representative capacity but was filed in a proceeding under Section 107, Criminal Procedure Code. The signatories declared inter alia that "neither we, the Musalmans nor we the Hindus can at any time in future create any disturbance towards each other's religion and will deal with each other as before. We will not create any disturbance in any function of either party and will not create breach of peace with each other amongst ourselves.....There is no apprehension of breach of peace as we the Hindus and the Musalmans have amicably settled the matter nor will there occur any breach of peace in future. So we both parties having settled the matter amicably, hereby submit this petition and pray that the case be disposed of in terms of this compromise petition." It is signed by a number of persons but there is no indication that they represented the two communities. It may be that these persons, who signed the compromise, were important persons in the communities and it may be that both the communities should act according to the compromise effected by the so-called important persons. But in law it does not debar the parties from asserting their legal rights in a Civil Court. We need not decide what the compromise means, and particularly the whether the words inscribed on the pillars were part of the compromise effected by the leaders."

18. From the above judgments, it is clear that the compromise filed in the criminal proceedings under Section 107/116 Cr.P.C. cannot be equated with the compromise filed in a regular trial or in determining the civil rights and title of the parties.

19. The respondents had waited so long i.e. when their names were not added in 1345 fasli i.e. in the year 1937-1938. Thereafter, the entries were intact after the Act, 1950 came into force on 01.07.1952 and for the first time after about 30 years raised the objection in the consolidation proceedings cannot 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 be 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."

20. In the case of **Ramnath Singh (supra)**, this Court had relied upon the judgments of Hon'ble Supreme Court, wherein it has been held that correctness of the entries for the purposes

of Section 20, Act, 1950 cannot be doubted or questioned or even incorrect entry (unless shown to have been made fraudulently and surreptitiously) will be sufficient to confer the right of Adivasi/Sirdars/Bhumidhar upon the person and if the entry is continued from last 11 years, in that case, since before start of consolidation then it cannot be questioned in consolidation proceedings. Similarly in the present case, the entry was made in the year 1937-38 i.e. 1344-45 fasli when Act, 1921 was in operation. Thereafter, it remained intact when Act, 1950 has come into force w.e.f 01.07.1952 and thereafter, in the consolidation proceedings, which were started in the year 1970's i.e. after 30 years from the date of 1345 fasli and 20 years from the date of Act, 1950, then for the first time in the consolidation proceedings the objection was raised by the respondents which is not permissible under the law laid down by this Court and over and above that the respondents had never come with a case that settlement made in 1345 fasli in favour of the ancestors of the petitioners was made fraudulently or surreptitiously.

21. In the aforesaid facts and circumstances of this case, the present writ petition is **allowed**.

22. The revisional order dated 31.12.1981 passed by respondent no. 1-Deputy Director Consolidation is hereby quashed.

Order Date :- 22.5.2024

Raj