

# SUPREME COURT OF INDIA

Ram Avadh

Vs.

Ram Das

C.A.No.5570 of 2001

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

14.05.2008

## JUDGMENT

### **Tarun Chatterjee, J.**

1. This appeal is directed against the judgment and order dated 22nd of May, 1998 passed by a learned single judge of the High Court of Judicature at Allahabad (Lucknow Bench) in W.P. No. 2016 of 1981 whereby the High Court had dismissed the writ petition filed by the appellants against an order of the Assistant Director of Consolidation, Sultanpur holding the sale deed dated 21st of May, 1969 in favour of the appellants to be illegal.

2. This case has a cheque history, which would be clear from the following facts leading to the filing of this appeal.

“The appellants alleged that by virtue of a registered sale deed dated 21st of May, 1969, they are the vendees of = of the land in Khata No. 98 (in short "the suit property") recorded in the name of the vendors viz., Bhagirati, Putai, Ram Newaj, Matadin, Bachai and Ram Avadh alias Avadhu (in short "Bhagirati & ors.") who are co-tenure holders with the respondents. A notification under Section 4 of the *U.P. Consolidation of Holdings Act, 1953* (in short "the Act") was issued for consolidation operation. The appellants filed objections under Section 9(2) of the Act before the Consolidation Officer for recording their names in place of Bhagirati & ors. in the revenue records contending that they had obtained the registered sale deed dated 21st of May, 1969 but by mistake of the Lekhpal, their names could not be recorded in the revenue records.

The respondents also filed objections claiming that Bhagirati & ors. or their father Faqir had no share in the suit property and that the suit property belonged to one Sanahi exclusively and therefore, Bhagirati & Ors. did not have any right to sell the same. Accordingly, the respondents strongly contested the case of the appellants who prayed for inclusion of their names in place of Bhagirati & Ors.

By an order dated 15th of March 1970, the Consolidation Officer allowed the objections of the appellants and directed that their names be recorded against the suit property. The respondents preferred an appeal under section 11(1) of the Act before the Settlement Officer, Consolidation but the same was dismissed by the order dated 18th of December, 1970. Feeling aggrieved, the respondents filed a revision under Section 48 of the Act before the Assistant Director - Consolidation, which was allowed by an order dated 16th of August 1971.

Against this order passed in revision, the appellants filed a writ petition being WP No. 1797 of 1971 and the same was allowed on 14th of November, 1978 and the matter remanded to the Assistant Director - Consolidation for deciding the revision afresh. The Assistant Consolidation allowed the revision this time also by his order dated 20<sup>th</sup> of February 1981. Feeling aggrieved, the appellants filed a writ petition before the High Court being 2016 of 1981, which, however, was dismissed by the judgment and order dated 22nd of May 1998. It is this decision of the High Court, which is now impugned in this appeal.”

3. Before we proceed further, considering the fact that concurrent findings of fact arrived at by the Consolidation Officer and the Settlement Officer-Consolidation were set aside by the Assistant Director-Consolidation in revision, whose decision was affirmed by the High Court in the impugned judgment, we deem it expedient to look at the findings of High Court and the Consolidation Officer.

“Let us first look at the findings of the High Court relying on which the writ petition of the appellants was dismissed. The findings are as under: -

- i) At the time of Third settlement, Sanehi was the only recorded tenure-holder of the land in question and Faqir was not recorded as a co-tenure holder.
- ii) The name of Faqir was recorded only in the year 1356 Fasli without there being any order showing the title of Faqir or showing the ground on account of which his name was entered as a co-tenure holder of the suit property and therefore, there was no evidence on record to show how his name could be entered as a co-tenure holder in the year 1356 Fasli.
- iii) The mere fact that in the khetauni of 1356 Fasli, it was mentioned that the tenure-holders were occupying the land for 15 years, the same could not confer any title on Faqir whose name did not find place at the time of the Third settlement.
- iv) Unless it was shown by Bhagirati & Ors. That the title of the suit property was acquired by Faqir before 1356 Fasli and unless the mode of acquisition of title was shown, the mere recording of Faqir's name as a co-tenure holder of Sanehi in the year 1356 Fasli would not make Faqir a co-tenure holder of Sanehi in the suit land.

v) The Assistant Director of Consolidation in revision had rightly held that the entry in favour of Faqir was fictitious and could not have been relied upon by the Consolidation officer and the assistant settlement officer (consolidation) to confer any title on Faqir, his heirs Bhagirati & Ors. and their vendees, the appellants.

vi) In connection with the land of another village, it was mentioned that Sanehi had not taken patta of land for the benefit of his brother Faqir and that being so, the jointness with regard to the suit property could also not be assumed.

vii) Since the appellants were the transferees from Bhagirati & ors. and since the title of Faqir, the ancestor of Bhagirati & Ors. could not be established, the appellants were rightly denied the relief by the Assistant Director of Consolidation.

viii) The benefit of the authority of the Supreme Court reported in *Sri Nath Singh & Ors. Vs. Board of Revenue*<sup>1</sup> was not available to the appellants because the entry of 1356 Fasli in favour of Faqir was fictitiously recorded and therefore, no right of co-tenure holder could be said to have accrued to Faqir.

As noted herein earlier, the High Court dismissed the writ petition of the appellants on the above findings and affirmed the decision and the findings of the Assistant Director- Consolidation passed by the latter in revision.”

4. In contrast to the above findings of the High Court relying on which the appellant's claim was rejected, the Consolidation Officer arrived at the following findings in his order dated 15th of May, 1970 and upheld the claim of the appellants:

“i) The extracts of Khatauni 1356 Fasli and 1357 Fasli revealed that the name of Faqir was present and that he became Sirdar in 1350 Fasli as on file.

ii) Ram Das had deliberately avoided the disclosure of his grandfather's name Dihar or Dehpal but his ignorance regarding the name of his grandfather i.e. Sanehi's father would not mean that Dihar or Dehpal was not Sanehi's father.

iii) The assertion regarding Dihar or Dehpal as made by Bhagirathi finds support from the extract of settlement and certified copy of the extract of 1356 Fasli, 1357 Fasli on record.

iv) Faqir was an occupant in 1356 Fasli and his heirs had been entered in the Khata in 1368 Fasli by an order of the court after the death of Faqir in 1367 Fasli.

v) The name of Faqir was present in 1356 Fasli alongwith Sanehi and by virtue of having been in physical cultivatory occupation of the plots from 1356 Fasli onwards, Faqir became Sirdar thereof and his sons, whose names had been recorded, were the

bonafide Sirdar of the lands and were entitled to = share because Ram Dass did not explain who they were if not from that branch.

vi) As to whether Bhagirati & ors. had the right to transfer, the statement of A.R.K. on the file showed that on 1.5.1969, ten times rent had been deposited in the government treasury and therefore, the vendor would be deemed to have become bhumidari of the land from the date of depositing the amounts in the state treasury.”

5. The above findings of the Consolidation Officer were affirmed by the Assistant Settlement Officer, Consolidation in his order dated 18th of December 1970.

6. The learned counsel for the appellants argued before us that under Section 48 of the Act, the Assistant Director of Consolidation did not have the jurisdiction to set aside the findings of fact recorded by the courts below without any basis and on assumptions particularly in view of the fact that the name of Faqir was recorded as cultivator in possession along with Sanehi, both being real brothers and sons of Dehpal. The learned counsel for the appellants further argued before us that the appellants would be entitled to the benefit of Section 20 of the *U.P Zamindari Abolition and Land Reforms Act, 1950* (in short "UPZA&LR Act) which provides that the entries in the base year 1356 Fasli are final and confers all rights on the occupant who would be entitled to retain possession thereof. It was also argued that the High Court and the revisional court had adopted an erroneous approach by relying on the result of a litigation in respect of some other land in a different village wherein Sanehi was held to be exclusive lessee and therefore, it was argued that it could not be assumed that the present revenue record showing joint possession and occupation of Faqir and Sanehi became unreliable. Finally, the learned counsel for appellants contended before us that the respondents did not take any steps to challenge the revenue record containing the name of Faqir before any court and in fact, the names of Faqir's sons i.e. Bhagirati & Ors. were mutated in 1368 Fasli after the death of Faqir by an order passed by the Tehsildar where the respondents were on notice.

7. These submissions of the learned counsel for the appellants were contested by the learned counsel appearing on behalf of the respondents. The learned counsel for the respondents argued that the suit property is the sole acquisition of the respondent's grandfather Sanehi and that they have been occupying the same exclusively after his death and thus are the sole holders of the suit property and therefore, Bhagirati & Ors. had no title of the land in dispute which could entitle them to sell the suit property to the appellants. It was further argued that Faqir got a fictitious entry of his name made in the Khetauni 1356 Fasli and his name was not present at the time of the Third Settlement.

8. Having heard the learned counsel for the parties and after examining the impugned judgment and the orders of the courts below and other materials on record, we are of the opinion that this appeal deserves to be allowed for the reasons set out hereinafter.

9. From the admitted pedigree chart produced before us, it is pellucid that Faqir and Sanehi were real brothers and sons of Dehpal. The record shows that the suit property was

recorded in the name of Faqir and Sanehi in the Khatauni for 1356 Fasli and this entry continued in the Khatauni for 1357 Fasli to 1366 Fasli. It was a finding of fact of the Consolidation Officer, which was affirmed by the Settlement Officer, Consolidation that Faqir was in possession as recorded cultivator in possession from 1356 Fasli onwards. It was also a finding of fact of the Consolidation Officer that after the death of Faqir in 1356 Fasli, the names of his sons Bhagirati & Ors. were mutated in place of their father in 1368 Fasli on the basis of an order passed by the Tehsildar where the respondents were on notice. These findings of fact were reversed by the revisional court which was affirmed by the High Court on the ground that the name of Faqir was not present at the time of the Third Settlement and therefore, the Khatauni for the year 1356 Fasli upto 1366 Fasli were fictitious. It is significant to note that the respondents had not taken any steps to expunge the names of the vendors from the record even though they continued to be recorded along with the respondents. Furthermore, a lot of weight has been placed by the revisional court as well as the High Court on the result of a litigation in respect of some other plots wherein it was concluded that a certain lease does not appear to have been entered by Sanehi for the benefit of the joint Hindu family and as such, Faqir could not be held to be a co-tenant. We are of the opinion that the result of that litigation should not have any bearing on the present case. It is an admitted fact that in the year 1356 Fasli, the name of Faqir was entered along with Sanehi in the Khatauni and yet it was held that this must be wrong because in respect of land in another village, the lease was held to be exclusively that of Sanehi and not for the benefit of Faqir. This, in our opinion, has been given exaggerated and undue importance by both the revisional and the High Court. The fact remains that Faqir's name was entered in 1356 Fasli, which was not challenged by the respondents till 1366 Fasli i.e. for almost 11 years. From 1356 Fasli onwards, throughout the names of Faqir and thereafter his sons are continuing in the revenue record and in that view of the matter, the concurrent findings of fact arrived at by the courts below should not have been disturbed by the revisional court and the High Court.

10. The learned counsel for the respondents argued before us that the name of Faqir was entered fictitiously without there being any order of any authority showing the basis on which his name was entered. It is true that there does not appear any order passed by any competent authority to show how Faqir got his name entered in 1356 Fasli but that by itself would not lead us to infer that the name was fictitiously entered. Nothing has been shown to us to prove that Sanehi and Faqir had separated prior to 1915 except the result of the litigation of 1944 on which, as noted hereinabove, we are not inclined to place much weight. From the admitted pedigree chart also, as noted herein earlier, it is clear that Faqir and Sanehi were real brothers and sons of Dehpal. In this view of the matter, it would not be appropriate to raise such serious doubts over how Faqir's name appeared in the Khatauni. In any view of the matter, in our view, the vendors would be entitled to the benefit of Section 20 of the UPZA&LR Act. Section 20 provides that where the person is recorded as an occupant of any land in Khasra Khatauni for 1356 Fasli, which has been taken as the base year, he shall be entitled to retain possession thereof. If the entry was not challenged, it could not be doubted and have to be deemed to be correct in view of explanation III to Section 20 which provide that the entries in the year 1356 Fasli is final and

confers all rights on occupant. In the present case, the name of Faqir appeared along with Sanehi in the 1356 Fasli upto 1366 to 1368. Mutation was carried out after considering objections of respondents, by the Tehsildar.

11. There is another aspect of this matter. In the present case, even if it is found that the names of Faqir and subsequently Bhagirati & ors. were fictitiously recorded, the fact remains that they were recorded Bhumidars and co-tenure holders (it is an admitted fact that Bhagirati & Ors. deposited ten times the land revenue under Sections 134 to 137 of the UP ZA & LR Act for grant of Bhumidari Sanad in respect of the suit land) and that no step was taken by therespondents ever to challenge their title to the suit property or the inclusion of their names in the revenue record. For this reason, the interest of the present appellants cannot be defeated particularly when they had made due enquiries under Section 55(1)(b) of the Transfer of Property Act that the vendors were the recorded Bhumidars of the suit property and had a transferable right before purchasing the suit property and therefore, in our opinion, they were bonafide purchasers for value without notice.

12. Before parting with this judgment, we may also consider the submission of the learned counsel for the appellants that the revisional court viz. Assistant Director, Consolidation had no jurisdiction under Section 48 of the Act to set aside the concurrent findings of fact of the Consolidation Officer and the Settlement Officer, Consolidation. In support of her submission, she relied on two decisions of this court in *Ram Avtar & Ors. Vs. Ram Dhani & Ors.*<sup>2</sup> and *Ram Dular Vs. Dy. Director of Consolidation, Jaunpur & Ors.*<sup>3</sup>. From these authorities, it is clear that the Director Consolidation under Section 48 of the Act does not have the jurisdiction to interfere with the findings of fact, without any basis and on assumptions. In view of our foregoing discussion, we are, therefore, of the considered view that it was not open to the Assistant Director Consolidation, whose order was affirmed by the High Court in the impugned judgment, to interfere with the concurrent findings of fact arrived at by the Consolidation Officer as also the Settlement Officer, Consolidation.

13. For the reasons aforesaid, we set aside the judgment of the High Court and the Revisional Court and affirm the decisions of the Consolidation Officer and the Settlement Officer, Consolidation. The appeal is thus allowed. There will be no order as to costs.

<sup>1</sup>[AIR 1968 SC 1351]

<sup>2</sup>[(1997) 2 SCC 263]

<sup>3</sup>[JT 1994 (3) SCC 341]