

Court No. - 31

Case :- WRIT - C No. - 3003820 of 1989

Petitioner :- Ram Swaroop

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Mohd. Arif Khan, Mohammad Aslam Khan

Counsel for Respondent :- C.S.C., Shishir Pradhan

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohd. Arif Khan Senior Advocate assisted by Sri Mohammad Aslam Khan Advocate, the learned counsel for the petitioner and the learned Standing Counsel.
2. By means of the instant writ petition filed under Article 226 of the Constitution of India the petitioner has challenged validity of an order 28.10.1987 passed by the Additional District Magistrate (Finance and Revenue), Raebareli in Case No. 5 (85-86) under Section 11(2) read with Section 14(3) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Ceiling Act'), whereby the application filed by the petitioner under Section 11(2) of the Ceiling Act had been rejected. The petitioner has also challenged validity of an order dated 15.03.1989 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow, dismissing Appeal No. 21(87-88) filed by the petitioner under Section 13 of the Ceiling Act against the aforesaid order dated 28.10.1987.
3. It has been pleaded in the writ petition that the petitioner's father had planted a grove on land bearing plot no. 150 (of third settlement), new plot number whereof is 61/3, having an area of 1 Bigha, 2 Biswa and 10 Biswansi situated in Village Alipur Khalso, Pargana, Tehsil and District Raebareli with the permission of Rana Uma Nath Bux Singh – the then proprietor of Khajoorgaon Estate. Consolidation proceedings commenced in the village in the year 1963 and after survey, a Khasra Chakbandi was prepared on C.H. Form 2-A, wherein it is mentioned that Ram Swaroop Baghdar was found in possession whereas Rana

Uma Nath Singh was recorded as the chief tenant of the land in question.

4. The petitioner claims that when C.H. Form 2-A mentioned that he was found in possession of the land as the grove holder, the Assistant Consolidation Officer ought to have referred the matter to the Consolidation Officer, but it was not done and no notice was sent to the petitioner. The land in question was included in the surplus land of Raja Khajoorgaon under the Ceiling Act. The petitioner claims that the land being in the nature of grove and in possession of the petitioner, it could not have been declared to be surplus land of Raja Khajoorgaon. The land was declared as surplus and was allotted to the opposite party no. 8 without the petitioner having any knowledge of the proceedings under the Ceiling Act. Upon coming to know about this fact, the petitioner filed an application under Section 198(4) of U.P. Zamindari Abolition and Land Reforms Act for cancellation of the lease deed granted in favour of opposite party no. 8. A commission was issued in those proceedings and the commissioner submitted a report stating that 10 Mango trees aged between 50-75 years, a Mahua tree aged about 50 years, a Ber tree aged about 5 years and 3 Neem trees aged about 5 to 25 years were standing on the land in question. No crop had been sown on the land and the petitioner's *payaal ki khahi* was found there. However, as the proceedings under Section 198(4) of the U.P.Z.A.L.R. Act were not maintainable, the petitioner did not pursue the same and the proceedings were dismissed for want of prosecution.
5. Thereafter, the petitioner filed objections under Section 11(2) of the Ceiling Act along with an application under Section 5 of the Limitation Act and he prayed for cancellation of the patta granted in favour of the opposite party no. 8 and the order declaring the land in question to be surplus land of Rana Swayambar Singh.
6. The opposite party no. 8 filed objections stating that the land in question had been leased to him. In support of this submission, the opposite party no. 8 filed a copy of the relevant extract of khataunis of

Village Alipur Khalso and a copy of C.H. Form 41, which showed that the old plot number of land bearing Gata No. 150 is 61/3 and it was recorded that the land was in possession of Ramau son of Matau. It is recorded in khatauni for the year 1387-92 Fasli that the land had been declared surplus by the Prescribed Authority.

7. The Additional District Magistrate (Finance and Revenue), Raebareli rejected the petitioner's application by means of the impugned order dated 28.10.1987, holding that the petitioner could not produce any evidence to establish his possession in respect of the land in dispute. He had not submitted any objections in proceedings under the Consolidation of Holdings Act during consolidation proceedings and, therefore, his claim regarding ownership is barred by the provisions of Section 49 of the Consolidation of Holdings Act.
8. Being aggrieved, the petitioner filed an Appeal No. 21 (87-88) against the aforesaid order dated 28.10.1987, which has been dismissed by means of a judgment and order dated 15.03.1989 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow.
9. The petitioner had contended before the appellate court that he had not filed any objection during consolidation proceedings because the land was in the shape of a grove and there was no dispute at that time. The appellate court found that as the petitioner had not filed any objection during consolidation proceedings, his claim regarding title is barred by Section 49 of the Consolidation of Holdings Act.
10. While assailing the validity of the aforesaid orders, the learned counsel for the petitioner has submitted that the petitioner's name was recorded as the grove holder in C.H. Form 2-A and, therefore, the grove land stood vested in the petitioner by virtue of the provisions contained in Sections 18 and 21 of the U.P.Z.A.L.R. Act. He has relied upon decisions of this Court in the case of **Lal Behari and others versus Ram Adhar**: 1987 RD 206 = 1985 SCC OnLine All 1197, **Gurmukh Singh and Ors. versus Dy. Director of**

Consolidation/A.D.M. (F. and R.) and Ors.: 1997 RD 276 and Shafir versus District Judge, Gonda and others: 1987 R.D. 113.

11. In **Lal Behari and others versus Ram Adhar**, this Court held that: -

*“6. 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.**”*

(Emphasis added)

12. In **Gurmukh Singh and Ors.** (Supra) it was held that: -

“5. It is clear from para 102-C of the Land Records Manual that the entries will have no evidenciary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the revenue records, the burden of proof is

further upon the person claiming adverse possession to prove that the tenure holder was duly given notice in prescribed form...

6. In Jamuna Prasad v. Dy. Director of Consolidation, Agra, 1981 RD 112, this court repelled the contention that the burden of proof was upon the person who challenges the correctness of the entries. It was observed:—

“Learned counsel for the petitioner argued that there was a presumption of correctness about the entries in the revenue records and the onus lay upon the respondent to prove that the entries showing the petitioner's possession had not been in accordance with law. This contention is untenable. Firstly, it is not possible for a party to prove a negative fact. Secondly, the question as to whether the notice in form P.A. 10 was issued and served upon the petitioner also is a fact which was within his exclusive knowledge.”

“Petitioner's contention that the burden lay on the respondents to disprove the authenticity and destroy the probative value of the entry of possession cannot be accepted. In my opinion, where possession is asserted by a party who relies mainly on the entry of adverse possession in his favour and such possession is denied by the recorded tenure holder, the burden is on the former to establish that the entries in regard to his possession were made in accordance with law.”

13. Section 57 of the U. P. Land Revenue Act, 1901 provides as follows: -

“Section 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.”

14. However, the petitioner's name was not recorded in any record of settlement prepared under the Land Revenue Act. The Consolidation proceedings commenced in the village in the year 1963 and it was mentioned in the Khasra Chakbandi prepared on C.H. Form 2-A that Ram Swaroop Baghdar was found in possession whereas Rana Uma Nath Singh was recorded as the chief tenant of the land in question. Khasra Chakbandi is prepared under Rule 21 of the U.P. Consolidation of Holdings Rules, 1954, which provides for recording

the findings of the field to field partial (enquiry) carried out by the Consolidator. However, after preparation of Khasra Chakbandi, the Assistant Consolidation Officer checks the same under Rule 24 and thereafter the Assistant Consolidation Officer in consultation with the Consolidation Committee prepares the 'Statement of Principles' under Rule 24-A, which is published and objections against the same are invited under Section 9 of the U. P. Consolidation of Holdings Act. The Assistant Consolidation Officer decides the objections and ultimately the Khatauni is prepared under Section 27 of the Consolidation of Holdings Act on CH Form 45, which is the new revenue record of rights.

15. In the Khatauni prepared under Section 27 of the Consolidation of Holdings Act on C.H. Form 45, the petitioner's name does not find any mention. Therefore, even as per the principle of law laid down in **Lal Behari**, the subsequent entry made in CH Form 45, which is the new record of rights, shall be presumed to be correct and as per the law laid down in **Gurmukh Singh** (Supra), the burden to prove that the entry in CH Form 45 is incorrect, would lie on the petitioner and the petitioner has failed to discharge this burden.
16. In **Shafir v. District Judge, Gonda**, 1985 SCC OnLine All 220 : 1987 RD 113, this Court relied upon an earlier decision and held that:

“8. In Dilbagh Singh’s case (Dilbagh Singh v. State of U.P., 1978 All.L.J. 717) it was held by the Division Bench that Section 11(2) permits a tenure-holder to file objections. Such tenure-holders may be those who have been served with a notice and a statement under Section 10(2). It also includes tenure-holders who have not been given or served with any such notice or statement. The construction put by the Full Bench also embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other person wish to challenge that declaration or notification thereof in the gazette under Section 14. They are all entitled to file an objection under Section 11(2) and get an adjudication thereon as required by Section 12....”

17. The petitioner's objections have not been rejected as not maintainable on the ground that he was not recorded as a tenure holder and the same have been entertained and decided on their merits. Therefore, the principle of law laid down in **Dilbagh Singh v. State of Uttar Pradesh**, 1978 SCC OnLine All 393, and followed in **Shafir** (Supra) has been followed in the present case.
18. The learned Counsel for the petitioner has placed reliance upon the provisions contained in Sections 18 and 21 of the U.P.Z.A.L.R. Act, 1950, which are being reproduced below: -

“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—

(a) in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove,

(b) held as a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(c) held by a fixed-rate tenant or a rent-free grantee as such, or

(d) held as such by—

(i) an occupancy tenant,

(ii) a hereditary tenant, possessing the right to transfer the holding by sale,

(iii) a tenant on Patta Dawami or Istamrari referred to in Section 17,

(e) 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, as the case may be, who shall, subject to the provisions of this Act, be entitled to take or retain possession as a bhumidhar thereof.

(2) Every person belonging to the class mentioned in Section 3 or sub-section (2) of Section 3-A of the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949 (U.P. Act X of 1949), who has been granted the declaration referred to in Section 6 of the said Act in respect of any holding or share thereof shall, unless the declaration is subsequently set aside, be deemed to be the bhumidhar of the holding or the share in respect of which the declaration has been made and continues in force.

(3) Notwithstanding anything contained in the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949 (U.P. Act X of 1949), any declaration granted under Section 6 of the said Act in favour of a tenant whom sub-section (2) of Section 10 applies, shall be and is hereby cancelled and the amount deposited by him under Section 3 or 6 of the said Act shall, after deducting the amount which might have been paid or be payable by the State Government to his landholder under Sections 7 and 8 of the said Act, be refunded to the person entitled in such manner as may be prescribed.”

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21. Non-occupancy tenants, sub-tenants of grovelands and tenant's mortgagees to be asamis.—

(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as—

(a) a non-occupancy tenant of an intermediary's groveland,

(b) a sub-tenant of a groveland,

(c) a sub-tenant referred to in the proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act X of 1947),

(d) a mortgagee in actual possession from a person belonging to any of the classes mentioned in clauses (b) to (e) of sub-section (1) of Section 18 or clauses (i) to (vii) and (ix) of Section 19,

(e) a non-occupancy tenant of pasture land or of land covered by water and used for the purpose of growing singhara or other produce or of land in the bed of a river and used for casual or occasional cultivation,

(f) a non-occupancy tenant of land declared by the State Government by notification in the Gazette, to be intended or set apart for taungya plantation, or

(g) a tenant of land, which the State Government has, by a notification in the Gazette declared to be part of tract of shifting or unstable cultivation,

(h) a tenant of sir of land referred to in sub-clause (a) of clause (i) of the Explanation under Section 16, a sub-tenant referred to in sub-clause (ii) of clause (a) of Section 20 or an occupant referred to in sub-clause (i) of clause (b) of the said section where the landholder or if there are more than one landholders, all of them were person or persons belonging—

(a) if the land was let out or occupied prior to the ninth day of April, 1946, both on the date of letting a occupation, as the case may be, and on the ninth day of April, 1946, and

(b) if the land was let out or occupied on or after the ninth day of April, 1946, on the day of letting or occupation, to any one or more of the classes mentioned in sub-section (1) of Section 157;

(i) a lessee holding under a lease from a court under sub-section (1) of Section 252 of the U.P. Tenancy Act, 1939, shall be deemed to be an asami thereof.

Explanation.—The expression “taungya plantation” means the system of afforestation in which the plantation of trees is, in the earlier stages, done simultaneously with the cultivation of agricultural crops which ceases when the trees so planted begin to form a canopy rendering the cultivation of agricultural crops impossible.

(2) Occupants of groveland.—Every person, who, on the date immediately preceding the date of vesting was a person recorded, in the manner stated in clause (b) of Section 20, as occupant of any grove land, shall be called an asami of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof as an asami from year to year.”

19. The grove land in question could have vested in the petitioner only in accordance with the provisions of Section 18 of the U.P.Z.A.L.R. Act if the land was held by him as a grove holder on the date immediately preceding the date of vesting. The solitary evidence of possession relied upon by the petitioner is the CH-Form 2-A, which was prepared after commencement of consolidation operations in the year 1963. The entry made in CH Form 2-A does not establish that the petitioner was in possession of the land in dispute ‘on the date immediately preceding the date of vesting’. Therefore, the material placed by the petitioner does not establish fulfillment of the conditions of Section 18 of the U.P.Z.A.L.R. Act.
20. So far as the submission based on Section 21 of the U.P.Z.A.L.R. Act. is concerned, the petitioner merely claims that he had planted trees with the permission of the proprietor of the land and he does not claim himself to be any kind of tenant referred to in Section 21 or a mortgagee and, therefore, the petitioner cannot claim any right on the basis of the provisions contained in Section 21 of the U.P.Z.A.L.R. Act also.

21. Even in the Khasra prepared on C.H. Form 2-A after commencement of the consolidation operations in the year 1963, the name of the tenure holder of the land in dispute was mentioned as Rana Syambar Singh. In spite of having been found in possession of the land in question, the petitioner was not mentioned as the tenure holder of the land in the Khasra. The petitioner did not feel aggrieved by this entry and it is the petitioner's own case that as he was recorded as the person in possession of the land, he did not file any objections. Subsequently in the new revenue record of rights prepared on CH Form-45, Rana Syambar Singh was recorded as the tenure holder and the petitioner's name did not find any mention and the petitioner did not challenge this entry also.
22. When the land in question continued to be recorded in the name of Rana Swayambar Singh without any protest by the petitioner, the Ceiling authorities did not commit any illegality in passing the order dated 29.03.1979 whereby the land in question was declared to be surplus land of the tenure holder Rana Swayambar Singh.
23. After declaration of the land as surplus land of Rana Swyambar Singh, its possession was taken and the land was allotted to the opposite party no. 8. In the year 1986, the petitioner filed a suit for cancellation of the lease deed executed in favour of the opposite party no. 8, but he allowed it to be dismissed for want of prosecution on 26.05.1986. ‘
24. Although the commission report submitted in proceedings under Section 198(4) of U.P.Z.A.L.R.Act mentioned that 10 Mango trees aged between 50-75 years, a Mahua tree aged about 50 years, a Ber tree aged about 5 years and 3 Neem trees aged about 5 to 25 years were standing on the land in question, no crop had been sown on the land and the petitioner's *payaal ki khahi* was found there, this status was of the date of commission and not of the date of vesting. Moreover, the proceedings under Section 198(4) were dismissed for want of prosecution and this report was not accepted. Therefore, the petitioner would not get any benefit from the observations recorded in the commission report.

25. Thereafter the petitioner had filed his objections/application under Section 11 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960, claiming that he had been found in possession of the land and his name had been recorded as 'Baghdar Qabiz' in CH Form 2-A. However, the land continued to be recorded in the name of Rana Uma Nath Bux Singh, who had died about 50 years' ago and thereafter the name of his heir Rana Swayambar Singh was recorded in the Khatauni prepared on C.H. Form 45.
26. Section 27 (2) of the U. P. Consolidation of Holdings Act provides that all entries in the records of rights prepared in accordance with the provisions of sub-section (1) shall be presumed to be true until the contrary is proved.
27. Section 49 of the U. P. Consolidation of Holdings Act provides that: -

***"49. Bar to Civil Court jurisdiction.**—Notwithstanding anything contained in any other law Courts for the time being in force, the declaration and adjudication of rights of tenure-holder in respect of land, lying in an area, for which a notification has been issued under sub-section (2) of Section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act:*

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) in respect of any land, possession over which has been delivered or deemed to be delivered to a Gram Sabha under or in accordance with the provisions of this Act.

28. In spite of the aforesaid statutory provision barring the jurisdiction of civil and revenue Courts, the petitioner had filed the application under Section 11(2) of the Ceiling Act, which has rightly been dismissed on the ground that the land continued to be recorded in the name of Rana Uma Nath Bux Singh, who had died about 50 years' ago and thereafter the name of his heir Rana Swayambar Singh was recorded

in the Khatauni, which is the new revenue record of rights prepared under Section 27(1) of the U. P. Consolidation of Holdings Act on C.H. Form 45 and the petitioner had not challenged this entry..

29. In view of the aforesaid discussion, there is no illegality in the order 28.10.1987 passed by the Additional District Magistrate (Finance and Revenue), Raebareli rejecting the petitioner's application under Section 11(2) of the Ceiling Act, or in the order dated 15.03.1989 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow, dismissing the Appeal filed by the petitioner against the aforesaid order dated 28.10.1987.
30. The Writ Petition lacks merit and the same is **dismissed**. Costs made easy.

(Subhash Vidyarthi J)

Order Date: 01.07.2024
Pradeep/-