
(1993) 1 AWC 58 : (1993) RD 32

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 30163 of 1992

Raja Ram

APPELLANT

Vs

Deputy Director of
Consolidation and
Others

RESPONDENT

Date of Decision: Sept. 7, 1992

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 4, 8A, 9, 9A(1), 9A(2)#Uttar Pradesh Consolidation of Holdings Rules, 1954 " Rule 26(2)

Citation: (1993) 1 AWC 58 : (1993) RD 32

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: S.N. Singh and R.N. Singh, for the Appellant; Ravi Pratap, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.L. Yadav, J.

In proceedings u/s 9-A(2) of the U.P. Consolidation of Holdings Act, (for short the Act), objections were filed. In the

basic year the name of Respondent no 3 was recorded in revenue records and the Petitioner filed objection u/s 9-A(2) of the Act for ex-function

of that entry as the Petitioner has matured his title over the land in dispute.

2. The aforesaid objection was contested by Respondent No. 3, but it appears that a compromise was filed and on that basis the case was

decided by the Consolidation Officer by his order dated 22-1-87 (Annexure-3 to the petition). Against that order Respondent No. 3 filed an

appeal which was allowed by order dated 5-6-92 by the Settlement Officer Consolidation, and the compromise was set aside and basic year entry

was maintained (vide Annexure-4 to the petition). Against that order the Petitioner preferred revision which was dismissed by the impugned order

dated 10-8-92 (Annexure-6 to the petition), holding that the compromise has correctly been set aside and the order of Settlement Officer

(Consolidation) was correct. To quash these orders by issuing a writ of Certiorari, the present petition has been filed by the Petitioner.

3. Counter and rejoinder affidavits have been exchanged between the parties and learned Counsel for the parties have suggested that the petition

may be decided on merit at the admission stage itself. Accordingly, I proceed to decide the petition on merits.

4. Learned Counsel for the Petitioner urged that as the compromise was set aside by the impugned order of the Consolidation Officer dated 22-1-

87, hence the parties must have been directed to lead evidence and the matter ought to have been decided on merits. But that was not done by the

Settlement Officer Consolidation while allowing the appeal and hence Respondent Nos. 1 and 2 committed error apparent on the face of record.

5. Learned Counsel for Respondent No. 3, on the other hand, urged that even after setting aside the compromise by order of the Settlement

Officer Consolidation the basic year entry has correctly been maintained and there was no justification to permit the parties to lead evidence or to

decide the matter on merits.

6. It is to be noticed that the provisions under the Act for filing objections u/s 9-A(2) of the Act is just after issuing extracts from the record and

statement and publication of record as mentioned in Sections 4 and 8-A and the issue of notice for inviting objections u/s 9. These objections are

filed and thereafter in case it is not decided by the Asstt. Consolidation Officer u/s 9-A(1) of the Act, the matter is referred for disposal by the

Consolidation Officer under the provisions of Section 9-A(2) of Act. These matters are decided In view of Rule 26(2) of the U.P. Consolidation

of Holdings Rules, (for short the Rules), after hearing the parties, framing issues on points in dispute and taking evidence, both oral and

documentary. But in the present case, once the compromise was set aside, the Consolidation Officer must have been directed to hear parties and

to frame issues on the points in dispute and permit the parties to lead evidence, both oral and documentary and thereafter matter roust have been

decided on merits. The provisions of Rule 26(2), was mandatory in nature, were violated in the impugned orders. The Settlement Officer

Consolidation was supposed to be conscious about the provisions of Rule 26(2) of the Rules.

7. Even apart from Rule 26(2) of the Rules, the Settlement Officer Consolidation and the Deputy Director of Consolidation were expected to pass

an appropriate order according to rules of reasons and justice, and not on the basis of their private opinion They must have exercised judicial

discretion as the concept of rule of law is equality before law. As the Petitioner ha. filed objection against the basic year entries, he must have been

permitted to lead evidence and without that just on the basis of compromise, which was even though set aside by the Settlement Officer

Consolidation, the basic year entry could not have been maintained. But that was obviously done under the misconception of the provisions of Rule

26(2) and the concept of justice, particularly when the consolidation authorities were decided rights and title of the parties in State imposed

litigation. It would not be out of place to refer to an old Latin maxim ""ACTUS LEGIT- IMI NON RECEP1IJNT MODUM"" which obviously

connotes that when doing of anything in a particular manner is sanctioned by law, then the thing cannot be done in a different way. In Taylor v.

Taylor (1876) 1 Ch. D. 426, Jessel, M.R. observed as follows:

When a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to

be adopted.

8. As by Rule 26(2) of the Rules the mode of deciding dispute between the parties on merits has been pointed out, it was not open to Settlement

Officer Consolidation to maintain the basic year entry without framing issues on the points involved and without permitting the parties to lead

evidence, both oral and documentary. That order was confirmed by the Deputy Director of Consolidation also in revision.

9. In view of the premises aforesaid, the impugned orders cannot be sustained and the petition deserves to be allowed.

10. In the result, the petition succeeds and is allowed The impugned orders dated 5-6-92 and 10-8-92 passed by the Settlement Officer

Consolidation and Deputy Director of Consolidation (Annexure-4 and 6 respectively), are quashed The matter is remanded back to the

Consolidation Officer for deciding it afresh in accordance with law.

11. As the matter has dragged on for too long, what is required is expedition. The Consolidation Officer is directed to decide the matter on merits

after framing issues, permitting the parties to lead evidence and after affording opportunity of hearing, within a period of four months from the date

n certified copy of this order is furnished before him. There shall be no order as to costs.