
(2013) 12 AHC CK 0097

Allahabad High Court

Case No: Writ-B No. 62306 of 2013

Mohd. Ehsan Ali Khan
and Others

APPELLANT

Vs

Dy. Director of
Consolidation and
Others

RESPONDENT

Date of Decision: Dec. 13, 2013

Citation: (2014) 102 ALR 830 : (2014) 122 RD 45

Hon'ble Judges: Ram Surat Ram (Maurya), J

Bench: Single Bench

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Ayub Khan, for the petitioners and Sri Ashish Srivastav, for the respondents.

The writ petition has been filed against the order of Deputy Director of Consolidation (respondent-1) dated 4.10.2013, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to plot 1054 of village Nariyawal, pargana and district Bareilly, which was recorded in basic consolidation year khata 102, in the name of Aiwaz Khan (grand-father of the petitioners). The respondents raised a dispute claiming co-tenancy in the land in dispute. Assistant Consolidation Officer, by order dated 6.12.1987, directed to recording the names of respondents-3 to 7 (hereinafter referred to as the respondents), as co-sharers in the land in dispute. The petitioners filed an appeal against the aforesaid order. The appeal was allowed, by order dated 12.12.1990 and order of Assistant Consolidation Officer was set aside and the case was remanded to Consolidation Officer for decision on merit. After remand, it is alleged that Consolidation Officer, by order dated 27.5.1998, rejected the objection of the respondents and directed for recording the names of the petitioners as the heirs of Aiwaz Khan.

3. The respondents filed an appeal (registered as Appeal No. 1545/1753) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by order dated 17.8.1999 found that order dated 27.5.1998 was neither written in the hand writing of the Consolidation Officer nor bear his signatures, as such it was held as fabrication in the order sheet. On these findings the appeal was allowed and order dated 27.5.1998 was set aside and the case was again remanded to the Consolidation Officer to decide the case on merit after giving opportunity to the parties for adducing evidence and hearing them.

4. The petitioners filed two revisions (registered as Revision No. 155/362 and 163/371) from the aforesaid order. Both the revisions were consolidated and heard by Deputy Director of Consolidation, who by order dated 4.10.2011 held that in previous consolidation the land in dispute was recorded in the name of Aiwaz Khan, grand father of the petitioners. The respondents did not adduce any evidence, for such a long time in order to prove their co-tenancy. Their claim for co-tenancy right in the land in dispute was barred u/s 11A of the Act. On these findings, the revisions were allowed and order of Settlement Officer Consolidation dated 17.8.1999 was set aside. Israr Ali Khan (now represented by respondents-6 and 7) filed an application for recall of the order dated 4.10.2011, which was allowed by order dated 24.6.2013. Thereafter, the revisions were again heard by Additional Collector/Deputy Director of Consolidation, who by order dated 26.7.2013, again held that as in previous consolidation the land in dispute was recorded in the name of Aiwaz Khan, grand father of the petitioners. The respondents did not adduce any evidence, to prove their co-tenancy and their claim in the land in dispute was barred u/s 11A of the Act. On these findings, the revisions were again allowed and order of Settlement Officer Consolidation, dated 17.8.1999, was set aside.

5. Thereafter Shamshad Ali Khan and others (respondents-3 to 5) filed an application for recall of the order dated 26.7.2013, in which they had stated that Shahenshah Ali Khan (the father of the petitioners) had died on 11.8.2012 and Israr Ali Khan died on 14.9.2012 but their heirs were not substituted. After recall of the order dated 24.6.2013, no notice was issued for hearing of the revisions, on merit to them and the order dated 26.7.2013 was passed ex-parte against them. The recall application was heard by Deputy Director of Consolidation, who by the impugned order dated 4.10.2013, held after restoration of the revisions, no notice was issued to Shamshad Ali Khan and others, as such the order dated 26.7.2013 was an ex-parte order. As after remand by the order dated 12.12.1990, no evidence was recorded by the Consolidation Officer nor any order was passed by him. Settlement Officer Consolidation, by order dated 17.8.1999 found that the order dated 27.5.1998, was neither written in the hand writing of the Consolidation Officer nor bear his signatures, as such it was held that order dated 27.5.1998 was a fabricated order. The appeal was rightly allowed by Settlement Officer Consolidation and revisions have no merits. On these findings, the revisions were dismissed. Hence this writ petition has been filed.

6. The Counsel for the petitioners submitted that the land in dispute was recorded in the name of Aiwaz Khan, grand father of the petitioners, in previous consolidation. No objection was filed by the respondents claiming co-tenancy over the land in dispute. Their claim for co-tenancy right in the land in dispute is barred u/s 11A of the Act. The respondents did not adduce any evidence, in order to prove their co-tenancy. They are merely harassing the petitioners. On the application of the respondents, order dated 4.10.2011 was set aside and after hearing the parties and the revision was heard on merit and allowed by order dated 26.7.2013. The order dated 26.7.2013 has been again illegally recalled. On the basis of the order of Assistant Consolidation Officer dated 6.12.1987, reference was made in favour of the respondents, therefore they are prolonging the proceedings in one way or other although they have no right over the land in dispute.

7. I have considered the arguments of the counsel for the parties and examined the record. The petitioners could not challenge the findings of Settlement Officer Consolidation and Deputy Director of Consolidation that order of Consolidation Officer dated 27.5.1998, was neither written in his hand writing nor bear his signatures and it was a fabricated order. As such no illegality has been committed by Settlement Officer Consolidation in setting aside the order of Consolidation Officer dated 27.5.1988. Admittedly order of Assistant Consolidation Officer 6.12.1987 was set aside and the case was remanded for trial of the claim of the respondents afresh on merit by Settlement Officer Consolidation, in the appeal filed by the petitioners, by order dated 12.12.1990. But after remand, no trial has been conducted by Consolidation Officer, rather a fabricated order dated 27.5.1998 was set up, although in compliance of the order dated 12.12.1990, trial was liable to be conducted. In such circumstances no interference is required by this Court.

8. So far as the argument of the petitioners that the respondents on the basis of order of Assistant Consolidation Officer dated 6.12.1987, got a reference made in their favour, therefore they are prolonging the proceedings, is concerned, it is sated that in basic consolidation records, names of the respondents was not recorded over the land in dispute. The order dated 6.12.1987 has already been set aside. Till today, there is no order by which co-tenancy right has been given to the respondents in the land in dispute. In case, the land in dispute was given to them in pursuance of the order dated 6.12.1987, then the petitioners may file an application for restoring the land in dispute to them before the appropriate authority. However this is a separate issue.

9. In view of the aforesaid discussion, the orders of Settlement Officer Consolidation and Deputy Director of Consolidation do not suffers from any illegality. The writ petition has no merit and is dismissed. However, the Consolidation Officer may expedite the hearing and conclude the trial expeditiously, preferably within a period of six months from the date of production of a certified copy of this order before him.