

Dina Nath Vs. State of U.P. and ors.

Dina Nath Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/487577

Court : Allahabad

Decided On : Sep-08-2009

Reported in : 2010(1)AWC34

Judge : S.U. Khan, J.

Appellant : Dina Nath

Respondent : State of U.P. and ors.

Advocate for Def. : Sri. S.R. Yadav

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the petitioner and Sri S.R. Yadav, learned Counsel for the respondent No. 3, who has appeared through caveat.

2. The case of the petitioner is that land in dispute was allotted to his mother in the year 1968 by Gaon Sabha. However, in the revenue records, name of Smt. Kalawati Devi, mother of the petitioner was recorded for the first time in the year 1997 through order alleged to have been passed by C.O. on 12.2.1997, copy of which is Annexure-1 to the writ petition. In Annexure-1, it is mentioned that in the basic year, i.e., the year when consolidation proceedings started, land in dispute included in khata khatauni No. 304 was entered as usar land. It is not mentioned

that what was the basic year. It is further mentioned in the said order that Smt. Kalawati filed belated objection alongwith delay condonation application claiming that patta was granted to her in 1968 however due to ignorance, she could not apply for entry of her name in the revenue records. In the said order patta bearing date 14.3.1968 is mentioned to have been filed. Some witnesses were examined including Ram Roop, Pradhan. Patta was also shown to have been granted by Ram Roop, Pradhan. Two members of Land Management Committee, Lalta Prasad and Hublal also supported the case of Smt. Kalawati Devi. The C.O. Gyanpur, district Sant Ravidas Nagar/Bhadohi accordingly passed the requisite order. In the said order, it is also mentioned that in the year 1968, there. was no requirement of seeking permission of S.D.O. before allotment. Respondent No. 3 Muralidhar filed appeal against the said order being Appeal No. 1785. Appeal was dismissed on the ground that proceedings for cancellation of patta should have been initiated. Copy of judgment of appeal dated 6.12.1997 is Annexure-2 to the writ petition.

3. It has been stated in Para 5 of the writ petition that thereafter respondent No. 3 filed revision, which was allowed by D.D.C on 3.7.2002 and matter was remanded to S.O.C for reconsideration. However, order dated 3.7.2002 has not been annexed. Thereafter, it has been stated that S.O.C. allowed the appeal of respondent No. 3 ex parte on 27.1.2005 against which petitioner filed restoration application which was rejected on 25.7.2006. Against both the orders, petitioner filed revision before D.D.C. D.D.C allowed the revision (No. 220 of 2007-08) on 22.9.2008 and again remanded the matter to S.O.C. The said order is Annexure-3 to the writ petition.

4. From the perusal of the Annexure-3 to the writ petition, it appears that Gaon Sabha had also filed restoration application before C.O. In the order dated 22.9.2008, D.D.C, Varanasi Camp Sant Ravidas Nagar Gyanpur unnecessarily criticised the conduct of S.O.C. while setting aside the order of S.O.C dated 27.1.2005. Against order dated 22.9.2008 restoration application was filed which was dismissed in default on 15.6.2009. Thereafter, respondent No. 3 filed transfer application before Collector on 6.7.2009. It is alleged that thereafter on 13.7.2009, respondent No. 3 ' again filed restoration application. Collector through order dated

26.8.2009 allowed the transfer application filed by respondent No. 3 and transferred the file of the revision alongwith restoration application to himself. Said order is Annexure-9 to the writ petition and has been challenged through writ petition.

5. I do not find least error in the order of Collector dated 26.8.2009.

6. Copy of patta has not been annexed alongwith the writ petition. On enquiry from the Court as to why since 1968 till 1997, i.e., for 29 years, no efforts were made by the petitioner or mother of the petitioner to get her name mutated in the revenue records, no reply could be given by the learned Counsel for the petitioner. Learned Counsel for the respondent No. 3 stated that mother of the petitioner Smt. Kalawati Devi was daughter-in-law of Ram Roop, the Pradhan,. who signed the patta and gave statement before C.O. It has further been stated that the said Pradhan also executed ante dated pattas in favour of his sons and other family members.

7. It is quite clear that as until 1969 prior permission of S.D.O. was not required, hence the Pradhan manufactured the pattas of Gaon Sabha land and ante dated the same to a date prior to 1969. There is absolutely no reason that in case patta had in fact been executed, the names of lessees would not have been mutated in the revenue records.

8. Prima facie it appears to be loot of the public property.

9. Collector is the best person to look into this matter. If the Collector finds that no patta was executed in 1968 and Ram Roop and his family members usurped the property of the Gaon Sabha on the ground that prior to 1969, he was Pradhan, then stern action must be taken/recommended to be taken against the C.O. who passed the order on 12.2.1997. Collector may also reopen all such cases in the District in which Gaon Sabha property was mutated in the name of private persons in the similar manner. If patta is executed, then immediately name of the allottee is mutated in the revenue records. Few months delay in getting the names mutated in the revenue records on the basis of pattas is understandable but few decades or few years delay is not at all understandable.

10. The experience of the Court is that during consolidation proceedings, Consolidation Authorities/Officers liberally donate the Gaon Sabha properties to influential/resourceful persons by passing such orders as has been passed in the instant case.

11. Accordingly, all the Collectors of all the Districts in the State are directed to reopen such cases where names of private persons are entered in revenue records on the basis of old pattas or adverse possession over Gaon Sabha land and correct the illegality by taking suo motu action. However, no orders shall be set aside without issuing notice and hearing affected persons. If notice through registered post is not served then it may be served through publication in the newspaper also. If it is found that some Consolidation Officer or S.O.C or D.D.C has done similar thing, then the action must be proposed to be taken against him also.

12. Supreme Court has held that fraud vitiates even most solemn proceedings vide Mahboob Sahab v. Syed Ismail and Ors. : AIR 1995 SC 1205 (Para 9) : United India Insurance Co. v. Rajendra Singh : AIR 2000 SC 1165 : 2000 (2) AWC 1349 (SC) and A.V. Papaya Sastry v. Government of A.P. and Ors. : AIR 2007 SC 1546 : 2007 (3) AWC 2538 (SC) (Para 39).

13. Learned Counsel for the petitioner has cited an authority of this Court in Baba Bhola Nath v. D.D.C. Jaunpur 2004 (97) RD 548, holding that in case first restoration application is dismissed on merit, then the second restoration application is not maintainable as it amounts to review and as held in Shivraji v. D.D.C. Allahabad and Ors. 1997 RD 562 : 1997 Supp AWC 454 (FB), consolidation authorities including D.D.C. has got no power to review.

14. The said authorities are not applicable to the facts of the instant case as earlier restoration application was dismissed by D.D.C. in default as stated in para 11 of the writ petition.

15. With the above observations, writ petition is disposed of.

16. Office is directed to supply a copy of this order free of cost to Sri N.P. Pandey, learned standing counsel, within three days, who shall send it to the Secretary concerned and to all the Collectors of all the districts in the State.

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