

# ALLAHABAD HIGH COURT

Kumbha Karan

Vs.

S.C. Lal Saxena

Writ Pet. No. 176 of 1960

(J.K. Tandon, J.)

19.04.1961

## JUDGMENT

### **J.K. Tandon, J.**

1. It may be necessary at the very outset to state the following facts. Village Sehlumau Pargana and Tahsil Mohanlalganj, District Lucknow was placed under consolidation of holdings operations in 1956. In accordance with the scheme laid down in that Act after the usual examination of village records the statement of tenure holders made Under Section 11 was published on 31-12-56 . Plot No. 160/5 was shown in this statement as grove belonging to Kumbha Karan Petitioner. Section 12 of the Act allows persons interested in disputing the correctness or nature of an entry in the statement to prefer objections within a time prescribed therefore. Srimati Lachmin with whom the dispute later arose in respect of the above plot never filed within the period of limitation any objection on the statement published Under Section 11. The result was that the entry with respect to the above plot remained unaltered.

2. Sometime after the expiry of the period of limitation prescribed for filing objections Srimati Lachmin trade the objection claiming that the plot belonged to her as her grove. This objection was dismissed being time barred. An appeal against the order dismissing the objection also failed. The lady who was not satisfied then filed a suit also in the civil court claiming the grove but I have been informed by the Petitioner that that too has since been dismissed.

3. Sec. 12 of the Act. which makes provision for the filing of objections and their decision on the statement of tenure holders, lays down in sub S. (7) that a question of title in respect of any plot mentioned in the statement which might and ought to have been raised Under Section ub-S. (1) of Section 1 but had not been raised shall not be raised in any objection filed Under Section ub-S. (20 of Section 20 or under sub S. (1) of Section 34. The intention underlying this provision is to give finality to questions of title which have been raised and decided or which might and ought to

have been raised but have not been so raised. Section 12 appears in Chapter II and is followed by Chapter III which provide for preparation of the consolidation scheme. It is not necessary to refer to the various provisions contained in this Chapter but the relevant out of them are to be found in Ss. 19, 20, 21, 22 and 23. Section 19 requires that as soon as the Statement of Principles has become final Under Section 18 the Assistant Consolidation Officer shall in accordance with the said statement prepare a statement of proposals which among other particulars will show the khasra numbers of the plots to be allotted to each tenure holder in lieu of his original plots of his holding. Section 20 allows opportunity to the tenure holders to file objections on the statement of proposals while these objections are to be disposed of u(sic)S 21 and 22. Section 22 requires that whenever a question of title is raised in the objections it shall be referred for determination to the Civil Judge who will thereupon refer it to the arbitrator. The next S. i.e. Section 23 provides that where objections have been filed and disposed of or where no objections are filed on the statement of proposals within the time specified therefore, the Settlement Officer Consolidation shall confirm the statement after making such modifications or alterations as shall have become necessary in view of the orders passed Under Section s 21 and 22. It further lays down that the statement thus modified and confirmed will become final .

4. Chapter IV of the Act relating to the enforcement of the scheme as finalized Under Section 23 contains provisions, firstly, for the fixing of the date from which the scheme shall come into operation, secondly for the issue of allotment orders to the tenure holders of the plots allotted to them, and, thirdly, about the right of tenure holders to enter into possession of the plots allotted to them. Section 2. which also appears in the same Chapter is thus:-

"27(1) As soon as may be, after the consolidation scheme has come into force, the Director of Consolidation shall cause to be prepared a new village map, Khasra and record of rights in respect of each village included in the consolidation operation and the provisions of the UP Land Revenue Act 1901, shall, subject to such modifications and alterations as may be prescribed, be followed in the preparation of the said maps and records.

(2) All entries in the record of rights and in the maps prepared under sub S. (1) shall be final and conclusive.

(3) The record prepared Under Section ub S. (1) shall be maintained by the Collector instead of the records maintained previously Under Section 33 of the UP Land Revenue Act 1901."

Sub-section (1) above contemplates that the provisions of the UP Land Revenue Act 1901 shall be applicable for the framing of new revenue records subject to such modifications and alterations as shall be prescribed by the rules. In pursuance of it the State Government have framed Rr. 72, 73 and 74. R. 72 is to the effect that the Settlement Officer (Consolidation) shall cause to be prepared a village map, khasra and record-of rights for each village in respect of the areas which were included in the scheme of consolidation on the basis of the statement of

proposals finalized Under Section 23, and in the case of lands which were not included in the scheme of consolidation, after partial in accordance with R. 73 and 74. R. 74 prescribes that a field to field partial shall be made and the procedure laid down in Rr. 21 and 22 shall be followed in correcting mistakes and deciding dispute about entries. Rr. 21 and 22 in their turn lay down the manner in which the partial and objections thereto have to be conducted. The only important point about them is that the entries made in pursuance of them have not been given a finality on the question of title.

5. To revert now to the particular facts of this petition what happened was that in 1959-the exact date is not known from the record proceedings Under Section 22 of the consolidation of holdings were held in the village in question. In the course of those proceedings it was at one time reported that Srimati Lachmin Respondent No. 4 was in possession of grove No. 160/o. An entry also to that effect was, therefore, made in Form No. 6 in place of the Petitioner whose name appeared in the statement published Under Section 11 of the Act. On further scrutiny, however the Assistant Consolidation Officer discovered that the partial had not been correctly done and that the name of Srimati Lachmin could not be entered in Form No. 6 while the name of Kumbha Karan the Petitioner should have been entered. In these proceedings the lady filed an objection purporting to be u/R. 74 of the Rules claiming that the plot belonged to her as its groveholder and Bhumidhar. The Consolidation Officer who heard the said objection held on 31-8-1959, that Kumbha Karan's name shall be expunged from the record while the lady's name shall be substituted. The Settlement Officer Consolidation on appeal confirmed the order of the Consolidation Officer. The Deputy Director Consolidation too refused to interfere. The Petitioner thereupon filed this petition challenging the legality of the aforesaid orders.

6. Various grounds have been urged against these orders, one being that groves being lands not included in the consolidation scheme, cannot be the subject of decision by the consolidation courts and the other being that, in any case, these courts or authorities had no jurisdiction Under Section 27 to decide the question of title; they could not do so on the ground also that Srimati Lachmin was disentitled from raising the question in view of Sub-section (1) of Section 12 of the Act.

7. I have heard the Learned Counsel for the two sides and to my mind it is not necessary for disposing of this petition to enter into the controversy whether the consolidation authorities had jurisdiction or not to decide the question of title with respect to groves which otherwise are excluded from the scheme of consolidation, the reason is that Section 27 does not confer power on these authorities to decide questions of title in the proceedings held under its provisions.

8. The section, it is noteworthy, appears in the Chapter relating to enforcement of the scheme of consolidation. It will be noticed that Chapter 11 of the Act requires statement of tenure holders to be prepared. It also requires persons interested in disputing the correctness etc. of entries in the statement published Under Section 11 to prefer their claims within the prescribed period of

limitation. Any claim which might and ought to have been urged but was not urged will not be permitted to be raised subsequently. A question of title in respect of plots included in the holdings has to be raised and decided at that stage. The next Chapter then provides for the preparation of Chaks which have to be given to different tenure holders in lieu of the plots etc. held by them. These Chaks again are prepared after due opportunity has been given to the tenure holders to object on the proposals. And after the objections have been disposed of the Chaks are conferred finality by Section 23. Briefly therefore, the scheme of these two Chapters is firstly that all questions of title in respect of lands are disposed of in the first instance, and, secondly, that new Chaks are formed to show which plots shall in future be held by different tenure holders. The old plots belonging to them yield in favour of the Chaks freshly awarded to them.

9. Chapter IV in which Section 27 appears relates to enforcement of the consolidation scheme. It is in this background that Section 27 will have to be read and interpreted. The new revenue records which are to be prepared under its provisions are with a view to give effect in those records to the new allotments made to the tenure holders. The section does not permit questions of title to be raised or decided, much less any decision given or deemed to be given in proceedings held under Chapter 11 of Chapter III to be reopened or altered, modified or rescinded.

10. This is further proved by the fact also that the provisions of the UP Land Revenue Act, 1901 have been made applicable to those proceedings. Section 40 of this Act in making provision for settlement of disputes as to entries in annual registers has clearly provided that all disputes regarding entries in those registers shall be decided on the basis of possession while any such order shall not debar any person from establishing his right to the property in any civil or revenue court having jurisdiction. The term "possession" has also been defined in the same section as meaning possession based on succession or transfer or on such transfer and changes as are dealt with in Section 39. Section 39 refers to changes becoming necessary on account of any mistake or error arising from any accidental slip or omission.

11. It will thus be clear that even the provisions of the Land Revenue Act which govern the proceedings held Under Section 27 of the Consolidation of Holdings Act do not envisage an inquiry into title. The purpose, therefore, of Section 27 is to give effect to the consolidation scheme in the revenue papers and also to record any changes which might have become necessary on account of any transfer or succession or the like taking place in the meantime. An objection raising a question of title cannot be inquired into in these proceedings. The learned Standing Counsel referred me to sub S. (2) wherein it is laid down that "all entries in the record of rights prepared Under Section 27 shall be final and conclusive" and he argued that finality and conclusiveness conferred upon the entries showed that the legislature intended to confer jurisdiction to decide question of title as well. I do not think this is correct. Section 27 is intended to give effect to the consolidation scheme. The finality and conclusiveness provided for by sub-S. (2) cannot, therefore, mean beyond providing that the scheme as evidenced by the

entries as made in the revenue records will be final and conclusive. The finality or conclusiveness does not, and, indeed, cannot, confer jurisdiction to decide question of title at this stage.

12. I have carefully gone through the judgments of the Consolidation Officer, the Settlement Officer Consolidation and the Deputy Director Consolidation and to my mind it is impossible to get away from the conclusion that these authorities embarked upon a decision of question of title for which they had no authority under the law. They have proceeded in each one of these documents to settle question of title. Whatever meagre reference there is at one or two places to the fact of possession is incidental only while they actually decided the question of title which, however, was not open to them.

13. In the above view of the matter the three orders complained of are without jurisdiction. They are accordingly quashed. The Petitioner to get his costs from the Respondents.  
Petition allowed.