

(2000) 01 AHC CK 0067

Allahabad High Court

Case No: C.M.W.P. No. 9761 of 1997

Nar Singh

APPELLANT

Vs

Deputy Director of
Consolidation, Gorakhpur and
others

RESPONDENT

Date of Decision: Jan. 18, 2000

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11(1), 11(2), 48, 9A

Citation: (2000) 1 AWC 791 : (2000) 91 RD 199

Hon'ble Judges: Shitla Prasad Srivastava, J

Bench: Single Bench

Advocate: S.S. Tripathi, for the Appellant;

Final Decision: Dismissed

Judgement

Shitla Prasad Srivastava, J.

Heard Sri S. S. Tripathi learned counsel for the petitioner.

2. By means of this writ petition, the petitioner has sought the relief for quashing of the impugned orders dated 25.2.1997 and 19.6.1995 passed by the respondent Nos. 1 and 2 respectively (Annexures-4 and 2 to the writ petition). The revision which was filed by the petitioner before the Deputy Director of Consolidation was against the order passed by the Settlement Officer, Consolidation exercising powers of the appellate authority. The appellant court in the appeal filed u/s 11 of the U. P. Consolidation of Land Holdings Act granted Interim order, which was challenged by the petitioner in revision u/s 48 of the Act.

3. Learned counsel for the petitioner urged that there is no doubt that the order passed by the appellate authority's interlocutory order but nevertheless the order passed by the appellate authority is not under the provisions of the U. P. Consolidation of Land Holdings Act and there is no specific provision in the U. P.

Consolidation of Land Holdings Act for grant of stay order nor the provisions of the CPC are applicable, therefore, the appellate authority had no jurisdiction to pass the stay order. In support of his argument, Sri Tripathi placed before the Court a decision reported in 1993 RD 30. in which the Court has held that stay order can be granted and he argued that this decision is applicable only in those cases where there are special facts and circumstances but no special facts and circumstances exist in the present case. His further submission is that if the authority who has no jurisdiction to pass the stay order has passed the order it shall be deemed that the said order has been passed mechanically, and not by applying mind, therefore, the order liable to be quashed.

4. After hearing the learned counsel for the petitioner. I am of the view that the contention raised by the petitioner is not correct. From the perusal of the provisions of Section 48. it is clear that no order of interlocutory in nature can be challenged u/s 48 of the Act. Section 48 of the U. P. Consolidation of Land Holdings Act, which is quoted below :

"(1) Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings : or as to the correctness, legality or propriety of any order (other than an interlocutory order) passed by such authority in the case of proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit :

(1) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under subsection 13).

(2) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard. refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

Explanation 1.--For the purpose of this section, Settlement Officer Consolidation, Consolidation Officers. Assistant Consolidation Officer, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation 2.--For the purposes of this section the expression interlocutory order in relation to a case or proceeding, means such order deciding any matter arising in such case or proceedings or collateral thereto as does not have the effect to finally disposing of such case or proceedings."

From the perusal of this Section, it is crystal clear that the Director of Consolidation cannot entertain revision against the Interlocutory order u/s 43 of the U. P. Consolidation of Land Holdings Act. Section 11 (2) of the U. P. Consolidation of Land Holdings Act shows that Settlement Officer. Consolidation hearing an appeal under sub-section (1) shall be deemed to be a Court of competent Jurisdiction. Section 11

of the U . P. Consolidation of Land Holdings Act is also quoted below :

"Section 11.

Appeals.--(1) Any party to the proceedings u/s 9A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation who shall after affording opportunity of being heard to the parties concerned give his decision thereon, which except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

(2) The Settlement Officer, Consolidation hearing an appeal under sub-section (1) shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any law for the time being in force notwithstanding."

5. Thus, if the aforesaid two provisions are read together, it is apparent that the Settlement Officer, Consolidation was acting as a Court and had full jurisdiction to grant or refuse the stay, which is inherent power of the Court and if an order was passed against the party, it was interlocutory order during the pendency of the appeal and no revision u/s 48 of the U. P. Consolidation of Land Holdings Act was maintainable, therefore, the present writ petition filed against the order rejecting the revision against the interlocutory order, has no force and is accordingly dismissed.