
(2001) 2 AWC 1003 : (2001) 92 RD 317

Allahabad High Court

Case No: C.M.W.P. No. 4883 of 2001

Bechan Ali

APPELLANT

Vs

Deputy Director of
Consolidation/Additional
District Magistrate and
Others

RESPONDENT

Date of Decision: Feb. 19, 2001

Acts Referred:

Constitution of India, 1950 " Article 226#Limitation Act, 1963 " Section 5#Uttar Pradesh
Consolidation of Holdings Act, 1953 " Section 4, 52, 52(1), 53B, 9A#Uttar Pradesh
Consolidation of Holdings Rules, 1954 " Rule 109, 109A

Citation: (2001) 2 AWC 1003 : (2001) 92 RD 317

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: H.P. Mishra, for the Appellant; R.K. Chitra Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Narain, J.

The Petitioner seeks to quash the order dated 31.1.2001 passed by the Deputy Director of Consolidation, respondent

No. 1 whereby the revisions have been allowed and the delay in filing the objections has been condoned.

2. Briefly, stated the facts, are that the village Sonari, district Siddharth Nagar was notified u/s 4 of U.P. Consolidation of Holdings Act, 1953 (in

short the Act). In the basic year khatauni, the names of Gopal Krishna Bansikar, respondent No. 3, Anant Bansikar sons of Ram Narain and

Sukhdeo Prasad son of Ram Dayal, respondent No. 2 over the disputed plots were recorded.

3. The version of the Petitioner is that he was in possession over the disputed plots. He filed objection u/s 9A of the Act. The Consolidation

Officer, vide order dated 28.1.1971 allowed the objection and passed an order to delete the names of the contesting respondents. This order,

however, was not given effect to. The Petitioner is alleged to have filed an application under Rule 109 of the U.P. Consolidation of Holdings Rules

to give effect to the order passed by the Consolidation Officer on 28.1.1971. The Consolidation Officer allowed the application vide order dated

15.9.1994 directing to make the entries in accordance with the order passed by the then Consolidation Officer dated 28.1.1971.

4. Respondent Nos. 2 to 4 filed Appeal No. 1870 of 1998-99 on 25.11.1998 against the order of the Consolidation Officer dated 28.12.1971

along with an application to condone the delay in filing the appeal before the Settlement Officer of Consolidation. Another Appeal No. 1869 of

1998-99 was filed against the order dated 15.9.1994 before the Settlement Officer of Consolidation. Both these appeals were dismissed by the

Settlement Officer of Consolidation on 31.12.1999. Respondent Nos. 2 to 4 filed two separate revisions against the orders passed by the

Settlement Officer of Consolidation. The Petitioner filed an application on 27.12.2000 to decide the question of limitation first. Respondent No. 1

by the impugned order dated 31.1.2001 rejected the application of the Petitioner and directed that the revisions be heard on merits. This order has

been challenged in the present writ petition.

5. I have heard Sri H.P. Mishra, learned Counsel for the Petitioner and Sri R.K. Chitra Gupta, learned Counsel for the contesting respondents.

6. Learned Counsel for the Petitioner contended that the appeals and the revisions filed by the contesting respondents were not maintainable. It is

urged that the village was de-notified u/s 52 of the Act vide Notification dated 3.3.1979 and after the said date, neither any appeal nor any revision

against any order passed by the consolidation authorities was maintainable. Admittedly Section 5 of the Limitation Act will be applicable to any

appeal or revision filed before the consolidation authorities. Section 53B of the Act provides that Section 5 of the Indian Limitation Act, 1963 shall

apply to the applications, appeals or revisions under the proceedings under the Act or the Rules made there under. The question as to whether

even after de-notification the applications, appeals or revisions can be filed along with an application to condone the delay u/s 5 of the Limitation

Act.

7. In *Bhagwati v. Deputy Director of Consolidation and Ors.* 1983 ALJ 1250 it was held that an appeal or revision can be filed even after de-

notification against an order which was passed prior to the date of the de-notification although the limitation for filing the appeal or revision has

already expired. In *Mathani Singh v. Asstt. Director of Consolidation Ghazipur* 1990 RD 258, it was held that a restoration application can be filed

to set aside the ex parte order even after de-notification of the village u/s 52 of the Act. In *Radhey Shyam and Anr. v. The Deputy Director of*

Consolidation Bhadohi and Ors. 1996 RD 231 an order passed by the Deputy Director of Consolidation was sought to be recalled on the ground

that it was ex parte even after the de-notification of the village. The Court held that even after de-notification, the Deputy Director of Consolidation

had jurisdiction to recall the order if the order was passed without giving opportunity to the other side. Various decisions were considered by me in

Ram Rati v. Deputy Director of Consolidation Banda and Ors. 1998 RD 204 wherein the view taken by earlier decisions was followed holding

that even after de-notification, an appeal or revision is maintainable if the delay is explained by the applicant.

8. Learned Counsel for the Petitioner has placed reliance upon the decision in *Writ Petition No. 5809 of 1985 Ram Briksh v. Deputy Director of*

Consolidation Gorakhpur and Ors. where in it was held that an objection purporting to be u/s 9A(2) can be filed only after the notification u/s 4 of

the Act has been issued and before issuance of a notification u/s 52(1) of the Act. It was a case where the objection itself was to be filed before

the de-notification u/s 52 of the Act. The Court itself made the observation that in case, the objections were filed before de-notification u/s 52 of

the Act, the position would be different. It was not a case where an appeal or revision was filed after de-notification, along with an application to

condone the delay in filing such appeal or revision. In Raja Ram and Others Vs. The Dy. Director of Consolidation and Others, it was held that a

person cannot approach the consolidation authorities to give effect to an order under Rule 109A read with Section 52 of the Act. In Nanhki v.

Deputy Director of Consolidation Pratapgarh and Ors. 1995 RD 264. it was held that if the village has been de-notified by issuance of notification

u/s 52(1) of the Act, an application to make the correction is not applicable. These cases have no application to the facts of the present case.

9. In the present case, admittedly in the basic year khatauni, the names of the contesting respondents were recorded. The Petitioner is alleged to

have filed application for expunging their names and to record his name as the sole tenure holder on the basis of adverse possession. The

contention of the Petitioner is that in fact no proceedings were taken by the Petitioner u/s 9A of the Act and the Consolidation Officer had not

passed any order on 28.1.1971. The entire proceedings are fraudulent and secondly, he was not given any notice of such proceedings. Thirdly, it

may be noted that the Consolidation Officer is alleged to have passed the order on 28.1.1971 expunging the names of the contesting respondents

from the revenue record and directing the name of the Petitioner to be recorded as sole tenure holder. This entry was not given effect to and the

Petitioner is alleged to have filed an application on 20.9.1992 to give effect to the order passed on 28.1.1971 and in pursuance to that application,

the entries are alleged to have been made in favour of the Petitioner on 15.9.1994. The Deputy Director of Consolidation having found that there

was Justification to condone the delay and to hear the revisions on merits, I do not find that it is a fit case for interference under Article 226 of the

Constitution. The matter will be decided on merits by the Deputy Director of Consolidation.

10. The writ petition is, accordingly, dismissed.