
AIR 1999 All 258 : (1999) 2 AWC 1415

Allahabad High Court

Case No: C.M.W.P. No. 8411 of 1999

Ranjeet and others

APPELLANT

Vs

Deputy Director of
Consolidation, Ballia
and another

RESPONDENT

Date of Decision: March 19, 1999

Acts Referred:

Constitution of India, 1950 " Article 226, 227#Uttar Pradesh Consolidation of Holdings Act,
1953 " Section 11, 48, 9

Citation: AIR 1999 All 258 : (1999) 2 AWC 1415

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Sankatha Rai, for the Appellant; A.K. Rai and S.N.Singh, for the Respondent

Judgement

M.L. Singhal, J.

This is a writ petition under Article 226/227 of the Constitution of India for issuance of a writ of certiorari quashing the

impugned order dated 18th December, 1998 (Annexure-1 to the writ petition), passed by Deputy Director of Consolidation, Ballia (respondent

No. 1) and further quashing the proceedings in pursuance thereof in Tej Bahadur v. Ranjeet and others, Case No. 408 and in Ranjeet and another

v. Sarvjeet, Case No. 409, pending before Consolidation Officer, Sikanderpur, Ballia.

2. I have heard the learned counsel for the petitioners, the learned counsel for the respondent No. 2, and the learned standing counsel for the

respondent No. 1. With the consent of the learned counsel for the parties, the writ petition is finally disposed of at the admission stage.

3. Undisputedly, the petitioners' objections, preferred u/s 9 of the U. P. Consolidation of Holdings Act (hereinafter referred to as the Act only),

the Consolidation Officer consolidated both the objections, and passed a single order on 14th March, 1997 allowing the petitioners' objections.

Aggrieved by the said order, the respondent No. 2 preferred appeal before the Settlement Officer, Ballia, filed restoration applications and during

the pendency of appeals also preferred Revision before the Deputy Director of Consolidation (respondent No. 1) u/s 48 of the Act along with

application for condonation of delay u/s 5 of the Indian Limitation Act. Both the restoration applications were dismissed for default on 31.8.1998.

In appeal and revision, both the parties appeared. The petitioners also filed cross-appeal. Both the appeals were consolidated. In revision petition

before the Deputy Director of Consolidation, Ballia, the petitioners on 8.12.1998 moved applications and raised specific plea challenging the

jurisdiction of the Court to entertain and decide the revision in view of the pendency of the appeals before the Settlement Officer, Ballia. The

petitioners contended that as the appeals were pending, the Deputy Director of Consolidation had no jurisdiction to decide the revision. The

Deputy Director of Consolidation overruled the petitioners' objection and allowed revision by the impugned order dated 18.12.1998, and has

remanded the case for fresh adjudication before the Consolidation Officer on the petitioners' objections u/s 9 of the Act.

4. The only point, which arises for adjudication in this writ petition, is whether the respondent No. 2 having filed appeal against the order dated

14th March, 1997, the revision before the Deputy Director of Consolidation was maintainable. In *Sontosh Kumar v. U. P. Sanchalak Chakbandi*,

1998 RD 578, a Bench of this Court has held that the revision petition u/s 48 preferred directly without filing appeal is not maintainable. Another

Bench of this Court in *Manmohon v. Deputy Director of Consolidation* 1996 AWC 158, has also held that challenge in revision u/s 48 of the Act

without availing remedy of appeal is destructive of statutory remedy. In the present case, the appeal preferred by the respondent No. 2 and cross-

appeal thereto filed by the petitioners were already pending before the Settlement Officer, Ballia. Section 11 of the Act specifically provides for

appeal against the order passed by the Consolidation Officer. Where the appeal is pending, it is not appropriate for the Deputy Director of

Consolidation to interfere in revision, specially, when the scope of interference in appeal is much wider than the scope of interference in revision.

5. The learned counsel for the respondent No. 2 argued that the remedy under Article 226/227 of the Constitution of India is equitable remedy, the

order passed by the learned Consolidation Officer shows that the objection of the petitioners u/s 9 of the Act was moved after a period of twenty

years, the case was not registered, no notice was given to the respondent No. 2 and as such, it is not a fit case for exercise of equitable jurisdiction

under Article 226/227 of the Constitution of India. Further, the learned counsel argued that u/s 48 of the Act the Deputy Director of Consolidation

can exercise jurisdiction suo motu, as has been done by him in the present case, apparent from the observations appearing in the impugned order.

The learned counsel relied upon a Full Bench decision of this Court in Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and Others, ;

Jagdishwar Sahai v. Deputy Director of Consolidation 1984 RD 244 and in Parahu v. Deputy Director of Consolidation, U. P. at Gorakhpur 1964

ALJ 240. In Parahu v. Deputy Director of Consolidation, U. P. at Gorakhpur (supra), a Division Bench of this Court observed that where in

revision the Deputy Director of Consolidation acts in excess of jurisdiction vested in him u/s 48 of the Act, but his order is proper, equitable and

just order, the High Court should not issue writ for setting aside such an equitable order. In Jagdishwar Sahai v. Deputy Director of Consolidation

(supra), this Court observed that even where an appeal lying from an order of consolidation authority is not filed, the revisional authorities have

wide powers to entertain revisions. In Ramakant Singh v. Deputy Director of Consolidation, U. P. (supra). In para 17 of the Law Report, relied

upon by the learned counsel for the respondent No. 2, the Full Bench of this Court observed :

After the record has been called for by the Deputy Director of Consolidation u/s 48 of the U. P. Consolidation of Holdings Act he should

examine"" the record to decide whether it was a fit case for exercise of the revisional jurisdiction suo motu. Such opinion shall have to be formed

even where the application in revision moved by a party is defective having been made beyond the prescribed, period of limitation or alt the

necessary parties have not been impleaded.

If the Deputy Director of Consolidation finds that the case requires further hearing he shall give notice to all the necessary parties irrespective of

whether they were or were not impleaded in the application and after giving them reasonable opportunity of hearing pass such orders as he thinks

fit. Where the application in revision is not defective and is maintainable the exercise of revisional jurisdiction shall be at the instance of the parties

and not suo motu.

6. The facts of these three cases relied upon by the learned counsel for the respondent No. 2 are different. In all these three cases the appeal

before the Settlement Officer was not pending, in the instant case, as seen above the appeal and cross-appeals were pending before the Settlement

Officer (Consolidation), the petitioners specifically urged before the Deputy Director of Consolidation that in view of the pendency of the appeal,

the revision was not maintainable. The present case is a case where the Jurisdiction exercised by the Deputy Director of Consolidation is

destructive of the statutory remedy of appeal and it is a fit case which calls for interference in petitions under Article 226/227 of the Constitution of

India.

7. In the result, the petition succeeds, and is hereby allowed. The impugned judgment, dated 18.12.1998 (Annexure-1 to the writ petition), passed

by the Deputy Director of Consolidation, respondent No. 1, is hereby quashed, and the further proceedings in pursuance thereof in Tej Bahadur v.

Ranjeet and others, Case No. 408 and Ranjeet and others v. Sarvjeet, Case No. 409, pending before the Consolidation Officer. Sikanderpur,

Ballia, are also hereby quashed.

8. No order as to costs.