



AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 7800 of 1978

Kanti Kumar

.....Petitioner(s)

Versus

Board of Revenue and others

.....Respondent(s)

Counsel for Petitioner(s)	: S. K. Chaturvedi
Counsel for Respondent(s)	: C. S. C.

Court No. - 51

HON'BLE ARUN KUMAR, J.

1. Heard Sri S. K. Chaturvedi, learned counsel for the petitioner and learned Standing Counsel for the State respondent nos.1, 2 and 12. No one has put in appearance on behalf of the respondent nos. 3 to 10 or their heirs despite notice to them.

2. The present petition has been filed challenging the orders of the respondent no.2 – Additional Commissioner, Jhansi Division, Jhansi and respondent no.1 – Board of Revenue, U.P. at Allahabad, dated 26.04.1972 and 25.05.1978, respectively, arising out of proceedings under Section 229B/209 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ('Act' for short), whereby the suit instituted by the plaintiff-petitioner was dismissed after setting aside the judgment and decree of the Sub Divisional Magistrate, Jhansi dated 20.01.1971.

3. The facts of the case are that the petitioner was the original resident of Village Phuthera Pichhor, Tehsil & District Jhansi, which was acquired by the Government for use of defence forces and in lieu

thereof, the residents of said village were granted land in the neighbouring Village Pathesur. Initially, in around 1948-49, the petitioner and his father Jamuna Prasad along with Har Narayan & Har Dayal sons of Gaya Prasad were jointly allotted 40 acres of land for agricultural purposes, in Plot no.21 and 8 acres for cattle grazing, in Plot no. 1. The said fact is substantiated by the entry in the name of petitioner and other allottees in 1356 Fasli, over the entire 40 acres land comprised in plot no.21A. The said entry continued in 1359 Fasli and thereafter. In 1374 Fasli to 1376 Fasli, Kanti Kumar (petitioner), Jamuna Prasad (petitioner's father), Har Narayan and Har Dayal were recorded as Sirdar over plot nos.21/3 and 21/4 having an area 20 acres each and 8 acres of land in plot no.1.

4. Har Dayal filed a suit under Section 176 of the Act for division of holdings, which was allowed by the judgment and decree dated 17.05.1967, pursuant to which, the petitioner was allotted plot no.21/4/4 and his father Jamuna Prasad was allotted plot no.21/4/3. After partition, a dispute relating to the boundaries of Plot Nos. 21/3 and 21/4, arose, which was resolved by the order of the Sub-divisional Officer, Jhansi dated 23.10.1967, in demarcation proceedings under section 41 of the Land Revenue Act, 1901. The said order was passed after considering the objection of the respondent no.4.

5. Subsequently, the respondent nos. 3 to 9 started interfering in the peaceful possession of the petitioner over plot no. 21/4/4, claiming it to be their land being the successors-in-interest of Priya Lal, one of the allottee of the plot no.21. The Respondent no.4, initiated proceedings under Section 145 Cr.P.C. against the petitioner, in which an order dated 07.04.1970 was passed by the Sub Divisional Magistrate, Jhansi, evicting the petitioner from plot in question and putting the respondent no.4 in possession. Aggrieved by his eviction, the petitioner filed a suit under Section 229B of the Act alongwith Section 209 of the Act against the respondent nos. 3 to 10. The said suit was decreed by the judgment and decree of the Sub Divisional Magistrate dated 20.01.1971. Appeal

filed by the respondent nos.3 to 9 was allowed by the respondent no.2 by the order dated 26.04.1972. The second appeal filed by the petitioner before the respondent no.2 was dismissed by the order dated 25.05.1978. The aforesaid two orders passed by the appellate authorities are the subject matter of challenge in the present writ petition.

6. It is contended by the learned counsel for the petitioner that the revenue records relating to plot no. 21A and 21/4/4, right from 1356 Fasli to 1376 Fasli and then 1383 fasli to 1388 fasli, filed alongwith the supplementary Affidavit on record, shows that Kanti Kumar, the petitioner, was allotted 10 acres of land alongwith his father and two cousins. The renumbering of the plots numbers from 21A to 21/3 and 21/4 does not take away the right of the petitioner in plot no.21 in respect of 10 acres land allotted to him. It is further submitted that the plot number, which was jointly allotted to co-tenure holders at the time of initial allotment, was subsequently re-numbered and in the partition suit filed by one of co-tenure holder Har Dayal, the plot no.21/4 was allotted in the share of petitioner re-numbering it as plot no.21/4/4. However, it did not affect the right of petitioner in plot no.21 pursuant to initial allotment of 10 acres made to him. It is also stated that the defendants in the suit arrayed as respondent nos.3 to 10 in the present petition, claim their right in the said plot, being the legal representative of one Priya Lal, who was also allotted 10 acres of land in plot no.21, which was comprised in sub-plot no.21 Da. The defendants-respondents had claimed their right from Priya Lal in plot no.21, therefore, their claim of possession over the land recorded in the name of petitioner was unsustainable as neither in the written statement filed by them, nor in the orders of respondent nos.1 and 2, any finding has been recorded that the share of Priya Lal in plot no.21 was comprised in plot no.21/4.

7. Learned counsel for the petitioner further argues that the respondent no.2 while allowing the first appeal and reversing the decree has recorded an erroneous finding that the petitioner was never recorded in any revenue records by placing reliance on the Khasra entries of 1365

Fasli, ignoring the Khataunis of 1356 to 1376 Fasli, showing the name of plaintiff-petitioner over plot nos.21/4 and 21/3 along with three other co-tenure holders and plot no. 21/4/4 in the name of the petitioner in 1383 to 1388 fasli. It is further urged that the respondent no.2 erred in misreading the revenue records and relying on the order passed in proceedings under Section 145 Cr.P.C, denied the claim of the petitioner. The observation of respondent no.2 that the judgment and decree passed during the partition proceedings cannot be relied upon as Priya Lal was not party to the said proceedings, is misconceived and erroneous in view of the fact that the said partition proceedings was between the tenure holders of plot nos.21/3 and 21/4, which was never recorded in his name.

8. It is further argued that the respondent no.1 while dismissing the second appeal has observed that two different plots, one having 40 acres land belonging to plaintiff/petitioner alongwith Har Narayan, Har Dayal and Jamuna Prasad and another 10 acres belonging to Priya Lal, existed. However, has further held in the same paragraph that plaintiff-petitioner and his father was never the original tenure holder of the plot in dispute and the Lekhpal changed the entries from time to time to suit the interest of the plaintiff, which is based on no evidence. Submission is that the respondent no.1 has completely ignored the longstanding entries in the name of petitioner and his father alongwith Har Narayan and Har Dayal whose rights have not been disputed either by the defendant-respondents or by the respondent nos.1 and 2 in the judgments/orders impugned.

9. The contesting respondent nos.3 to 9 are unrepresented in the writ petition from the date of its filing. Perusal of the order sheet shows that several orders were passed, pursuant to which, notices were issued to the contesting respondents from time to time. However, neither the original respondent nos.3 to 10, nor their heirs substituted in the present petition have put in appearance through their counsels. As the matter is of 1978 and is listed in the category of 'Oldest Pending Case in this High Court for Priority Hearing', therefore, it was heard finally.

10. I have considered the submissions made by the learned counsel for the petitioner and learned Standing Counsel for the State respondents and perused the material available on record.

11. From the pleadings and material brought on record, the controversy essentially relates to the identity of the land originally allotted to the petitioner and the effect of subsequent renumbering and partition of the original holding. There is no dispute that the petitioner has founded his claim on the initial allotment made after acquisition of Village Phuthera Pichhor and on the revenue entries continuing from 1356 Fasli onwards. The Khatauni entries relied upon by the petitioner, which have been brought on record by means of the supplementary affidavit, indicate that the petitioner, his father Jamuna Prasad, Har Narayan and Har Dayal were jointly recorded over the original plot no.21A measuring 40 acres and that upon revision of the revenue records, the said holding came to be reflected as plot nos.21/3 and 21/4. Thereafter, pursuant to the decree passed in the partition proceedings under Section 176 of the Act, the petitioner's share stood carved out and recorded as plot no.21/4/4. These entries have neither been shown to have been cancelled by any competent authority nor declared to be fictitious or forged in any proceedings known to law.

12. The appellate court, while reversing the decree passed by the trial court, proceeded substantially on the premise that the petitioner was never recorded over the land in dispute and placed reliance upon certain Khasra entries of 1365 Fasli. The approach adopted by the appellate authority cannot be legally sustained. It is settled that while adjudicating a claim under Section 229B of the Act, the entire chain of revenue records has to be examined and a finding cannot be returned by isolating one entry while ignoring the continuous Khatauni entries extending over several Faslis. The impugned appellate order does not discuss the entries of 1356 Fasli, 1359 Fasli, 1374 to 1376 Fasli or the subsequent entries of 1383 to 1388 Fasli, despite the same constituting the principal documentary evidence relating to the petitioner's title. Failure to consider

material evidence amounts to a manifest error of law and vitiates the findings recorded.

13. The finding of the respondent no.2 that the petitioner had no recorded rights is, therefore, contrary to the documentary evidence available on record. A finding arrived at by ignoring relevant evidence and by taking into consideration only a part of the record is perverse in law and cannot be sustained in exercise of writ jurisdiction.

14. The reasoning adopted by the appellate authority that the decree passed in the partition proceedings could not be relied upon because Priya Lal was not a party thereto is equally misconceived. The partition proceedings admittedly related to the holding jointly recorded in the names of the petitioner, Jamuna Prasad, Har Narayan and Har Dayal. The case of the petitioner throughout has been that Priya Lal was allotted a separate extent of land and that the respondents claim through Priya Lal. If that is so, unless it was first established by cogent evidence that the holding claimed through Priya Lal formed part of plot no.21/4 or the petitioner's allotted share, the absence of Priya Lal from the partition proceedings could not render the partition decree ineffective inter se the recorded co-tenure holders. The appellate authority has recorded no finding, on the basis of any revenue record, map or other documentary evidence, that the share of Priya Lal was ever comprised in plot no.21/4 or, after partition, in plot no.21/4/4. In absence of such a finding, the conclusion reached by the appellate authority lacks any factual foundation.

15. The order passed in proceedings under Section 145 Cr.P.C. also could not have constituted the basis for negating the petitioner's title. Proceedings under Section 145 Cr.P.C. are confined to the question of actual possession on the relevant date and neither determine nor finally adjudicate title or tenancy rights, as held by the Hon'ble Supreme Court in the case of **Bhinka and others Vs. Charan Singh**, AIR 1959 SC 960. The aforesaid principle of law has been reiterated by the Apex Court in

the case of **Shanti Kumar Panda Vs. Shakuntala Devi, AIR 2004 SC 115**. The appellate authority, therefore, committed an error of law in treating the order passed under Section 145 Cr.P.C. as determinative of the petitioner's rights under Section 229B of the Act.

16. The Board of Revenue, while dismissing the second appeal, has itself noticed that there were two distinct allotments, namely one comprising 40 acres in favour of the petitioner, his father, Har Narayan and Har Dayal, and another allotment in favour of Priya Lal. Having returned such a finding, the Board could not have simultaneously concluded that the petitioner and his father were never original tenure holders of the land in dispute or that the revenue entries had been manipulated by the Lekhpal. Such conclusion is unsupported by any discussion of evidence and no material has been referred to indicating that the long-standing revenue entries in favour of the petitioner had ever been challenged, corrected or annulled in accordance with law. Findings resting on mere suspicion or conjecture, without reference to admissible evidence, cannot be sustained.

17. Although entries in the revenue records are not documents of title by themselves, long-standing revenue entries raise a rebuttable presumption regarding possession and recorded tenure until displaced by cogent evidence, as also held by the Hon'ble Supreme Court in the case of **Smt. Sawarni v. Smt. Inder Kaur, (1996) 6 SCC 223**. In the present case, the respondents failed to establish that the petitioner's recorded holding and the holding claimed through Priya Lal were identical. Equally, no material has been brought on record to demonstrate that the renumbering of the plots or the decree passed in the partition proceedings divested the petitioner of the rights flowing from the original allotment. The trial court had appreciated the documentary evidence in its proper perspective and rightly decreed the suit. The reversal of the said decree by the first appellate authority is based upon misreading of the revenue records, non-consideration of material documentary evidence and application of legally irrelevant

considerations. The Board of Revenue failed to correct these patent errors and instead affirmed findings which are self-contradictory and unsupported by the record.

18. It is well settled that the jurisdiction of this Court under Article 226 of the Constitution is supervisory and not appellate. Ordinarily, this Court does not interfere with concurrent findings of fact recorded by the revenue authorities. However, where such findings are shown to be vitiated by perversity, non-consideration of material evidence, misreading of documentary evidence, or reliance upon legally irrelevant considerations, interference in exercise of writ jurisdiction is not only permissible but warranted. In the present case, both the appellate authority and the Board of Revenue have failed to consider the continuous revenue entries relied upon by the petitioner, have proceeded on an erroneous assumption that the petitioner was never recorded over the land in dispute, and have attached determinative value to proceedings under Section 145 Cr.P.C., which are confined only to the question of possession. The impugned findings are therefore vitiated by patent errors of law and perversity, justifying interference under Article 226 of the Constitution.

19. Accordingly, the impugned orders dated 26.04.1972 passed by the Additional Commissioner, Jhansi Division, Jhansi and dated 25.05.1978 passed by the Board of Revenue, U.P. cannot be sustained and are liable to be quashed. The judgment and decree dated 20.01.1971 passed by the Sub-Divisional Magistrate decreeing the petitioner's suit under Sections 229B and 209 of the Act deserve to be restored.

20. The writ petition is, accordingly, allowed. The order dated 26.04.1972 passed by the Additional Commissioner, Jhansi Division, Jhansi and the order dated 25.05.1978 passed by the Board of Revenue, U.P. at Allahabad are hereby quashed. The judgment and decree dated 20.01.1971 passed by the Sub-Divisional Magistrate, Jhansi in favour of

the petitioner is restored. Consequential benefits shall follow in accordance with law. There shall be no order as to costs.

(Arun Kumar,J.)

August 05, 2026
Ashok Kr.