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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

YADVENDRA BIKRAM SINGH — Appellant

Vs.

STATE OF U.P. AND OTHERS — Respondent

(Before : Narayan Shukla, J)

Decided on : 08-02-2010

A. U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B — Declaratory suit by a person claiming to be a bhumidhar with transferable rights — Maintainability — Application for declaration of land as "Samil Jot Abadi" and mutation of name — Where Gatas are recorded as "abadi" (settlement/habitation) land in the land records (Clause 6(2) of Land Record Manual), a suit for declaration of bhumidhari rights under Section 229-B is not maintainable as the provision applies to agricultural holdings (land used for cultivation) not to residential or non-agricultural land. (Paras 7, 11, 12, 14)

B. U.P. Consolidation of Holdings Act — Section 9-A(2) — Section 9-A(1) — Correction of entries — Jurisdiction of Consolidation Officer — Validity of mutation of name — Orders passed by Consolidation Officer — Where the original order (dated 16.09.1993) for mutation of name is found to be forged and fabricated, the subsequent mutation orders based on such a forged document are invalid and without jurisdiction — Consolidation Officer is empowered under Section 9-A(2) to correct such erroneous/forged entries — Mutation proceeding does not fall under Section 9-A(1). (Paras 7, 9, 10, 11, 12, 13, 15)

C. Principles of Natural Justice — Opportunity of hearing — Fraud and forgery — Cancellation of land entries — Where initial entries in land records

are based on a forged and fabricated order, the principles of natural justice do not strictly mandate providing an opportunity of hearing before their cancellation, especially when appellate/revisional authorities have affirmed the fraudulent nature of the original order. The court cannot be expected to protect those who acquire entries through fraudulent means. (Paras 6, 9, 14)

D. Forgery and Fabrication — Evidence — Genuineness of court orders — Absence of original records — Non-production of certified copy — Rule 35 of U.P. Revenue Court Manual — An order claimed to be passed by a Sub-Divisional Officer, but not bearing the officer's signature, or not registered in the court's records (misilband), or for which no original record exists, or where the certified copy is not produced despite objections, is highly suspicious and likely forged or fabricated. The delay in seeking mutation and the attempt to get mutation through Lok Adalat (where orders are non-appealable/non-revisable) also indicate a doubtful conduct aimed at regularizing entries based on a fabricated document. (Paras 5, 7, 8, 9, 10, 11, 12, 13, 14, 15)

Final Result : Dismissed

JUDGMENT

Narayan Shukla, J.—Heard Dr. L.P. Mishra & Mr. Sharad Pathak, learned Counsels for the petitioner and learned Standing Counsel for the State as well as Mr. Mohd. Adil Khan, Mohd. Aslam Khan, Mr. R.N. Gupta & Mr. Shailendra Kumar Singh, learned Counsels for the opposite parties.

2. The petitioner is aggrieved with the orders dated 7.12.2004, 19.8.2009, 16.11.2009 and direction dated 22.11.2004 passed by the opposite parties 4, 3, 2 and 6 respectively, whereby the petitioner's name recorded in Gata No. 556/1.75, 527/1.54 and 530/0.27 has been expunged. The petitioner is claiming possession over the aforesaid Gatas since before the date of vesting i.e. 1st of July, 1952.

3. Briefly, the case as set out by the petitioner is that in 1993 he filed a suit to declare him as tenure holder with transferable rights u/s 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act), which was decreed by the Sub Divisional Officer, Sadar, Bahraich by means of order dated 16th of September, 1993. In 1995 the area in question was notified for consolidation operation. Since the petitioner's name was not mutated in the revenue record, pursuant to the order passed by the Sub Divisional Officer, he moved an application for mutation of his name before the Consolidation Officer, who passed the order on 5th of August, 2000 for mutation of his name in the revenue record, pursuant to which the concerned Lekhpal incorporated his name in the revenue record on 8th of August, 2000. One Mr. Rudendra Vikram Singh, who

was nephew of the petitioner being jealous to the petitioner inspected the record of case No. 177/145 registered u/s 229-B of the Act in 2000 and after inspection he came to know about the order i.e. 16th of September, 1993. Then he moved an application for recall of order dated 16th of September, 1993 before the Sub Divisional Officer, Bahraich, which is still pending consideration. The petitioner against the proceeding of the application for recall filed a writ petition which was registered as writ petition No. 3239 (MS) of 2001. This Court by means of order dated 5th of November, 2001 stayed the proceeding with the direction that the status quo as on today shall be maintained by the parties over the property in question. Subsequently, this Court by means of order dated 24th of January, 2005, modified the order dated 5th of November, 2001 to the extent that proceeding before the Sub Divisional Officer will continue by maintaining the status quo on the spot as already directed. In the meantime the Consolidation Officer, Nanpara cancelled the entries made in the revenue record by means of order dated 7th of December, 2004 without noticing to the petitioner.

4. It is stated that on a complaint moved by Mr. Rudendra Vikram Singh, the Chief Revenue Officer, Bahraich issued direction to the Sub Divisional Officer, Bahraich to look into the matter and cancel it, on being proved the entry as forged, pursuant to which the Settlement Officer Consolidation took cognizance and issued direction to the Consolidation Officer, Nanpara to take cognizance under the relevant provisions and cancel it. Pursuant to the aforesaid direction on the application moved by Mr. Rudendra Vikram Singh the Consolidation Officer registered a case u/s 9-A (2) of the U.P.C.H. Act as case No. 895 and cancelled the entries by means of order dated 7th of December, 2004. Being aggrieved with which the petitioner preferred an appeal before the Settlement Officer Consolidation, Bahraich inter alia on the ground that the earlier order dated 27th of January, 2002 passed by the Consolidation Officer has become final. There is no provision to review the same as it is a decision of Lok Adalat, which is neither appellable nor revisable under the provisions of the Act, thus the subsequent order passed by the Consolidation Officer is without jurisdiction. Further the order has been passed without providing opportunity of hearing to the petitioner, therefore, it is in violation of principles of natural justice.

5. The court of appeal dismissed the petitioner's appeal on the ground that the Sub Divisional Officer, Bahraich after enquiry has submitted a report that neither the case for mutation i.e. case No. 177/145 was registered in his court nor was entered in misilband. Moreover, no such record is available in the record room, accordingly he arrived at conclusion that the order dated 16th of September, 1993 is absolutely forged and baseless, thus the court of appeal held that the order passed by the Consolidation Officer is based on the report submitted by the Sub Divisional Officer, which does not suffer from error. He further directed to initiate a criminal proceeding against the petitioner as well as recommended for departmental proceeding against concerned Lekhpal. Being aggrieved with the order of appeal the petitioner filed a revision, which was registered as revision No. 615/6. The District Deputy Director of Consolidation also dismissed the revision on the same very ground. Through the supplementary affidavit he has brought on record the

extract of C.H. Form No. 45 and C.H. Form No. 41 in respect of disputed Gatas to establish that those are recorded as abadi in the revenue record.

6. It is stated that neither the Chief Revenue Officer, who initiated the proceeding for cancellation of entries nor the Consolidation Officer, who acted upon his direction provided any opportunity of hearing before cancelling the entries. Accordingly the orders passed by these authorities are in gross violation of principles of natural justice. Being so the same are unsustainable and deserves to be quashed alongwith subsequent orders, whereby the order passed by the Consolidation Officer has been upheld.

7. Contesting the case the opposite party No. 8 has filed the counter affidavit stating therein that Gata No. 556 is recorded as abadi in khatauni in Clause-6(2) as "Sthal, Sarken, Railmarg, Bhumi tatha Anya bhumi jo krishi se bhinn prayojanon hetu kaam men layi jati hai", while plot No. 527 and 530 recorded in Clause 6(2) are also being used as Rasta and Tazia marg. Since plots in dispute were recorded in Clause 6 (2) as defined in Land Record Manual the suit for declaration u/s 229-B of U.P.Z.A. & L.R. Act was not maintainable. Moreover, no such suit was ever filed which was numbered as suit No. 177/145. He has also raised finger on the genuineness of the plaint filed as annexure No. 2 claiming the same as forged and fictitious document. Mr. Khan, Senior Advocate further submitted that Rule 35 of U.P. Revenue Court Manual provides that all judicial orders must be self-contained and all important orders must be in the handwriting of the Presiding Officer or type-written and signed by him, whereas the order dated 16th of September, 1993 shown as passed by Sub Divisional Officer, Sadar, Bahraich, does not bear the signature of the officer concerned. Accordingly he submits that no order dated 16th of September, 1993 was ever passed.

8. It is also stated that had any such order being passed in 1993, copy ought to have been obtained by the petitioner in 1993 itself not in 2000 and he should not have waited till the commencement of consolidation proceeding i.e. up to 3rd of August, 2000, on which date he moved an application for giving effect the order dated 16th of September, 1993 passed by the Sub Divisional Officer, Sadar, Bahraich. The petitioner succeeded to get incorporated his name in the revenue record in connivance of the then Consolidation Officer, whereas the consolidation courts have no jurisdiction to give effect such an order, thus he has further raised finger on the genuineness of the order dated 24th of April, 2002 passed by the Consolidation Officer in case No. 2118 u/s 9-A(2) of the U.P.C.H. Act in Lok Adalat. Reason being that once under the order of Consolidation Officer his name was mutated in 2000, there was no reason to move further application in 2002 before the Lok Adalat and get it finalised for ever, so that there may not be any chance to challenge it before the court of higher jurisdiction.

9. The learned Counsel for the opposite party No. 8 further submitted that the proceeding of mutation does not come within the purview of Section 9-A(1) of the U.P.C.H. Act. It is stated that when the father of answering respondent came to know about the forged entries

made in the revenue record pursuant to the forged and fictitious order, he moved an application for setting aside the said order on 27th of December, 2000. On the basis of enquiry conducted by the Sub Divisional Officer, the order provided by the petitioner has been found forged and fabricated as no such case was ever proceeded in the court of opposite party No. 5. The application moved by the father of the answering respondent was registered and notices were issued to the petitioner as well as Gaon Sabha. Being aggrieved with which the petitioner filed a revision before the Additional Commissioner, which was dismissed. Then he filed a writ petition bearing No. 3239 (MS) of 2009, in which this Court has allowed to continue the proceeding on the application for recall of the order, but since after enquiry it has been found by the Sub Divisional Officer that no such case was registered nor decided, there is no reason to proceed on the said application. Further after the order passed by the Consolidation Authorities, it has lost its relevance. Again when the Consolidation Officer passed the order on 7th of December, 2004 for deleting the forged entries, the petitioner challenging the said order filed a writ petition bearing No. 1072 (Cons) of 2004 concealing this fact that he has already preferred an appeal before the Settlement Officer Consolidation. This Court decided the aforesaid writ petition by means of judgment and order dated 25th of January, 2005 with the following observation:

...However, as the impugned order has been passed without affording an opportunity to the petitioner to prove that the decree passed in the declaratory suit No. 177/145 does actually exist, it would be proper that the petitioner avails the alternative remedy of appeal, especially in view of the facts that there is specific mention in the impugned order that on examination, no suit appeared to have been filed by the petitioner u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act and the particulars of the suit as mentioned by the petitioner were of a suit filed by some other person in respect of some other property. True that normally, observance of principles of natural justice is essential before passing an order entailing civil consequences but in the case of fraud and forgeries, denial of such opportunity cannot be treated to be fatal as the court cannot be expected to help those who succeed in obtaining entries by fraudulent means.

10. This Court provided that in case the appeal is preferred by the petitioner within ten days, the appellate authority shall entertain the same ignoring the limitation provided and decide it on merits. This Court further observed that the appellate authority shall be at liberty to lodge an F.I.R. Itself or direct its subordinate authorities to do so against the guilty persons in case it comes to the conclusion that the said order dated 16th of September, 1993 is forged. He further submits that since there is concurrent finding of the courts below that the order dated 16th of September, 1993 is forged and fabricated document, which are based upon the inquiry report submitted by the Sub Divisional Officer, no interference is warranted by this Court and the writ petition deserves to be dismissed.

11. Mr. R.N. Gupta, learned Counsel for the Gaon Sabha (opposite party No. 7) supported the arguments of learned Counsel for opposite party No. 8 and pointed out various

provisions of the U.P.C.H Act as well as the Land Revenue Act with the submission that the proceeding in which the petitioner's name was mutated was not permissible u/s 9-A(1). Further once through the enquiry, the order dated 16th of September, 1993 has been found forged and fictitious, there is no reason to adjudicate upon it further. He further submitted that till date the petitioner has failed to place the certified copy of the said order either before the courts below or before this Court, which also establishes that there is no such order in existence. He also raised finger upon the proceeding of Section 229-B of the U.P.Z.A. & L.R. Act by inviting the attention towards the prayer made through the application moved before the Sub Divisional Officer and submitted that the prayer made through the application cannot be adjudicated upon under the right of declaration u/s 229-B of the U.P.Z.A.& L.R. Act. Section 229-B of the U.P.Z.A.& L.R. Act, 1950 is reproduced as under:

229-B. Declaratory suit by person claiming to be an asami of the holding or part thereof.-

(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be.

(2) In any suit under Sub-section (1) any other person claiming to hold as asami under the landholder shall be impleaded as defendant.

(3)The provisons of Sub-section (1) and (2) shall mutatis mutandis apply to a suit by a persons claiming to be a bhumidhar with the amendment that for the word "landholder" the words "the State Government and the Gaon Sabha" are substituted therein.

12. Keeping in view the entry of disputed Gatas in Clause(6) he submitted that the petitioner was not having the status either of bhumidhar or asami, therefore, he was not having any right to declare him as bhumidhar or asami. Through the prayer made in the application moved u/s 229-B of the U.P.Z.A. & L.R. Act, the petitioner sought the relief to enter the land in dispute in his name as Samil Jot Abadi of applicant as he is recorded tenure holder with transferable right and is in possession. He further pointed out that once the petitioner was recorded as tenure holder, there was no occasion to get declare his right as bhumidhar and the relief for mutation of the land as his Samit Jot Abadi. Such kind of relief cannot be sought through the application u/s 229-B of the Act, thus he submits that since very beginning the fraud has been committed by the petitioner in connivance with the revenue officer as well as Consolidation Officer and succeeded also to fabricate the order dated 16th of September, 1993 fraudulently. He further pointed out that the copy of the plaint which has been brought on record as annexure No. 2 bears seal of the court, whereby the petitioner has tried to establish that the said copy has been issued by the office of the court, but has it been so definitely, it would have been registered, but it does not show any case number, rather the order dated 16th of September, 1993 indicates the case No. 177/145,thus he doubted upon the genuineness of the plaint also and order as well. He further submitted that so far as the order passed by the Consolidation Officer on 7th of

December, 2004 cancelling the forged entries are concerned u/s 9-A(2) of the U.P.C.H. Act the Consolidation Officer is empowered to correct the entries and accordingly he has exercised his power, therefore, there is no error in the order passed by him. Thus he submits that the writ petition has no merit and deserves to be dismissed being devoid of merit.

13. Upon perusal of the order dated 7th of December, 2004, passed by the Consolidation Officer, Nanpara, Bahraich, whereby the entries have been cancelled, I am of the definite view that before passing the said order no opportunity of hearing was provided to the petitioner, but the order reveals that the Consolidation Officer has taken into account the report of the Record Officer as well as the enquiry report dated 20th of September, 2004 of the Sub Divisional Officer who reported that the said case was not registered in the Misil Band of the year 1992-93 of the court of Sub Divisional Officer concerned u/s 229-B of the U.P.Z.A. & L.R. Act. Indisputedly, the father of the opposite party No. 8 inspected the record as he has submitted in his application for recall of the order dated 7th of December, 2004 but it is not clear either from his application or from the averments of the petitioner that he inspected the original record, but once it has been reported that no record is available, definitely he would have inspected the fabricated record.

14. This Court in writ petition No. 3239 (MS) of 2001 has opened the proceeding on the application for restoration before the Sub Divisional Officer, but once after inquiry it has been found that no such case was registered, there is no question to allow the Sub Divisional Officer to proceed on the application for recall as the same would be a futile exercise. So far as the inquiry report of the Sub Divisional Officer is concerned, the same cannot be doubted as keeping in view the prayer made in the suit filed u/s 229-B of the U.P.Z.A. & L.R. Act, I am of the view that once the petitioner claim himself as recorded tendure holder with transferable right, there was no occasion to pray for recording the said Gata as Samil Jot Abadi in the said suit as for this limited relief the suit u/s 229-B of the U.P.Z.A. & L.R. Act was not maintainable. I am further of the view that after passing the order by this Court in writ petition No. 1072 (Cons.) of 2004 coupled with the facts that the order dated 16th of September, 1993 is forged and fabricated document, no opportunity of hearing was required before cancelling the entries. The order dated 7th of December, 2004 passed by the Consolidation Officer was before this Court in the said writ petition and this Court considered this fact that the order has been passed without affording opportunity to the petitioner to prove that the decree for declaratory suit No. 177/145 does actually exist, but without interfering in the order passed by the Consolidation Officer this Court provided to file an appeal. The appeal filed by the petitioner has been dealt with by the Settlement Officer Consolidation before whom the petitioner has failed to establish his title otherwise as also before the revisional court.

15. Upon perusal of the provisions of Section 9-A of the U.P.C.H. Act I am also of the view that the consolidation courts have rightly observed that such a mutation cannot be made under the said provision. The petitioner's conduct also becomes doubtful as once he

succeeded to get mutated his name under the order of the Consolidation Officer passed on 5th of August, 2000, there was no occasion to move an application further for mutation of his name before the Lok Adalat as subsequently by means of order dated 24th of April, 2002 passed by the Consolidation Officer in a case registered as case No. 2118 u/s 9-A(2) of U.P.C.H. Act he succeeded to get another order through the Lok Adalat. Since the order passed in Lok Adalat is neither revisable nor appellable and the petitioner would have been in the opinion that the order of mutation passed earlier may be challenged, he got mutated his name through Lok Adalat so that it may become final for all the times. Despite objection raised by the opposite parties, the petitioner has also not been able to bring on record the certified copy of the order passed by the Sub Divisional Officer, Sadar, Bahraich on 16th of September, 1993. More so, C.H. form 41 and 45 produced by the petitioner does not establish the individual right of the petitioner in Abadi. All these facts and circumstances lead this Court to arrive at a definite conclusion that the order dated 16th of September, 1993 allegedly passed by the Sub Divisional Officer, Sadar, Bahraich does not exist originally, therefore, there is no question to interfere in the orders passed by the courts below.

16. In the result the writ petition is dismissed.