
(1965) 35 AWR 416

Allahabad High Court

Case No: Sp. Appeal No. 39 of 1964

Thakur Sant Bux Singh

APPELLANT

Vs

S.G. Singh, Deputy
Director of
Consolidation, Lucknow
and others

RESPONDENT

Date of Decision: Jan. 12, 1965

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 27, 49#Uttar Pradesh
Consolidation of Holdings Rules, 1954 " Rule 74, 80

Citation: (1965) 35 AWR 416

Hon'ble Judges: M.C. Desai, C.J; Lakshmi Prasad, J

Bench: Division Bench

Advocate: Standing Counsel Uma Shankar for Respondents Nos. 1 and 2, K.S. Verma,
(absent) for Respondents Nos. 3 to 7, for the Respondent

Final Decision: Dismissed

Judgement

Lakshmi Prasad, J.

This is a special appeal from the judgment dated January 23, 1964 of a learned single
Judge of this Court dismissing

the Appellant's writ petition under Article 226 of the Constitution of India.

2. The allegation of the Appellant is that he along with the widow of his brother Fateh
Singh, namely, Respondent No. 8 has been the owner in

possession since long of groves Nos. 985 and 1070 measuring one bigha 11 biswas and
two bighas seven biswas respectively situate in village

Sithauli Kalan, Tahsil Mohanlalganj, District Lucknow. He further alleges that it was on 8th January, 1960 that C.H. Form 38 was served on him

when he came to know about the incorrect entries made surreptitiously by the village Lekhpal in favour of Respondents Nos. 3 to 7. According to

the said entries 15 biswas of grove in plot No. 985 stands recorded in the name of Respondent No. 3 whereas one bigha four biswas of the grove

in plot No. 1070 stands recorded in the name of Respondents Nos. 4 to 7. The Appellant preferred an objection under Rule 80 of the

Consolidation of Holdings Rules, 1954 on 11th January, 1960 subsequent to the service of C.H. Form 38 on him on 8th January, 1960. The said

objection of the Appellant was dismissed by the Settlement Officer Consolidation Respondent No 2 by his order dated 27th February, 1960.

Aggrieved by that order the Appellant preferred a revision u/s 48 of the U.P. Consolidation of Holdings Act before the Deputy Director of

Consolidation Respondent No. 1, but that too was dismissed on 17th September, 1960. The allegation of the Appellant is that the said

consolidation authorities exceeded their jurisdiction in deciding the question of title which could not be done in the proceedings u/s 27 of the U.P.

Consolidation of Holdings Act It is further alleged by the Appellant that Rule 80 of the U.P. Consolidation of Holdings Rules which purports to

confer jurisdiction on consolidation authorities to determine the question of title, is ultra vires in so far as it goes beyond the provisions of the Act

itself. Accordingly, the prayer of the Appellant in the petition is for a writ of certiorari quashing Rule 80 of the U.P. Consolidation of Holdings

Rules and the aforesaid two orders of the consolidation authorities, with a further prayer that a writ of mandamus may issue forbidding the

Respondents to act upon the aforesaid orders of Respondents Nos. 1 and 2.

3. The petition has been contested by the Respondents.

4. The learned single Judge before whom the petition came up for hearing dismissed it on the ground that the sole point raised before him that Rule

80 of the U.P. Consolidation of Holdings Rules being against the principle of natural justice deserved to be struck down, was without any

substance. Hence the Petitioner has come up in appeal.

5. We have heard the learned Counsel for the parties at some length. The Appellants counsel argued before us that the said Rule 80 deserved to

be struck down, firstly, because the said rule and those preceding it beginning from Rule 74 having been interpreted by this Court in the case of

Kumbha Karan v. S.C. Lal Sexena (1) (1961 A.W.R. 526) and in an unreported decision of this Court in Husain Abbas v. Brij Lal (2) (Spl. A.

No 89 of 1962) as not conferring jurisdiction to decide questions of title, must be taken to have failed to achieve the purpose with which they came

to be framed having in view the provisions of Section 27 of the U.P. Consolidation of Holdings Act and secondly, because they are discriminatory

in so far as they envisage a procedure quite different from that envisaged by Section 12 of the Act pertaining to the determination of questions of

title in respect of holdings included in the consolidation scheme. The argument in this behalf is that in case of a dispute of bhumidhari rights in

respect of a holding included in the consolidation scheme the procedure envisaged by the Act and the Rules framed thereunder for the

determination of such dispute is materially different from that envisaged by Rules 74 to 80 pertaining to bhumidhari rights in grove plots, and hence

Rules 74 to 80 are, obviously discriminatory and must accordingly be struck down. We are unable to accept the contention. As is obvious from the

afore-mentioned arguments, both these contentions proceed on the assumption that Section 27 of the U.P. Consolidation of Holdings Act

concerns itself with the determination of questions of title. We are of opinion that such is not the position notwithstanding the provisions of Sub-

section (2) of Section 27 that all entries in the record of rights and in the map prepared under Sub-section (1) shall be final and conclusive. It will

appear from a perusal of Sub-section (1) of Section 27 that action thereunder has to be taken after the consolidation scheme has come into force

with a view to correct the records so as to make them in conformity with the scheme and also with a view to take notice of any changes taking

place meanwhile as a result of succession, transfer or the like. In the very nature of things, such a correction of records in order to make them

uptodate can have little to do with the determination of questions of title, particularly when as mentioned in Sub-section (1) of Section 27 itself, this

correction has to be carried out in accordance with the provisions of U.P. Land Revenue Act, 1901 Merely because Sub-section (1) of Section

27 while saying that the correction is to be carried out in accordance with the provisions of the U.P. Land Revenue Act also says that the

provisions of the U.P. Land Revenue Act shall be applied subject to such modifications and alterations as may be prescribed, it does not and can

not be taken to mean that such modifications and alterations under the provisions of U.P. Land Revenue Act can be introduced by means of rules

as would entitle the authorities charged with the task of making corrections to determine questions of title. So Sub-section (1) of Section 27 of the

Act must necessarily be interpreted as not concerning itself with the determination of questions of title. The wide phraseology of Sub-section (2)

cannot be a justification for giving a different interpretation to Sub-section (1) of Section 27. On the other hand, it is Sub-section (2) that has to be

interpreted in the light of the purpose and object of Sub-section (1). Judged in that background Sub-section (2) of Section 27 can only mean that

the entries once corrected in accordance with Sub-section (1) cannot be, subsequently, questioned, that is, there can thereafter be no relief for

mere correction of entries. Thus we fail to see how Sub-section (2) of Section 27 can bar a claim of title raised independently of the entries. Both

the cases referred to in the arguments of the Appellant's counsel support the view that Section 27 does not concern itself with the determination of

questions of title. In the case reported in 1961 Allahabad Weekly Reporter it is observed on page 529:- ""The finality and conclusiveness provided

for by Sub-section (2) cannot therefore, mean beyond providing that, the scheme as evidenced by the entries as made in the revenue records will

be final and conclusive. The finality or conclusiveness does not, and, indeed, cannot, confer jurisdiction to decide questions of title at this stage."" In

the unreported case the material observations are:

... We are of opinion that u/s 27 of the U.P. Consolidation of Holdings Act, the provisions of the U.P. Land Revenue Act are applicable, and at

the stage of consolidation proceedings, a consolidation authority is concerned solely with the question of possession. If any such erroneous finding

has been given by the consolidation Court, that would merely be treated as an observation and would have no binding force in law. It can be

disregarded by courts of law and would not affect the rights of Appellant so far as the question of title is concerned.

6. We are therefore of opinion that Section 27 of the Act does not concern itself with the determination of questions of title and that Rules 74 to 80

cannot be struck down either on the ground that they are discriminatory because they prescribe a procedure different from that envisaged by the

Act for the determination of questions of title pertaining to the holdings included in the consolidation scheme or on the ground that by prescribing

the procedure they do, they have failed to achieve the object of Section 27 of the Act. Since no other point has been urged for striking down any

of Rules 74 to 80, we reject the contention of the Appellant's counsel and conclude that Rule 80 cannot be quashed.

The only other point that has been urged by the Appellant's counsel is that the orders passed by Respondents Nos. 1 and 2 deserve to be

quashed in so far as they have exceeded their jurisdiction in deciding the question of title which they have done as appears from the orders

themselves. It is true that the impugned orders appear to have proceeded on the question of title, but that alone does not call for the exercise of the

writ jurisdiction of this Court, since the party aggrieved by a decision on the question of title arrived at in these orders, is perfectly at liberty to bring

a regular suit in a Court of competent jurisdiction to establish its title. In view of the interpretation placed by us on Section 27 of the U.P.

Consolidation of Holdings Act, it is not competent for consolidation authorities to determine questions of title in proceedings u/s 27 and hence any

decision given by them on a question of title in such proceedings is not binding on, and can very well be ignored by Courts of law. Observations to

the same effect have been made by a Division Bench of this Court in the unreported case referred to above. We do not agree with the contention

of the Appellant's counsel that, in view of Section 49 of the UP. Consolidation of Holdings Act, the Appellant cannot bring a regular suit for

establishing his title. As is obvious from its language Section 49 operates as a bar against any suit with respect to any matter arising out of

consolidation proceedings or with respect to any other matter in regard to which a suit or application can be filed under the provisions of this Act.

If Section 27 does not concern itself with a question of title then obviously no suit or application could be filed under the provisions of the UP.

Consolidation of Holdings Act for the determination of a question of title in proceedings u/s 27 of the Act. That being so, there would arise no

occasion for Section 49 of the Act to come in the way of the Appellant if he decides to file a suit to establish his title. Thus the remedy of the

Appellant if he feels aggrieved by the impugned orders is by way of a regular suit in a Court of competent jurisdiction rather than by way of a writ

petition.

No other point has been urged before us. Hence we hold that the appeal fails. In view of the peculiar circumstances of the case, we would make

no order for costs.

Before taking leave of the matter, we may mention that the Respondents' counsel took a preliminary objection that the appeal had become in-

fructuous because of the issue of a notification u/s 52 of the Consolidation of Holdings Act. Having in view the provisions contained in Sub-section

(2) of Section 52 of the Consolidation of Holdings Act the objection was, obviously without any substance and was overruled accordingly.

9. The appeal is dismissed. Parties shall bear their own costs.