

(2011) 03 AHC CK 0370

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 13181 of 1975

Hari Ram

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: March 9, 2011

Citation: (2011) 4 ADJ 149 : (2012) 4 AWC 5303 : (2011) 3 CivCC 415 : (2011) 8 RCR(Civil) 838

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A.P. Sahi, J.

Heard Sri Vishal Chandra, learned Counsel for the Petitioner, Sri D.D. Chauhan, learned Counsel for the Gaon Sabha and the learned Standing Counsel.

2. The Petitioner-Hari Ram aggrieved by the order of the Deputy Director of Consolidation dated 25.8.1975 and the order of the Consolidation Officer dated 25.2.1975 has preferred this writ petition contending that the matter was decided ex parte by the Deputy Director of Consolidation and the restoration application, which was filed on the very same day, was erroneously rejected.

3. The matter arose out of a reference having been made in relation to an incorrect entry. It was recorded by the Consolidation Officer that the entry which has been made in the record in relation to the said claim by the Petitioner appears to be forged. It was indicated by the Consolidation Officer that the entry relating to plot No. 211, area 2.50 acres was illegal.

4. The said reference made by the Consolidation Officer was placed before the Deputy Director of Consolidation and on notices having been issued the matter appears to have been taken up on 25.8.1975. The Deputy Director of Consolidation recorded that in spite of the name of the Petitioner having been called out, none responded and in spite of opportunity having been given to adduce evidence, the

matter was not attended too, hence in the circumstances, the name of the Petitioner shall stand expunged. It was further directed that the land shall stand recorded as Navin Parti. It is these orders which are under challenge before this Court.

5. Learned Counsel for the Petitioner submits that the said order dated 25.8.1975 accepting the reference was ex parte and the Petitioner moved an application on the very same day for restoration of the proceedings and fresh hearing of the matter. The ground taken for restoration was that the Petitioner arrived late as he was ailing for a fairly long time and he is unable to move and, therefore, the date be fixed in the month of September, 1975 for adducing evidence.

6. The said application was rejected by the Deputy Director of Consolidation on the same day recording that this application has been moved after passing of the order.

7. Learned Standing Counsel submits that the order, which was recorded, on which reliance was being placed by the Petitioner, has been found to be unsupported by any evidence, as neither any such revision was filed before the Deputy Director of Consolidation nor had the Deputy Director of Consolidation passed any order for recording the name of the Petitioner over plot No. 211 area 2.50 acres in Khata No. 279. It is on the basis of the report submitted and the application moved by the Gram Pradhan that the aforesaid reference was prepared and forwarded to the Deputy Director of Consolidation. He, therefore, contends that even otherwise, the order does not suffer from any infirmity as nothing has been shown before this Court about any orders having been passed by the Deputy Director of Consolidation in favour of the Petitioner.

8. This writ petition was admitted by this Court presiding over by Hon"ble Justice N.D. Ojha on 18.12.1975 and an interim order was also passed staying the operation of the order in reference.

9. A counter-affidavit has been filed on behalf of the Gaon Sabha reiterating the facts stated in the order of the Deputy Director of Consolidation.

10. The issue before this Court is not the merits of the claim of the Petitioner or the Gaon Sabha but the order of the Deputy Director of Consolidation dated 25.8.1975 rejecting the restoration application. The Petitioner had moved the restoration application on the same day and merely because it was filed after the orders had been passed could not have been a ground for rejecting the same. The Deputy Director of Consolidation ought to have taken a pragmatic view and should have disposed of the matter on merits after hearing the Petitioner. There is no finding in the order of the Deputy Director of Consolidation that the cause shown for moving the application for restoration was not available to the Petitioner or was otherwise not justifiable. Apart from this, a simple rejection of the nature as impugned herein has resulted in the pendency of the matter for the past 36 years in this Court. This also causes immense inconvenience to the proceedings before the consolidation authorities themselves. This Court granted a stay order in 1975 itself and the matter

has now come up after 36 years which could have been decided on merits, had the Deputy Director of Consolidation not chosen to reject the restoration application.

11. In the opinion of the Court, the impugned order was unjustified as the restoration application had been moved on the very same day on which the order was passed and the matter could have been entertained on merits.

12. Accordingly, the order passed by the Deputy Director of Consolidation dated 25.8.1975 (Annexure 2 to the writ petition) on the restoration application as well as the order of the same date (Annexure 1 to the writ petition) are set aside. The Deputy Director of Consolidation shall pass orders afresh in the light of the observations made hereinabove within three months from the date of production of a certified copy of this order.

13. The Petitioner shall not seek any adjournment and shall instruct his counsel to appear before the concerned Deputy Director of Consolidation to be present as and when the dates are fixed for deciding the matter. The Petitioner shall cooperate by adducing evidence which he proposes to file in support of his contentions.

The writ petition is allowed.