

Neutral Citation No:- 2025:AHC:122038

AFR

Court No. 37

Reserved on: 26.5.2025

Delivered on: 25.7.2025

WRIT – B No. - 1870 of 1981

Petitioner :-	Jagbhan Singh and Others
Respondents :-	Assistant Director of Consolidation and Others
Counsel for Petitioner:-	Mr. S.K. Vidyarthi
Counsel for Respondents :-	Mr. Ashutosh Kumar Rai, Addl. C.S.C., Mr. Achal Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. S.K. Vidyarthi, learned counsel for the petitioners, Mr. Ashutosh Kumar Rai, learned Addl. C.S.C. for the state-respondents and Mr. Achal Singh, learned counsel for the respondent-gaon sabha.

2. Brief facts of the case are that the dispute relates to khata no.602, plot no.211/13, situated in village Majhgawan, Pargana and Tehsil Rath, District Hamirpur. In the basic year of the consolidation operation, the aforementioned plot was recorded in the name of the petitioners under Shreni-IV. Against the basic year entry of the plot in question, an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the “U.P. C.H. Act”) was filed by the petitioners with the prayer that petitioners should be recorded as Sirdar in place of Shreni-IV. The aforementioned objection filed by the petitioners, was registered as Case No.5767 before the Consolidation Officer. The Gaon Sabha filed his reply, denying

the case of the petitioners. The petitioners adduced oral and documentary evidence in support of their case. One issue was framed before the Consolidation Officer as to whether the petitioners/objectors is entitled to be recorded as Sirdar on the basis of their adverse possession. The Consolidation Officer vide order dated 29.6.1977 rejected the claim of the petitioners/objectors and directed that plot in question should be recorded as Jaman-V/Naveen Parti Gram Samaj. Against the order of the Consolidation Officer dated 26.9.1977, appeal under Section 11(1) of the U.P. C.H. Act was filed by the petitioners which was heard and dismissed vide order dated 30.7.1977. Against the appellate order dated 30.7.1977, revision under Section 48 of the U.P. C.H. Act was filed before the Deputy Director of Consolidation which was registered as Revision No.4616. The aforementioned revision was heard and dismissed vide order dated 13.10.1980. Hence, this writ petition for the following relief:-

“(i) Issue a writ of certiorari for quashing the orders dated 29.6.1976 and 13.10.1980 passed by Consolidation Officer as well as Assistant Director of Consolidation respectively. (Annexure Nos. 1 & 2).”

3. This Court entertained the matter on 28.7.1981 and granted interim protection to the effect that operation of the impugned order dated 13.10.1980 shall remain stayed and the possession of the petitioners shall not be disturbed.

4. Counsel for the petitioners submitted that petitioners are in possession of the disputed plot since before the date of vesting, as such, the petitioners have matured their right and title in respect to the plot in question in view of the provisions

contained under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the “U.P. Z.A. & L.R. Act”). He further submitted that title objection filed by the petitioners to record their names as Sirdar has been decided by the Consolidation Officer in arbitrary manner. He submitted that no documentary evidence was filed by the Gaon Sabha before the Consolidation Officer but the title objection of the petitioners has been dismissed without considering the oral and documentary evidence adduced by the petitioners. He submitted that the appellate and revisional jurisdiction have also been exercised in arbitrary manner. He submitted that the impugned orders passed by the consolidation authorities should be set aside and the petitioners' objection under Section 9-A (2) of the U.P. C.H. Act should be allowed, directing the authorities to record the names of the petitioners over the plot in question forthwith.

5. On the other hand, learned Addl. C.S.C. for the state-respondents and the counsel for the respondent-gaon sabha submitted that concurrent finding of fact has been recorded by all the three courts that no right will accrue to the petitioners in respect to the gaon sabha land on the basis of adverse possession. He submitted that the petitioners have claimed the right in respect to 13 acre land which belongs to gaon sabha. They submitted that the Consolidation Officer has framed the issues and considered the evidence adduced by the parties, recording finding of fact that petitioners cannot be recorded as Sirdar as neither the ownership nor the possession has been proved according to the provisions contained under the Act.

They further submitted that no interference is required and the writ petition is liable to be dismissed.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the title objection filed by the petitioners under Section 9-A(2) of the U.P. C.H. Act was dismissed by the Consolidation Officer which has been maintained in appeal as well as revision.

8. In order to appreciate the controversy involved in the matter, perusal of the only issue framed before the Consolidation Officer and the finding recorded on that issue, will be relevant which is as under:-

"न्यायालय चकबन्दी अधिकारी राठ उत्तर

मुकदमा नम्बर 5767/6327 धारा 6 क(2)

ग्राम- मफगवां पर० व तहसील राठ जिल हमीरपुर।

जगमान सिंह बनाम ग्राम समाज

निर्णय

वाद बिन्दु- (1) क्या वादी विवाद ग्रस्त भूमि पर कब्जे अनाधिकार के आधार पर सीरदार है? वादी की ओर से बहस प्रारम्भ करते हुए कहा गया है कि हम विवादित भूमि पर जमाना जमींदारी से काबिज बहैसियत मुखालफा-ना, व मालकाना बदस्तूर चले आ रहे हैं हमारे कब्जे की जानकारी ग्राम समाज की हमेशा से रही है परन्तु हमारे खिलाफ कभी भी बेदखली का दावा दायर नहीं किया गया। इससे स्पष्ट होता है कि गांव सभा को हमारा कब्जा स्वीकार था। गवाह देव सिंह प्रधान है। उन्होंने अपने ब्यानों में कहा है कि मैं ग्राम समाज का प्रधान रहा हूं मेरे समय में ही जगमान सिंह का कब्जा लिखा गया था। इसकी

जानकारी मुझे रही। आराजी निजाई में प्रतिवर्ष फसल होती है। परती व बंजर कभी नहीं रही दिनांक 10-10-58 की गिर-दावर कानूनगो साहब का आदेश हमारा नाम वर्ग 4 में अंकित होने का हुआ और उसके पहले से हम निरन्तर काबिज चले आ रहे हैं। नत्थू गवाह का विवादित भूमि के पास ही खेत है उसने भी हमारा कब्जा माना है। और चौहदी भी ठीक बतायी है। 1363 फ० में हमारे कब्जा टिप्पणी के स्तम्भ में लाल स्याही अंकित किया गया है तथा पूरे नम्बर पर फसल अंकित की गयी है। 1364 व 1365 फ० में यही इन्द्राज है। 1366 फ० व 1367 फ० के खसरे समाप्त कर दिये गये हैं। अतः वह उपलब्ध नहीं है। इसी कारण प० क० 10 की नकल उपलब्ध नहीं मिल सकी है। प० क० 10 का कोई आस्तित्व नहीं रहता जबकि उस समय के प्रधान ने हमारा कब्जा स्वीकार किया है। 1368 फ० लगायत आजतक हमारा कब्जा निरन्तर चला आ रहा है और फसल भी रही है। इस प्रकार हम विवादित भूमि के कानूनन सीरदार हो गये हैं।

ग्राम समाज की ओर से बहस प्रारम्भ करते हुए कहा गया कि नकल खसरा 1363 फ० 1364 फ० तथा 1363 फ० की प्रमाणित प्रतियां जमा नहीं की गयी है। अतः इन खसरों की साक्ष्य में नहीं पढ़ा जा सकता। यह खसरे फर्जी लेखपाल से बनवाकर जमा कर दिये गये हैं। नकल खसरा 1368 फ० में जगोसिंह का नाम स्तम्भ 4 में अंकित है। रकबा स्तम्भ 3 में 5-25, 132 व 6-68 अलग-अलग अंकित किया गया है तथा स्तम्भ 18 में बहेड़ व बंजर अंकित किया गया है जो यह स्पष्ट करता है कि यह भूमि 1368 फ० में बंजर व बेहड़ थी और एक ग्राम समाज के कब्जे में थी 1374 में केवल 11-00 में फसल है तथा 1 जवाब अंकित है इस प्रकार वादी का वास्तविक कब्जा 1366 फ० से प्रारम्भ होता है अतः इसके बाद 12 वर्ष पूरे नहीं होता। 14 अक्टूबर 1671 से पूर्व यदि 12 वर्ष की अवधि पूर्व नहीं होती तो 30 वर्ष का साक्ष्य प्रस्तुत करना चाहिये। साथ ही 25-1-71 को आदेशानुसार तहसीलदार साहब जगोसिंह पुत्र बृजराज सिंह बेदखल किये गये।

उक्त तथ्यों के आधार पर मैं इस निष्कर्ष पर पहुंचता हूँ कि वादी अपने लिखित एवं मौखिक साक्ष्य से दावा सिद्ध करने में पूर्ण रूप से असफल है अतः वादी का दावा निरस्त किया जाता है वाद बिन्दु वादी के विरुद्ध निर्णय किया जाता है। अतः आदेश हुआ कि

गाटा संख्या 211/13-00 से वादी जगो सिंह पुत्र बृजराज सिंह निवासी ग्राम वर्ग 4 से नाम तथा आपत्ति खारिज होकर भूमि जिमन 5 नवीन परती ग्राम समाज में अंकित हो। पत्रावली वाद अमल दरामद दाखिल दफतर हो।

यस० डी०:-
(प्रेम शंकर शर्मा)
च०अ० राठ उत्तर
26-6-77”

9. The perusal of the issue framed and the finding recorded, demonstrates that the Consolidation Officer has properly exercised the jurisdiction as provided under Rule 26 of the Uttar Pradesh Consolidation of Holdings Rules, 1954 (hereinafter referred to as the “U.P. C.H. Rules”).

10. The perusal of the finding of fact as quoted above, fully demonstrates that plaintiff has failed to prove his title as well as possession in respect to the plot in question.

11. It is also settled that plea of adverse possession is not available against the gaon sabha property. The finding of fact recorded by the Consolidation Officer has been maintained by the Settlement Officer of Consolidation and the Deputy Director of Consolidation.

12. It is also material to mention that relevant entry of 1356 fasli and 1359 fasli have also not been annexed along with the

writ petition nor there is any pleading regarding the entry, as such, no right and title can be given to petitioners.

13. It is also relevant to mention that the revisional order in the instant matter was passed on 13.10.1980 and Section 48 of the U.P. C.H. Act was amended by adding explanation 3 w.e.f. 10.11.1980, as such, the Deputy Director of Consolidation in the instant matter on the date of passing of the judgment, i.e., 13.10.1980, was having limited jurisdiction.

14. In view of above, there is no illegality in the exercise of the revisional jurisdiction by the Deputy Director of Consolidation while passing the impugned revisional order dated 13.10.1980.

15. Considering the entire facts and circumstances of the case, there is no scope of interference by this Court under Article 226 of the Constitution of India against the concurrent judgment passed by all the three consolidation courts under Sections 9-A(2)/11(1)/48 of the U.P. C.H. Act.

16. The writ petition is dismissed.

17. No order as to costs.

Order Date :- 25.7.2025

C.Prakash

(Chandra Kumar Rai, J.)