

Phool Chand Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-23-2006

Reported in : 2007(2)AWC1643

Judge : A.K. Yog and ;O.N. Khandelwal, JJ.

Appellant : Phool Chand

Respondent : State of U.P. and ors.

Disposition : Application allowed

Judgement :

A.K. Yog and O.N. Khandelwal, JJ.

1. In pursuance of our order dated 21.8.2006, the Sub Divisional Magistrate, Lakhimpur Khiri (Sri Basudev Prasad Khare), has appeared before us alongwith the original revenue record, viz. Zild Bandobast Page 288-289 wherein plot No. 324 (total area 38 acre) is shown as 'talab' (pond). Referring to an entry made in red ink (with reference to said plot) at page 288-289, he has stated before us that it is as a consequence of interpolation. In view of the aforesaid categorical stand taken before us, while exercising our extraordinary Constitutional jurisdiction under Article 226, Constitution of India, we have not only to decide the lis between the parties to the proceedings but also that of the interest of third party, if any, and no one is allowed to take advantage of 'fraud' or 'interpolation' in revenue records.

2. The above Writ Petition No. 1688 (MB) of 1993 is by one Phool Chand against the State of U.P., through Secretary, Revenue, Lucknow, the District Magistrate/Collector, Lakhimpur Kheri, the Sub Divisional Magistrate, Lakhimpur Kheri and Tehsildar (Sadar), Lakhimpur Kheri, claiming rights on a certain portion of plot No. 324, purchased under registered sale-deed way back in the year 1984.

3. According to the pleadings, proceedings under Section 29, Land Revenue Act, were initiated by Phool Chand and others registered as Case No. 246 Phool Chand v. Manorama Devi, Case No. 73 Phool Chand v. Pushpa Devi and Case No. 75 Phool Chand v. Uma Devi.

4. The then Naib Tehsildar directed name of Phool Chand to be mutated after expunging the name of Smt. Manorama Devi in respect of plot No. 324/2 area 0.15 acres. Similar orders have been passed in other mutation cases on 13.11.1984. Subsequently, Lekhpal in-charge of the area, made a complaint to the then Sub Divisional Magistrate, Lakhimpur Kheri who issued notice under Section 33/39, Land Revenue Act requiring the petitioner to show cause as to why mutation of plot No. 324 (0.38 Acre) may not be expunged which was recorded as talab (pond) in the khatauni issued before consolidation. Petitioner appeared before the authority concerned and submitted that he wanted to develop the area and build residential houses after having obtained requisite permission from the Competent Officer under Road Side Land Control Act.

5. The Sub Divisional Magistrate, Lakhimpur Kheri, after hearing the parties came to the conclusion that declaration during consolidation proceedings vide CA Form-41 was obtained by fraudulent means and the same had no effect on the rights of the State over the said land entered as talab in revenue records vide order dated 12.6.1987 (Annexure-13 to the writ petition). Being aggrieved, the petitioner filed revision before Commissioner, challenging the aforesaid order dated 12.6.1987. The Additional Commissioner, in turn referred the matter vide order dated 7.11.1989 to the Board of Revenue, Lucknow, recommending to allow the revision filed by the petitioner. The Board of Revenue vide its order dated 7.2.1992 agreed with the recommendation of the Additional Commissioner allowed the revision while setting aside the aforementioned order dated 12.6.1987 and rejected the

report of the Lekhpal on the basis of which, proceedings were initiated. The Board of Revenue, however, left it open for the aggrieved parties to get their rights adjudicated by means of regular suit by a competent court vide its order dated 7.2.1992 (Annexure-14 to the writ petition).

6. The land, in question, under notification dated 27.11.1976, fell in territorial jurisdiction of Nagar Palika, Lakhimpur Kheri and hence Nagar Palika, Lakhimpur Kheri and the State of U.P. through the District Magistrate, filed a Suit No. 158/38 against Smt. Uma Devi, Smt. Pushpa Devi and Phool Chand, under Section 229B, U.P.Z.A. and L.R. Act. The original record of the said suit has been placed before us today.

7. In paragraph 1 of the said plaint, it has been categorically pleaded that the land in dispute, measuring 0.38 acres, is recorded as talab (pond). The plaintiff claimed declaration to that effect, over the plot in question. The said plaint was signed by the then District Magistrate, Lakhimpur Kheri, D.G.C. Agra, the Executive Officer, Nagar Palika Lakhimpur Kheri or D.G.C. Revenue.

8. Initially, an interim injunction order was passed against which the defendants filed appeal before the Additional Commissioner, Lucknow, who passed order of status quo. As a consequence of which, interim order passed by the S.D.M. in the aforesaid suit was stayed. The record of the said suit (placed before us today) shows that, thereafter, the plaintiff did not take interest to prosecute the suit and consequently it was dismissed for non-prosecution.

9. Taking into account that the then District Magistrate changed stand (inasmuch as on the one hand, they contended that the land in question was pond and on the other hand the allotments were made in favour of 12 persons), the possibility of 'abuse of office' and abuse of Court cannot be ruled out. We strongly feel that suit was got dismissed for ulterior purposes.

10. Tanks and ponds are meant for use of general public/residents of the village concerned.

11. Taking advantage of the dismissal of the suit for non-prosecution, rights are being claimed by Phool Chand/Petitioner on one hand and 12 persons who were allotted said land are before us,

12. Phool Chand and one Brij Kishore who also claimed rights in the land in similar circumstances contended that the District Magistrate was forcibly trying to interfere with their possession and preventing them from raising construction on the plot in dispute and hence the following writ petitions:

1. Writ Petition. No. 1688 (MB) of 1993 Phool Chand v. State of U.P. and Ors;
2. Writ Petition No. 1801 (MB) of 1993, Brij Kishore v. State of U.P. and Ors.;
3. Writ Petition. No. 1802 (MB) of 1993, Phool Chand and Ors. v. State of U.P. and Ors; and
4. Writ Petition No. 2432 (MB) of 1993, Phool Chand v. District Magistrate, Lakhimpur Kheri.

13. In these writ petitions, the 12 persons in whose favour the allotments were made were not impleaded. It may be noted that by means of amendment, writ petition was amended and new paras 32A to 32F were added, wherein, petitioner had categorically pleaded that he was dispossessed from the land in question. Writ para 32B, added by amendment, reads:.The opposite party neither had any authority for forcibly occupy the land nor had authority to raise any construction for residential purpose or for commercial purpose....

14. The aforesaid amended para 32B shows that petitioner has come to know that land was allotted in favour of certain persons, who were incumbent upon those allottees.

15. The above mentioned writ petition was, allowed by means of the judgment and order dated 22.12.1999. Relevant operative para of the said judgment reads:.Under the facts and circumstances of the present case, respondents are liable to be directed to restore back the possession of the plots in dispute to the petitioners after removal of the construction raised by them but in this manner poor

Harijans allottees who are now in possession and who are not at fault at all, shall also suffer irreparable loss. In our opinion, it will meet the ends of justice. If these petitions are allowed with the direction to the respondents to restore back the possession of the plots in dispute after renewal of the construction or to pay compensation of the land in question at the prevailing market price, i.e., (Circle rates prescribed by the Collector, Kheri as stated in Annexure-16 to the W.P. No. 1688 (MB)/93), within a period of one month from the date a certified copy of this order is communicated to respondent No. 1. It is ordered accordingly....

16. Interestingly, the District Magistrate, Lakhimpur Kheri and Revenue Authorities, Nagar Palika Lakhimpur Kheri, instead of sticking to their stand of land being pond and to obviate the irresponsibility to pay compensation to the petitioner, preferred to restore back the position to the petitioners at the cost of twelve allottees.

17. Being aggrieved, the 12 allottees have filed the application for recalling of the said judgment and order dated 22.11.1999 on the ground that petitioners did not implead the 12 allottees and that the respondents authorities want to restore back possession to the petitioner, while they were never heard in the matter which is an error apparent warranting recalling of said judgment and order dated 22.11.1999.

18. While hearing present recall application, we notice that this Court inadvertently failed to refer to the question of land being pond and/or the circumstances in which suit under Section 229B, U.P.Z.A and L.R. Act was managed to be dismissed for non-prosecution.

19. It is shocking that District Magistrate, Lakhimpur Kheri or the Nagar Palika did not pursue the suit and allow the matter to rest there without getting the said controversy decided on merit. We deem it imperative to direct the authorities to take steps for restoration of suit under Section 229B, U.P.Z.A. and L.R. Act and ensure if land in question is 'pond' to be restored in view of the Apex Court judgment in *Hinch Lal Tiwari v. Kamla Devi and Ors.* : AIR 2001 SC3215 .

20. The Court in exercise Of its jurisdiction under Article 226, Constitution of India is not supposed only to safeguard the interest of the parties before it, but should

also particularly to protect the interest of third party, if any.

21. In view of the above settled position in law, we are of the opinion, that the mere fact that suit under Section 229B, U.P.Z.A. and L.R. Act was dismissed in default and no attempt was made to get it restored, should not be ignored.

22. In the facts of the instant case while we set aside the judgment order dated 22.12.1999, restore the writ petition to its original number with direction to the petitioner to implead the 12 allottees, who should be also heard. No notice need be sent to these 12 allottees, as they are already represented.

23. We further direct the District Magistrate, Lakhimpur Kheri and Chief Executive Officer, Nagar Nigam, Lakhimpur Kheri to file an application for recalling of the order dated 20.10.1992 passed by S.D.M. in Case No. 158/38 under Section 229B (referred to above), within one month from today alongwith the certified copy of this judgment and order and get the suit decided on merit in accordance with law. Suit under Section 229B referred to above shall be decided in six months of receipt of certified copy of judgment. If District Magistrate shall fail to prosecute the suit Court seized of said suit shall refer the matter to the Government indicating negligence of said authority.

24. Meanwhile, we direct learned standing counsel to inform the State Government, through Secretary (Revenue), Lucknow (within two weeks) for looking into the matter and direct the Commissioner concerned to hold an enquiry to fix responsibility/accountability of the then Officers for not prosecuting the suit diligently within three months of receipt of copy of this judgment. This writ petition shall be listed immediately after 6 months. Enquiry Report of the Commissioner (as indicated above) and the copy of the judgment in the aforesaid suit under Section 229B, U.P.Z.A and L.R. Act pending before the Sub Divisional Magistrate, Lakhimpur Kheri shall also be brought on record.

25. Review application allowed subject to above directions.

26. No costs.

