
(2010) 05 AHC CK 0331

Allahabad High Court

Case No: C.M.W.P. No. 50804 of 2003

Sudershan and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 19, 2010

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 20(2), 21(2)

Citation: (2011) 3 AWC 2463

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Poonam Srivastav, J.

Heard Sri S.S. Verma, learned Counsel for the Petitioners and Sri Awdhesh Singh, learned Counsel for the contesting Respondents.

2. Prayer is for quashing the order dated 21.8.2003, passed by Respondent No. 2 in two revisions, i.e. Revision Nos. 1366B/54, Kharbhan and Ors. v. Videshi and Ors. and Revision No. 1355/545, Rama Shankar and Ors. v. Videshi and Ors. and order dated 21.5.1997, passed by Respondent No. 3 Annexures 6 and 2 respectively to the writ petition.

3. The dispute is regarding allotment of chak. The Petitioner filed objections u/s 20(2) of U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) challenging the propriety of order of allotment of chaks to the Petitioner. The Consolidation Officer decided the objections vide order dated 30.8.1993. Contesting Respondent No. 4 Videshi aggrieved by the order dated 30.8.1999 filed an Appeal No. 879 u/s 21(2) of the Act before the Settlement Officer, Consolidation, Ghazipur. Grievance of the Petitioner is that the Settlement Officer, Consolidation clubbed a

number of appeals and without making a spot inspection and without affording any opportunity of hearing made alterations in chaks, whereby udanchak, which was not on the original holding of the Petitioner was given vide order dated 22.5.1997. sanshodhan talika was also appended to the said order. Two revisions were preferred before the Deputy Director of Consolidation vide Revision No. 1355/545 challenging the order of the Settlement Officer, Consolidation. The revision preferred by Kharbhan and other was dismissed but the revision filed by the Petitioner was allowed. The order passed in revision of Kharbhan was not challenged and it became final. The instant dispute is confined to the revision filed by the Petitioner against Respondent No. 4 Videshi. The order of the Deputy Director Consolidation was challenged by Respondent No. 4 in Civil Miscellaneous Writ Petition No. 34690 of 2009 against the order of the D.D.C. During the pendency of the writ petition, Respondent No. 4 filed restoration/recall application before the Deputy Director of Consolidation to recall the same order, which was impugned in the writ petition. The Deputy Director of Consolidation allowed the application and simultaneously decided the revision on merits. Submission of the learned Counsel for the Petitioner is that the Deputy Director of Consolidation condoned the delay of more than three years, holding that Respondent No. 4 had No. knowledge about the order dated 31.7.1999 till 14.11.2002.

4. The contention of Mr. Verma, learned Counsel on behalf of the Petitioner is that the order dated 31.7.1999 was neither an ex parte order nor passed behind the back of the contesting Respondent. Further, submission of learned Counsel is that the Deputy Director of Consolidation could not condone the delay in the manner, it has been done in the instant case. Admittedly, there was an inordinate delay and explanation and ground for condonation of delay was on the face of it false since the writ petition was instituted on 19.8.1999. The affidavit in the writ petition was sworn on 10.8.1999 by the son of Respondent No. 4 Videshi. The order of Deputy Director of Consolidation dated 31.7.1999 was challenged on merit and there was not a whisper in Writ Petition No. 34690 of 1999 that he was not heard. Besides, admittedly the contesting Respondent had full knowledge about the order dated 31.7.1999.

5. On perusal of the said order evidently the Deputy Director of Consolidation has mentioned the names of the counsels on behalf of Rama Shankar and Sudarshan Sri Asharfi Ahamad and Sri Ashok Lal and counsel on behalf of Videshi Sri Sant Saran Srivastava were heard.

6. Reliance has been placed on an Apex Court decision in [D. Gopinathan Pillai Vs. State of Kerala and Another](#),

7. Sri Awdhesh Singh appearing on behalf of the Respondent Videshi has disputed the argument of the Petitioner's counsel, firstly because that the order dated 31.7.1999 appears to be an ex parte order and, therefore, restoration/recall application was maintainable but he has not been able to give any appropriate reply

that since the order was challenged by Respondent No. 4 himself in a writ petition within 1-1/2 months of the order of D.D.C. as well as writ petition was kept pending till the revision filed subsequently was allowed. The Writ Petition No. 34690 of 1999, *Videshi v. D.D.C.* was got dismissed as withdrawn vide order dated 23.2.2004.

8. I am not in agreement with the submissions made by Sri Awdhesh Singh, advocate, firstly a recall application was filed and the same was allowed by common order on which orders of merit has also been passed and it's earlier order has been reversed evidently this could not be done. The Deputy Director of Consolidation, if at all entertains a restoration application, then the opposite parties (Petitioners) were entitled to a notice and an opportunity to file objection. This having not been done, the rights of the Petitioner considerably stands prejudiced. There is yet another ground that a perusal of the order dated 31.7.1999 evidently Respondent No. 4 was heard through his counsel. The name of his counsel is clearly mentioned. Besides, the argument of the Petitioner's counsel that limitation could not be condoned in a cryptic or shortcut manner as it has been done in the instant case.

9. The impugned order is also challenged on the ground that it amounts to reviewing the order of his predecessor, whereas the Deputy Director of Consolidation has No. jurisdiction to review. Reliance has been placed on a Full Bench decision in *Smt. Shiv Raji v. Deputy Director of Consolidation*, 1997 (88) RD 562. The Full Bench after discussing and taking into consideration all aspects was of the opinion that it is not open for consolidation authorities to review/recall their final orders passed in proceeding under the U.P. Consolidation of Holdings Act in exercise of inherent powers.

10. After examining the entire facts and circumstances, I am of the view that the Deputy Director of Consolidation committed a manifest error of law and procedure while condoning the delay allowing the revision on merits and thereby reviewed the order passed by his predecessor in view of the Full Bench decision, this could not be done. The order of the Deputy Director of Consolidation dated 31.7.1999 is not sustainable in law and hereby quashed.

The writ petition is accordingly allowed.