

(1995) 09 AHC CK 0109

Allahabad High Court

Case No: C.M.W.P. No"s. 14706 of 1992 and 24708 of 1995

Brij Lal and Another

APPELLANT

Vs

Deputy Director of
Consolidation and
Another

RESPONDENT

Date of Decision: Sept. 11, 1995

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 2(1)
- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 27, 41, 44A, 48(1), 48(3)
- Uttar Pradesh Land Revenue Act, 1901 - Section 201

Citation: (1996) AWC 512 Supp : (1996) RD 115

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: V.M. Sahai, for the Appellant; S.C. and S.K. Singh, for the Respondent

Final Decision: Allowed

Judgement

S.P. Srivastava, J.

Heard Sri V. M. Sahai, learned Counsel for the Petitioner and Sri S. K. Singh, learned Counsel representing the contesting Respondent Musai.

2. Learned Counsel for the parties have Jointly stated that both these writ petitions may be disposed of finally.

3. Considering the facts and circumstances of the case, these writ petitions are being disposed of at this very stage under the second proviso to Rule 2(1) of Chapter XXII of the Rules of the Court.

4. The facts, shorn of details and necessary for the disposal of these cases. He in a narrow compass. In the proceedings under the U.P. Consolidation of Holdings Act subsequent to the stage of the allotment of chaks in favour of the Petitioner and the contesting Respondent Musai, an application dated 2.3.84 was filed before the Deputy Director Consolidation by the Petitioner seeking an adjustment in the chak No. 505 allotted to the Petitioner and the chak allotted to Musai. This application was sent for disposal before the Consolidation Officer in accordance with law. On this application, the consolidator submitted a report dated 14.5.84 to the Assistant Consolidation Officer proposing an adjustment chart as prayed for which affected the chak allotted to Musai. Under the adjustment chart, an area of 14 decimal was proposed to be taken out from the chak of Musai and included in the chak of Basant Lal and Brij Lal. The adjustment chart Indicates that in lieu of 14 decimal area which was to be taken out from the chak of Musai, he was proposed allotment of an area of 31 decimal. The parties did not appear before the Assistant Consolidation Officer who by his order dated 16.5.84 sent the file of the case along with the report of the Assistant Consolidation Officer and the adjustment chart Indicating the proposed alteration in the chaks for appropriate orders before the Consolidation Officer. Thereafter the Consolidation Officer made a reference u/s 48(3) of the U.P. Consolidation of Holdings Act to the Deputy Director Consolidation vide his order dated 25.5.84. In the aforesaid order, the Consolidation Officer referred to the order of the Deputy Director Consolidation dated 21.3.84 sending the application filed by the Petitioner for appropriate orders to the Consolidation Officer. in the referring order the Consolidation Officer pointed out that the affected parties had been heard in the matter. He recommended for accepting the reference whereunder the chaks of the Petitioner and Musai were proposed to be altered. The Consolidation Officer also Indicated in his order that all the affected parties were present before him and had expressed their willingness to accept the proposed adjustment in token whereof they had affixed their signatures/ thumb-impression on the adjustment chart. in his referring order, the Consolidation Officer fixed 25.5.84 for the appearance of the parties before the Deputy Director of Consolidation in the matter. The photostat copy of the referring order shows that besides the signatures of Brij Lal and Basant Lal appended thereto, the thumb-impression purporting to be of Musai is also affixed. Mahavir, another chak-holder whose chak was to be affected under the proposed amendments, also appears to have appended his signatures on the referring order. A perusal of the photostat copy of the adjustment chart also Indicates that Mahavir, Brij Lal and Basant Lal had appended their signatures thereon and the purported thumb impression of Musai is also affixed on it.

5. As had already been noticed above, the Consolidation Officer had affixed 25.5.84 for appearance of the parties in the matter before the Deputy Director of Consolidation. It appears that the matter regarding the consideration of the reference was taken up by the Deputy Director of Consolidation on 28.5.84. On this date, he passed an order accepting the reference with the proposed adjustments. The contesting: Respondent Musai thereafter filed an application on 19.12.89 seeking recall of the order passed by the Deputy Director of Consolidation on 28.5.84 alleging that the said order had been passed

ex parte. He prayed that the delay in filing the application be condoned and after recalling the order dated 28.5-84, the matter may be heard on merits. In his affidavit filed in support of the application, apart from various allegations the contesting Respondent asserted that he had come to know of the order dated 28.5.84 for the first time on 18.12.89. It was also indicated that he was a literate person and his alleged thumb-impression appearing on the referring order as well as the adjustment chart was fictitious. He further asserted that the entire proceedings were farzi and also denied his presence before the Consolidation Officer.

6. The Petitioners filed objection against the application seeking recall of the order dated 28.5.84 denying the claim of the contesting Respondent. It was asserted that the application was barred by time and Musai had full knowledge of the entire proceedings and had in fact appeared as reported by the Consolidation Officer and had further expressed his willingness to accept the adjustments as proposed in token whereof he had affixed his thumb-impression not only on the referring order but also on the adjustment chart as well. Various other assertions were made in the objection which was supported by a counter-affidavit.

7. On an application filed by Musai on 19.12.89, the Deputy Director Consolidation had passed an interim order in the proceedings requiring the maintenance of status quo on the spot. This order was later on modified on the application dated 28.3.92. Whereunder the operation of the order dated 28.5.84 was stayed.

8. Writ Petition No. 14706 of 1992 was filed by the Petitioners praying for the quashing of the order dated 28.3.92 passed by the Deputy Director Consolidation staying the operation of the order dated 28.5.84. The application filed by Musai seeking recall of the order dated 28.5.84 was disposed of by the Deputy Director Consolidation vide his order dated 23.8.95. The Deputy Director Consolidation under the aforesaid order passed by him recalled his earlier order dated 28.5.84 simply on the ground that it was an ex parte one observing further that since it was an ex parte order, therefore, the applicant Musai was entitled to the benefit of Section 5 of the Indian Limitation Act which was accorded to him. After recalling the order, he posted the matter for hearing on merits.

9. The provisions contained in Section 53 of the U.P. Consolidation of Holdings Act provide that it shall be lawful for the Settlement Officer, (Consolidation), at any stage of the consolidation proceedings but before the preparation of the final records u/s 27 of the Act to allow mutual exchange of chaks or part thereof by agreement between the tenure-holders where he is satisfied that the exchange will improve the shape of chaks or reduce their number and generally lead to greater satisfaction amongst them. Under the aforesaid provision, tenure-holders are allowed to exchange their holdings amongst themselves subject to two conditions, i.e., the exchange will improve the chak and reduce their number and such exchange will lead to general satisfaction of the tenure-holders.

10. However, the provisions contained in Section 48 (3) of the U.P. Consolidation of Holdings Act provide that 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). Under Sub-section (1) of Section 48, the Director of Consolidation stands vested with the jurisdiction to 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 passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. The proceedings u/s 48 (3) of the Act are judicial proceedings and the orders in the case are to be passed after hearing the concerned parties. The Deputy Director of Consolidation exercises jurisdiction to pass an order u/s 48 (3) of the Act only upon a valid reference made by the subordinate authority which is a condition precedent to the exercise of that power. The Deputy Director Consolidation cannot proceed to exercise powers u/s 48 (3) of the Act suo-motu. It appears that it is in this view of the matter that the Deputy Director Consolidation had passed the order dated 21.3.84 whereunder the application of the Petitioners had been transmitted to the Consolidation Officer for appropriate action. Since the matter in question related to mutual exchange of the part of the chaks envisaged u/s 53 of the Act and the number of the chaks allotted to Musai was also going to be reduced, the entire proceedings should have been placed before the Settlement Officer, Consolidation as provided for u/s 53 of the U.P. C. H. Act. However, under the provisions contained in Section 44A of the U.P. Consolidation of Holdings Act the powers and duties of the subordinate authority could also be exercised or performed by an authority superior to it, the Deputy Director Consolidation could look into the matter and pass appropriate orders, in the matter relating to the mutual exchanges as Involved in the present case after affording an opportunity of hearing to the parties affected by the proposed adjustments.

11. In the circumstances, while passing the order accepting the adjustments proposed by the Consolidation Officer, the Deputy Director of Consolidation had to take into consideration as to whether there was any error, defect or irregularity in the order passed by the Consolidation Officer which had Influenced his conclusion in such a way that an unjust result had been arrived at. However, in case the affected parties had shown willingness to accept the adjustments and the requisite conditions contemplated u/s 53 stood satisfied, the adjustment sought for could be granted.

12. The question, however, which arises for consideration in this case is as to whether the application filed by Musai, the Respondent seeking recall of the order dated 28.5.84 could be entertained or not. The Deputy Director Consolidation has found that the order dated 28.5.84 was an ex parte order. It may be noticed that the Consolidation Officer himself had directed the parties to appear before the Deputy Director Consolidation on 25.5.84. There is nothing on the record to indicate that on 25-5.84 the Deputy Director

Consolidation himself had fixed 28.5.84 for the disposal of the matter. The learned Counsel for the Petitioner has strenuously urged that in the circumstances even if the finding of the Deputy Director Consolidation to the effect that the order dated 28.5.84 was an ex parte one is accepted, it was incumbent upon the said authority to consider the question of condonation of delay in moving the application and there could be no Justification for recalling the order simply on the ground that it was an ex parte one and condone the delay only because the order appeared to have been passed ex parte.

13. In the aforesaid connection, it may be usefully noticed that Section 41 of the U.P. Consolidation of Holdings Act provides that unless otherwise expressly provided by or under the Act, the provisions of Chapter IX and X of the U.P. Land Revenue Act, 1901 shall apply to all the proceedings including appeal and applications under the Act. The provisions contained in Section 201 of the U.P. Land Revenue Act, 1901 provide that in all such cases, if the party against whom judgment has been given appears either in person or by agent (if a Plaintiff, within 15 days from the date of such order, and if a Defendant, within 15 days after such order has been communicated to him, or after any process for enforcing the judgment has been executed or at any earlier period) and shows good cause for his non-appearance and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the Justice of the case.

14. It may, however, be noticed that Section 53B of the U.P. Consolidation of Holdings Act provides that the provisions of Section 5 of the Limitation Act, 1963 shall apply to the applications, appeals, revisions and other proceedings under the Act or the rules made thereunder.

15. The provisions contained in Section 5 of the Limitation Act provide that any appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the Appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. There is an explanation to Section 5 of the Limitation Act providing that the fact that the Appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of the said section.

16. Considering the implications arising u/s 41 of the U.P. Consolidation of Holdings Act and Section 53B of the said Act, it is obvious that the legislative intent is that the provisions of Chapter IX and X of the U.P. Land Revenue Act will continue to be applicable to the proceedings under the Act only so far as they are not inconsistent with the provisions of the U.P. C. H. Act. The expression used u/s 41 of the Act to the effect that "unless otherwise expressly provided" indicates that the provisions contained in Chapter IX and X of the U.P. Land Revenue Act will be applicable unless there is a provision to the contrary under the U.P. Consolidation of Holdings Act or the rules made

thereunder.

17. The difference in the implications arising under the expression "good cause" and "sufficient cause" as pointed out by the Apex Court in its decision in the case of [Arjun Singh Vs. Mohindra Kumar and Others](#), is that a requirement of a good cause is complied with on the lesser degree of proof than that of "sufficient cause".

18. It may be noticed that while the provisions contained in Section 201 provide for showing good cause for non-appearance, the provisions contained in Section 5 of the Limitation Act, 1963 provide for sufficient cause for not making the application within the period prescribed. The use of these different expressions in the two provisions are not without any significance. The difference really lies in the degree of proof. In the circumstances, therefore, while proceeding to decide an application of the nature under consideration, seeking condonation of delay, the word "good cause" as used u/s 201 of the U.P. Land Revenue Act has to be read as sufficient cause as envisaged u/s 5 of the Limitation Act in view of the provisions contained in Section 53A of the U.P. Consolidation of Holdings Act.

19. In the circumstances of the case, therefore, once the application filed by Musai, the Respondent seeking recall of the order dated 28.5.84 had to be considered and disposed of as an application contemplated u/s 201 of the Land Revenue Act, it could be entertained only when the requirements contemplated u/s 201 of the Land Revenue Act were satisfied. This obviously included, apart from other things, the condonation of delay in moving the application after establishing the sufficiency of the cause which prevented the applicant from submitting the application within the time prescribed under the law.

20. The Deputy Director of Consolidation has proceeded to hold under his impugned order that the applicant Musai was entitled to the condonation of delay in moving the application since the order dated 28.5.84 was an ex parte one. This approach of the Deputy Director of Consolidation betrays his ignorance about the implications arising under Sections 41 and 53B of the U.P. Consolidation of Holdings Act. He appears to have overlooked that the application filed by Musai was an application contemplated u/s 201 of the U.P. Land Revenue Act and it could be entertained only after he established that the order sought to be recalled was an ex parte order and further the requisite conditions contemplated under the aforesaid provision taking the expression "good cause" occurring therein to be substituted by "sufficient cause" stood satisfied. The fact that the order in question was an ex parte one by itself could only create a situation where an application u/s 201 of the Land Revenue Act could be entertained that is admitted to consideration but the order which was claimed to be ex parte one could not be recalled unless the other conditions contemplated under the aforesaid provision stood satisfied. The Deputy Director of Consolidation, therefore, appears to have manifestly erred in condoning the delay of over five years in moving the application seeking recall of the order dated 28.5.84 merely on the ground that the said order was an ex parte one ignoring altogether that the applicant Musai had to satisfy the other conditions contemplated u/s 201 of the

U.P. Land Revenue Act before the order claimed to have been passed ex parte could have been recalled. The Deputy Director of Consolidation appears to have manifestly erred in passing the impugned order without applying his mind at all to the relevant statutory provisions as indicated hereinabove which has vitiated the said order.

21. In view of my conclusions Indicated hereinabove and considering the facts and circumstances of the case, these writ petitions succeed in part. The impugned order passed by the Deputy Director of Consolidation dated 23.8.1985 is quashed with the direction requiring him to reconsider the matter and decide the application dated 19.12.1989 filed by Musai in accordance with law in the light of the observations made hereinabove within a period not later than two months from the date of production of a certified copy of this order before the said authority. in the meanwhile, the status quo in respect of possession over the chaks in dispute shall be maintained.

However, there shall be no order as to costs.