

# SUPREME COURT OF INDIA

Sukhendra Singh

Vs.

State of U.P.

C.A.Nos.7085-7086 of 2010

(Aftab Alam and R.M. Lodha JJ.)

26.08.2010

## JUDGEMENT

**R.M.Lodha, J.**

1. Leave granted.

2. At the conclusion of the arguments we indicated that, in our opinion, the matter has to go back to the High Court. Now we give the reasons therefor. In order to understand the controversy, it is necessary to state briefly the facts leading up to the filing of these two appeals, by special leave.

3. Ravi Dutta Singh (2nd appellant) is father of Sukhendra Singh ( 1st appellant). They initiated two separate proceedings under Section 9A (2) of the U.P. Consolidation of Holdings Act, 1953 (for short, '1953 Act') against Gaon Sabha, Lakanpur (now Gram Panchayat, Lakhanpur - 4th respondent) for declaring them as Bhumidhar and removing the name of Gaon Sabha in respect of diverse plots details of which have been set out in synopsis at pages B and C. For brevity, we shall refer to these plots as 'the disputed land'. On January 3, 1978, by two separate orders, the Consolidation Officer, Allahabad declared Ravi Dutta Singh and Sukhendra Singh (Surendra Bahadur Singh) Bhumidhar in respect of the disputed land and ordered removal of name of Gaon Sabha from the revenue record. It appears that no follow up action was taken pursuant to the orders dated January 3, 1978 by the concerned authorities, and accordingly, the 1st appellant made an application under Section 52 (2) of the 1953 Act before the Consolidation Officer, Allahabad for implementation of the aforesaid orders. On December 18, 1995 after seeking the report from the Assistant Consolidation Officer, the Consolidation Officer, Allahabad ordered that the revenue record be corrected by entering the applicant's name as Bhumidhar. Yet again, nothing seems to have been done pursuant to the order dated December 18, 1995. The 1st appellant, 2nd appellant and Smt. Etrawass Kunwari (3rd appellant), who is wife of 2nd appellant, approached the High Court of Judicature at Allahabad by filing few separate petitions. Strangely one writ petition in the name of Gram Panchayat, Lakhanpur also seems to have

been filed which was heard along with writ petition filed by the 1st appellant. By separate orders passed on March 24, 1998 in each of these petitions, the concerned authorities were directed to make necessary corrections in the revenue record pursuant to the orders dated January 3, 1978

4. Sometime later, Gram Panchayat, Lakhanpur moved an application before the Consolidation Officer, Allahabad for recalling the orders dated January 3, 1978. The Consolidation Officer took cognizance of that application and issued notices to 1st and 2nd appellant for their appearance before him on June 25, 2001. The said notices were challenged by the 1st and 2nd appellant before the Allahabad High Court and the said writ petition is said to be pending.

5. Pertinently, Gram Panchayat, Lakhanpur filed a writ petition (Civil Misc. Writ Petition No. 54673 of 2002) before the Allahabad High Court for setting aside the orders earlier passed by the High Court on March 24, 1998 and the orders dated January 3, 1978 passed by the Consolidation Officer. In this writ petition, the present appellants were impleaded as respondent Nos. 4, 5 and 6. It was averred in the writ petition that the orders dated March 24, 1998 were obtained by present appellants fraudulently and by misrepresentation and concealment of facts.

6. The Consolidation Officer again issued notices to the 1st and 2nd appellant asking them to appear before him on July 18, 2007. They challenged these notices by filing writ petition (Civil Misc. Writ Petition No. 45091 of 2007). These two writ petitions were heard together by the Division Bench. By the first order passed on February 5, 2009, the writ petition filed by the Gram Panchayat, Lakhanpur was disposed of. By that order, the Division Bench directed the Consolidation Officer, Allahabad to decide the dispute afresh in the light of the orders of that Court passed on March 24, 1998. By a separate two-line order of even date, the other writ petition filed by the 1st and 2nd appellant was disposed of in terms of the order passed in the writ petition filed by the Gram Panchayat, Lakhanpur.

7. With respect to the Judges presiding the Bench, we find it difficult to appreciate their approach in remanding the matter without indicating the reasons in support thereof. We are quite unable to discover any reason as to why the matter has been sent back to the Consolidation Officer. The first order dated February 5, 2009 reads as follows:

“Considering the facts and circumstances of the case, Consolidation Officer is directed to decide this question afresh in the light of the judgment of this Court passed in Writ Petition Nos. 10282 of 1998, 10284 of 1998 and also the judgment of the division bench of this Court in Writ Petition No. 15771 of 1996, if relevant in the facts and circumstances of the case.”

The second order of the even date reads:

"The writ petition is disposed of for order (sic) see order of the passed on Writ petition No. 54673 of 2002."

In the writ petition filed by the Gram Panchayat, the plea of fraud, misrepresentation and concealment of facts has been raised against the present appellants in obtaining the orders dated March 24, 1998 from the High Court in various writ petitions as well as the orders dated January 3, 1978 passed by the Consolidation Officer.

As a matter of fact, the grievance has been raised that no writ petition was filed by the Gram Panchayat earlier and one writ petition in the name of Gram Panchayat has been fraudulently filed. Obviously, the grievances raised by the Gram Panchayat, Lakhanpur in their writ petition cannot be gone into by the Consolidation Officer. On the other hand, the 1st and 2nd appellant in their writ petition before Allahabad High Court have raised the grievance with regard to continuous disregard of the orders of the High Court passed on March 24, 1998 as well as the legality and justification of the notices issued to them for their appearance before Consolidation Officer on July 18, 2007 and in reopening the consolidation proceedings. In our view, the controversy raised by the 1st and 2nd appellant on the one hand and the Gram Panchayat on the other was required to be considered judiciously by the High Court and not in the slipshod manner in which it has been done. We are constrained to observe that there is no application of mind at all to the issues raised by the parties in the two writ petitions."

8. In view of the above, the impugned orders dated February 5, 2009 are set aside; Civil Misc. Writ Petition No. 6 and Ors.) and Civil Misc. Writ Petition No. 45091 of 2007 to the file of the High Court for fresh consideration on merits in accordance with law. The appeals stand disposed of accordingly with no order as to costs.