

(2011) 11 AHC CK 0324**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 62510 of 2011Sobh Nath and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision: Nov. 2, 2011

Citation: (2012) 1 ADJ 20 : (2012) 1 AWC 1028

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon"ble A.P. Sahi, J.

Heard learned counsel for the petitioners.

2. The petitioners had sought transfer of the case from the Court of Sub-Divisional Officer, Tehsil - Sadar, Jaunpur, and in the transfer application, copy whereof is Annexure-1 to the writ petition, allegations had been made that certain persons have been found to be in association with the Sub-Divisional Officer/Presiding Officer and, as such, the petitioners were not expecting justice from him. On Advice received from the Lawyer, the transfer application was moved making those allegations with a prayer that the matter be transferred outside the district. The transfer application before the Board of Revenue was disposed of vide order dated 3.10.2011 recording that in view of the consent given by the learned counsel for the parties, the case is being transferred to the Sub-Divisional Officer of another Sub-Division namely Badlapur, District Jaunpur.

3. After the said order was passed, a review application was filed being review application No. 1 of 2011 supported by an Affidavit of Smt. Shyama Devi, one of the applicants to the review application. In paragraph Nos. 2 and 3, the aforesaid facts have been disclosed and in para 4 it has been stated that no such consent was tendered by the learned counsel for the applicants as mentioned in the order dated 3.10.2011. Learned counsel Sri Tiwari submits that the only request made was to

transfer it outside the district and, therefore, there was no consent for transferring it to another Sub-Divisional Magistrate of the same district.

4. I have perused the said Affidavit. The application has been rejected by the Board of Revenue holding that there was no ground made out for review.

5. A perusal of the aforesaid facts indicate that the order dated 3.10.2011 categorically records a consent of the learned counsel for the parties.

6. The Affidavit, which has been filed in support of the application, nowhere mentions the name of the counsel inspite of the fact that there were two counsel representing the petitioner Sri H.N. Sharma and Smt. Meera. The Affidavit nowhere indicates as to why the counsel had not given their consent nor any Affidavit of the counsel or statement was given before the Board of Revenue which may indicate that any such consent was not given. When the finding is in relation to the counsel and the allegation is on the Presiding Officer, then it is the counsel who have to take the responsibility of deposing or stating before the Officer about such a fact which is only in their personal knowledge. Whether the counsel consented or not has to be denied or accepted by the counsel and not by the litigant who may not have been present at the time of the passing of the order.

6. In the absence of any such material, there is no error on the face of record and, therefore, the Board has not committed any error in rejecting the review application.

7. The writ petition is dismissed.