

Dhani Ram and ors. Vs. Dy. Director of Consolidation and ors.

Dhani Ram and ors. Vs. Dy. Director of Consolidation and ors.

SooperKanoon Citation : sooperkanoon.com/460383

Court : Allahabad

Decided On : Jul-05-1977

Reported in : AIR1977All491

Judge : M.A. Ansari, J.

Acts : Uttar Pradesh Consolidation of Holdings Act - Sections 9

Appeal No. : Writ Petn. No. 494 of 1971

Appellant : Dhani Ram and ors.

Respondent : Dy. Director of Consolidation and ors.

Advocate for Def. : Mr. B. R. Gupta

Advocate for Pet/Ap. : Mr. S. Mirza

Disposition : Petition allowed

Judgement :

ORDER

M.A. Ansari, J.

1. This writ petition is directed against the judgment and order of Sri R. C. Sharma, Deputy Director of Consolidation dated 16-11-1970, by which he has dismissed the revision of the writ petitioners and allowed the revision of opposite party No. 3,

2. The dispute relates to plot No. 63 measuring a bigha 5 biswa and 6 biswansis situate in village Salarpur Pargana Dewa Tahsil Nawabganj district Barabanki. It was recorded Banjar in the basic year in the village record. Earlier to the consolidation proceedings the petitioner's father filed a suit for declaration of this bhumi-dhari rights over the grove. The suit was dismissed by Munsif Barabanki. The appeal filed by the petitioner's father was also dismissed by the Civil Judge, Barabanki. A second appeal was pending in the High Court at the time of the notification under Section 4 of the Consolidation of Holdings Act and the second appeal abated.

3. In the objection taken under Section 9 of the U. P. Consolidation of Holdings Act the petitioners claimed to be bhumidhars of the plot in dispute stating that the plot grove was ancestral. They also claimed rights by adverse possession. Opposite party No. 3 Gaon Sabha contested the objection and alleged that the plot was Banjar and not a grove and the entry of Banjar in the village papers was correct. It is alleged in the petition in para. 6 that no resolution was passed by the Gaon Sabha as also that there was no authority of the Gaon Sabha to engage a lawyer. The Consolidation Officer by his order dated 8-5-1967 allowed the objection of the petitioners to be Bhumidhars of the same. The Settlement Officer Consolidation by his order dated 9-11-1967 allowed the appeal in part and held that a portion of the plot which is marked as 'A' at the sketch map prepared by the Commissioner was in possession of the petitioners and their grove with regard to the areas of the portions marked as 'C' he held that they were not in the character of grove, nor in their possession on the date of vesting and they were rightly recorded as Banjar and vested in Gaon Sabha. With regard to portion marked as 'B' he also held that the objectors could retain possession over the trees as scattered one but the same cannot be treated as their grove.

4. The Deputy Director by his order dated 16-11-1970 allowed the revision of opposite party No. 3 and dismissed that of the petitioners. While dealing with previous civil litigation he held as follows :--

'The concurrent findings of the learned Munsif and the learned Civil Judge that the land in dispute was not a grove may not have attained finality but they certainly

constitute a strong piece of evidence of the fact that in the first litigation after the abolition of zamindari the land in dispute was not held to be a grove.'

He has been very much influenced by the finding of the learned Munsif and the Civil Judge, little realising that a second appeal had been preferred in the High Court which could set aside the above order but which, for intervention of the Consolidation of Holdings proceedings, abated. About the finding of the Settlement Officer Consolidation that the portion marked as 'A' is grove he held as follows :--

'This order is obviously improper because the whole plot has to be treated as one unit for giving a finding whether it is a grove or not. Holding that a portion of the plot has the character of grove is basically incorrect.'

He further held as under:--

'At the most they might be owners of those trees but such ownership is not to be determined by the consolidation courts when the land in dispute is outside the Scheme of Consolidation.'

5. After discussing the matter he came to the conclusion that there was no force in the revision application filed by the petitioners and dismissed the same. He set aside the order of the learned Settlement Officer Consolidation confirming the Bhumidhari rights over a portion of the plot on the objectors. As a result he held that the basic year entry in the record shall continue.

6. Mr. S. Mirza appearing for the petitioners has placed four contentions before me. They are as follows :-- (1) No resolution of Gaon Sabha was passed to contest the matter before the consolidation authorities at the time of the filing of the written statement by them nor any resolution is on record for filing any appeal or revision. This is in violation of paragraph 128 of the U. P. Gaon Samaj Manual. For a convenient perusal the provisions of paragraph 128 of the Gaon Samaj Manual is reproduced below :--

128. 'The conduct of Gaon Samaj litigation shall not depend upon individual discretion of the Chairman of the Land Management Committee, but shall be a matter of a resolution of the Land Management Committee as a whole. In urgent

cases, however, the Chairman can take action on his own and seek ratification of the Land Management Committee afterwards, by including it in the agenda of the next ensuing meeting.'

He has relied on the case, *Gram Sama.i Kairadih v. Deputy Director of Consolidation U. P., Lucknow* (1969 All WR (HC) 500), a judgment by Mr. Justice D. S. Mathur, as he then was. At page 503 paragraph 19, while interpreting paragraph 128 of the Gaon Samaj Manual it was held :--

'To sum up, the Chairman of the Land Management Committee could not have filed a written statement or preferred an appeal or revision without the Land Management Committee having passed a resolution, or the action of the Chairman being ratified by the Land Management Committee in the next ensuing meeting. The Land Management Committee had not passed such a resolution till the decision of the first revision, nor was the action taken by the Chairman ratified in the next meeting of the Land Management Committee. Hence, neither the written statement nor the appeal nor the revision, was maintainable. In the circumstances, when no written statement could be filed, no second revision could also be preferred by the Chairman after the passing of the resolution by the Land Management Committee, at a belated stage. The second re-vision under Section 48 of the Act was thus also liable to dismissal."

(2) The Deputy Director has taken into consideration the finding of the Munsif and Civil Judge in the Civil case relating to this matter while the second appeal abated because of notification under Section 4 of the U- P. Consolidation of Holdings Act. The Deputy Director has completely misled himself into relying on the findings of Munsif and Civil Judge and therefore committed an illegality,

(3) The Deputy Director having incorrectly observed that couple of trees would not make the land a grove, he has not applied his mind to the question whether cultivation was possible because of the existence of the trees or not.

(4) Certain observations made by the Deputy Director in his judgment are absolutely incorrect.

7. Mr. B. R. Gupta appearing for respondent. No. 3 has replied to the contentions raised by Mr. Mirza as follows :--

(1) That a resolution was passed on 16-6-1963 which is Annexure C-1 to the counter affidavit which authorised the fighting of the litigation before the consolidation authorities. He conceded that the case was started on 7-9-1962 when objection under Section 9 was filed by the petitioners. He also admitted that a written statement on behalf of Gaon Sabha was filed on 22-2-1963, He has not been able to point out to me whether there was any authority of the Gaon Sabha or of the Chairman, Land Management Committee for filing of the written statement. In this view of the matter the authority referred in 1'969 All WR (HC) 500 (Gram Samaj Kairadih v. Deputy Director of Consolidation, U. P. Lucknow) and the portion cited completely applied to the present case.

(2) With regard to point No. 2 he has said that there is evidently value of the judgments of Munsif and Civil Judge. He has relied on a decision, Sheo Charan v. Tota Ram (1971 All WR (HC) 226), wherein at page 231 in paragraphs 14 and 15 it has been held as follows :--

'14, The Consolidation Authorities are courts of special but limited jurisdiction. They are empowered to decide matters finally which fall within the scope of their jurisdiction. But, in exercising that jurisdiction, they cannot ignore pieces of evidence which may result from other legally valid proceedings. These pieces of evidence must be given, by the Consolidation Authorities themselves, the effect which the statute under which they come into existence is meant to confer upon them.

15. Incidentally, I may also mention that there was a judgment of a civil Judge in the instant case where, in a partition suit between the parties, it had been held that the petitioner had not lost his rights under the lease of 1917. It is true that a second appeal against it was pending in this court when the consolidation proceedings started. Under the law as it stands now the suit abated. But the judgment of the Civil Judge had evidentiary value for the consolidation authorities. Reasons for coming to a different conclusion should be cogent and reasonable after the matter has been elaborately tried by a civil or Revenue Court.'

On the basis of this authority he has argued that the Deputy Director of Consolidation was completely right in taking into consideration the judgments of the Munsif and Civil Judge as they had evidentiary value. He has also cited another decision of the High Court, *Khayali Ram v. Joint Director of Consolidation, U. P. Lucknow* (1968 All WR (HC) 306). At page 307 it has been held :--

'A Judgment, of the civil court in a previous litigation between the parties may or may not be strictly relevant under the Indian Evidence Act but it is certainly a good material which could be taken into consideration by the consolidation authorities while deciding the issue like the one involved in the present case. It is, therefore, necessary that such a question should have been raised before the consolidation authorities so as to enable them to give a finding thereon.'

This later decision does not apply to a case of abatement and I do not think it can be helpful in the present case. With regard to the first case of Mr. Justice Beg, frankly speaking I do not agree with the law laid down in the same. I would have referred the matter to a larger Bench if I was not to decide a writ petition on ground No. 1 already referred to above, but in the circumstances of the case a reference will not be necessary as the decision of this case will not depend on this.

(3) That the dispute was about plot No. 63 and there could not be a finding about part. Therefore, the argument, that the portion marked as 'A' having been declared grove could not have been interfered, has no basis.

(4) That there is only one mistake in the judgment of the Deputy Director of Consolidation. He has wrongly mentioned the name of the Vaki Commissioner.

8. As already indicated above I am allowing the writ petition on the first point that the appeal and revision filed by by Gaon Sabha were absolutely unauthorised and against the provisions of paragraph 128 of the U. P. Gaon Samaj Manual.

9. The writ petition is decided in favour of the petitioners. The orders of the Settlement Officer Consolidation and the Deputy Director Consolidation are absolutely without jurisdiction and as such it is not necessary to remand the case to the Deputy Director of Consolidation. With these observations the writ petition is

allowed. The petitioners will be entitled to their costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com