

Hansha And 5 Others vs State Of U.P. And 4 Others on 28 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44078

reserved on 03.03.2025

Delivered on 28.03.2025

Court No. - 50

Case :- WRIT - B No. - 1641 of 2020

Petitioner :- Hansha And 5 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Achal Singh,Ambuj Srivastava,Arvind Srivastava

Counsel for Respondent :- Bhupendra Kumar Tripathi,C.S.C.,Sunil Kumar Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Arvind Srivastava, learned counsel for the petitioners, Mr. Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for the Gram Sabha.

2. Brief facts of the case are that dispute relates to the plot No.474 area .0490 hectare (490 square meter) situated at Mauja-Lohta, Pargana-Dehat Amanat, Tehsil-Sadar, District-Varanasi. Petitioner Nos.1 to 5 and their ancestors were in possession of aforementioned plot No.474 area .0490 hectare for more than 70 years. According to the petitioners, they had constructed their houses over the part of the area of the aforementioned plot and in respect to the remaining area of the aforementioned plot petitioners are using the same for poultry and for keeping their animal live stock. Copy of the khatauni with effect from 1356 fasli to 1425 fasli are annexed along with the writ petition as Annexure No.1 in order to demonstrate that petitioners are recorded over the plot in question since

before the date of vesting. Petitioners belong to Scheduled Caste community and they were land less agricultural labourers as well as they are in possession over the same much prior to the relevant date for getting benefit of Section 122B(4-F) of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "U.P.Z.A.& L.R. Act). There was discrepancies in the revenue entry of the plot in question accordingly, suit under Section 144 of U.P. Revenue Code, 2006 was filed on behalf of petitioners for declaration that petitioners should be recorded as bhumidhar with transferable rights of plot No.474. The aforementioned suit was registered as suit No.743/ 2017. State of U.P. has filed his objection in the aforementioned suit. A report was called for from the Tehsildar in the aforementioned suit about the status of possession of the petitioners in respect to the plot No.474 area .0490 hectare, accordingly, report dated 05.05.2018 was submitted by Tehsildar stating that petitioners and their ancestors have been found in actual possession of plot No.474 in the year 1963 (1370 fasli). In the aforementioned report, it is also mentioned that petitioners have constructed their residential houses over the aforementioned plot and using the some area of the plot for keeping their animal live stock. It is also mentioned in the aforementioned report that petitioners belong to Scheduled caste community and were landless agricultural labourers. Trial court/ Assistant Collector vide judgment and decree dated 25.02.2019 dismissed the plaintiff suit only on the ground that name of petitioners were recorded under the category-4 and therefore, petitioners are not entitled to be recorded as bhumidhar with transferable rights over the plot No.474 area .0490 hectare. Against the judgment and decree of the trial court dated 25.02.2019, appeal was filed by petitioners before Commissioner Varanasi Division, Varanasi, which was registered as appeal No.00329/19 under Section 207 of U.P. Land Revenue Code, 2006. The aforementioned appeal was dismissed vide judgment dated 30.12.2019. Against the judgment dated 30.12.2019 second appeal under Section 208 of U.P. Revenue Code, 2006 was filed by the petitioners along with the prayer for condonation of delay. The aforementioned second appeal was registered as case No. SA/1335/2020. The Board of Revenue vide order dated 14.10.2020 dismissed the aforementioned second appeal hence this writ petition for the following relief:

"(i) a writ, order or direction in the nature of certiorari quashing the order dated 14.10.20 passed by Board of Revenue, order dated 30.12.2019 passed by the Commissioner, Varanasi Division, Varanasi and order 25.2.19 passed by Assistant Collector, First Class, Varanasi (Annexure Nos. 9, 8 & 7)."

3. This Court entertained the matter on 16.12.2020 and directed the parties to maintained status quo. In pursuance of the order dated 16.12.2020, Sate has filed his counter affidavit and petitioners have filed their rejoinder affidavit.

4. Learned counsel for the petitioners submitted that petitioners belong to Scheduled Caste Community and petitioners' ancestors were in possession of the plot in question much before the relevant date for getting benefit under Section 122B(4-F) of U.P.Z.A.& L.R. Act, as such suit under Section 144 of U.P. Revenue Code, 2006 filed by petitioners for recording their names as bhumidhar with transferable rights cannot be dismissed by revenue court. He further submitted that report submitted by Tehsildar in the aforesaid suit under Section 144 of U.P. Revenue Code, 2006 fully demonstrate that petitioners are in possession over the plot in question much before 1962-63 (1370 fasli) as well as petitioners belong to Scheduled Caste community, as such the suit filed by

petitioners under Section 144 of U.P. Revenue Code, 2006 cannot be dismissed on the ground mentioned in the impugned judgment passed by trial court. He submitted that first appellate court and second appellate court have also failed to examine the controversy involved in the matter in proper manner, as such the impugned judgment passed by trial court/ first appellate court/second appellate court cannot be sustained in the eye of law. He further submitted that in view of the plaint allegation as well as evidence on record, the plaintiffs are entitled to be recorded over the plot in question as bhumidhar with transferable rights. He submitted that in view of the plaint allegation, the revenue entry of the plot in question as well as report submitted by Tehsildar in the aforementioned suit under section 144 of U.P. Revenue Code, 2006, the petitioners are entitled to be recorded over the plot in question as bhumidhar with transferable rights in place of remanding the matter back before the trial court to decide the suit afresh. He placed reliance upon the following judgments of Hon'ble Apex Court as well as of this Court in support of his arguments:-

1. [2003 (94) RD 538 Manorey @ Manohar vs. Board of Revenue (U.P.) and others
2. (1999) 3 Supreme Court Cases 161 Ashwinkumar K. Patel Vs. Upendra J. Patel and others
3. (1999) 1 Supreme Court Cases 280 Keshav Deo and another Vs. State of U.P. and others.
4. (1999) 2 Supreme Court Cases 639 Bihar Supply Syndicate vs. Asiatic Navigation and others
5. Mr. Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for the Gram Sabha submitted that all the three courts have recorded findings of fact while dismissing the suit/first appeal/second appeal filed by petitioners, as such no interference is required against the judgment passed by respondents Nos.4, 3 and 2 respectively. They further submitted that plot in question was recorded in the name of the petitioners in Class-4 category, as such no right will accrue to petitioners to be recorded as bhumidhar with transferable rights. They further submitted that it is correct that Tehsildar has submitted the report in the aforementioned suit under Section 144 of U.P. Revenue Code, 2006 that petitioners are in possession since long over the plot in question, but since the revenue entry is of class-4 category, as such the suit of the petitioners under Section 144 of U.P. Revenue Code, 2006 cannot be decreed. They placed reliance upon the judgment of this Court in support of their arguments:-

1. 2022 (10) ADJ 62 Ajay Kumar and another vs. Union of India and 6 others.
2. 2006 (1) AWC 205 Kripal Singh son of Sri Sone Lal vs. State of U .P. through Secretary Board ...

6. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

7. There is no dispute about the fact that suit under Section 144 of U.P. Revenue Code, 2006 passed by petitioners claiming benefit of Section 122B(4-F) of U.P.Z.A.&L.R. Act was dismissed by trial court and judgment/ decree of trial court has been maintained in first appeal as well as second appeal. There is also no dispute about the fact that during pendency of the aforementioned suit under Section 144 of U.P. Revenue Code, 2006, a report was submitted by Tehsildar to the effect that petitioners belong to Scheduled Caste community and petitioners' ancestors are in possession much prior to 1962-63.

8. In order to appreciate the controversy involved in the matter, perusal of the report of the Tehsildar dated 05.05.2018 submitted in aforementioned suit under Section 144 of U.P. Revenue Code, 2006 which is annexed as Annexure No.6 to the instant writ petition will be relevant, which is as under:-

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9. Perusal of the report dated 05.05.2018 fully demonstrate that petitioners belong to Scheduled Caste Community and were landless agricultural labourers at the relevant time. The report further demonstrate that petitioners are in possession over the aforementioned plot since 1962-63 (1370 fasli).

10. So far as the suit under Section 229-B of the U.P. Z.A. & L.R. Act, now Section 144 of the U.P. Revenue Code, 2006 is concerned, the suit of aforementioned category, is treated to be a suit of special character and the same should be decided after framing issues and giving parties to lead evidence in accordance with law.

11. This Court in the case reported in 2020 (146) RD 186 Babu vs. Mahavir and Others has held that the suit under Section 229-B of the U.P. Z.A. & L.R. Act cannot be decided without framing issues and without affording opportunity to lead evidence to the parties. Paragraph nos. 2, 3 & 4 will be relevant for perusal which are as under:-

"2. The manner in which the suit instituted by the respondent no.1 under Section 229-B of U.P. Z.A. & L.R. Act has been decided by the impugned order dated 28.01.2019 cannot be appreciated. The trial court has neither framed issues nor has provided any opportunity of leading evidence to the parties to prove their respective cases. The provisions contained in Code of Civil Procedure has been given a go bye.

3. As already observed above by the Court in its order dated 21.02.2019, the proceedings under Section 229-B of U.P.Z.A & L.R Act are regular proceedings where declaration of rights in a holding is decided on the basis of evidence.

4. Learned counsel for respondent no.1 has also not been able to defend the impugned order; rather he appears to agree that the matter ought to have been remanded to the Sub-Divisional Officer concerned."

12. In the instant matter, suit under Section 144 of U.P. Revenue Code, 2006 was filed by petitioners in the year 2017 with the allegation that petitioners are entitled to the benefit of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act as petitioners' ancestors and petitioner's are in possession of the plot in question since 1962-63 (1370 fasli). Written statements were filed by State as well as a report dated 05.05.2018/10.05.2018 was submitted by the revenue authorities in the aforementioned suit. Trial court while deciding the aforesaid suit has mentioned in the judgment that issues were framed in the suit but there is no mention in the judgment that what issues were framed and in what manner they have been decided. The trial court has held that the entry in favour of petitioners is of Class-4

category, as such no right will accrue in favour of petitioners. It is also mentioned that in the written statement dated 19.05.2017 filed by Panel Advocate ((Revenue) that plot in dispute is recorded as banjar, although the written statement dated 19.05.2017 filed by panel Advocate (Revenue) was subsequently denied by filing another written statement stating that earlier written statement dated 19.05.2017 was filed without any authority as such the same should not be taken into consideration.

13. The judgment passed by the trial court dated 25.02.2019 cannot be sustained in the eye of law as there should be proper mention of all the issues in the judgment and there should be proper adjudication of the dispute by the trial court according to the issues framed in the suit after giving opportunity to lead evidence in the matter. The Judgment passed by the trial court has been maintained by the first appellate Court as well as second appellate court mentioning the same reasoning as mentioned by the trial court. There should be proper adjudication of the dispute by the trial court specially in the suit under Section 144 of U.P. Revenue Code.

14. In the instant matter, remand of the dispute before trial court is necessary as there should be proper exercise of jurisdiction by trial court after framing issues in the suit under Section 144 of U.P. Revenue Code 2006 considering the nature of entry of the plot in question as well as the plaint allegation for recording their name over the plot in question on the basis of long possession etc.

15. Considering the entire facts and circumstances of the case as well as ratio of law laid down by this Court in Babu (Supra), the impugned judgment dated 14.10.2020 passed by respondent No.2/ Board of Revenue, order dated 30.12.2019 passed by respondent No.3/ Commissioner, Varanasi Division, Varanasi and order dated 25.02.2019 passed by respondent No.4/ Assistant Collector, Ist Class Varanasi are liable to be set aside and the same are hereby set aside.

16. The writ petition stands allowed and matter is remitted back before respondent No.4/ trial court to register the suit on its original number and decide the same afresh by framing proper issues, if issue has not been framed and decide the suit afresh after giving opportunity to the parties to lead evidence in accordance with law expeditiously preferably within a period of three months from the date of production of certified copy of this order before him.

17. No orders as to cost.

Order Date:- 28.03.2025 PS*