

(2014) 05 AHC CK 0224

Allahabad High Court

Case No: Writ-B No. 23703 of 2014

Bhupal Singh

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision: May 6, 2014

Citation: (2014) 124 RD 209

Hon'ble Judges: Anjani Kumar Mishra, J

Bench: Single Bench

Advocate: H.M. Srivastava and V.S. Rajpoot, Advocate for the Appellant; L.C. Mishra and Usha Srivastava, Advocate for the Respondent

Final Decision: Allowed

Judgement

Anjani Kumar Mishra, J.

Heard Shri H.M. Srivastava, learned Counsel for the petitioner. Caveat had been filed on behalf of respondent Nos. 2 and 3 through Ms. Usha Srivastava and Shri L.C. Mishra, I have also heard the Counsel representing the caveators. The writ petition arises out of proceedings for allotment of chaks and is directed against an order dated 4.4.2014 passed by the respondent No. 1, the Deputy Director of Consolidation (the DDC), Bulandshahar in Revision No. 285 (Ajai Pal v. Bhupal and others).

2. The dispute between the parties who are real brothers is with respect to plot No. 927, area 1.3365 hectare. It is the admitted case of the parties that each of the three brothers, namely, the petitioner and the respondent Nos. 2 and 3 have 1/3 share each in this disputed plot.

3. On the start of the consolidation operations, objections u/s 20(1) of the Act were filed by all the three brothers, which were consolidated and decided by a common judgment dated 7.7.2000 passed by the Consolidation Officer (the C.O.).

4. Aggrieved by the order, the respondent Nos. 2 and 3 filed a time barred appeal against the order passed by the C.O. which was dismissed on 31.7.2013.

5. The Settlement Officer, Consolidation (the S.O.C.) recorded at the explanation furnished in the inordinate delay in filing the appeal was not satisfactory. He was also recorded that the case of the appellants that they were not aware of the modification made in their chaks by the C.O. was not liable to be believed. It was further recorded that the final record had been prepared and notification u/s 52 had been issued closing consolidation operations and, therefore, it was not possible to grant any relief to the appellants. On the aforesaid reasoning the appeal was dismissed as being highly time barred. It is also relevant to note that the S.O.C. has also observed in his order that during the hearing of the appeal a compromise was filed with a demand that the chaks be allotted as mentioned in the compromise.

6. Aggrieved by the order rejecting their appeal as barred by time, the contesting respondents preferred a revision before the DDC, who by the impugned order dated 4.4.2014 has allowed the same on the reasoning that at the time of hearing of the revision the revisionist was satisfied, in case chaks were provided as per the compromise filed before the appellate authority. It was also noticed that the petitioner Bhupal was not agreeable to this proposal of allotment of chak as per the aforementioned compromise. By this order the chaks have been allotted as per the compromise said to have been filed before the S.O.C.

7. Aggrieved by the order of the D.D.C. the instant writ petition has been filed.

8. Learned Counsel for the petitioner has submitted that at the appellate stage, the appeal of the contesting respondents had been dismissed as highly time barred. Under the circumstances, the scope of the revision was confined to the question as to whether the delay in filing the appeal was liable to be condoned or not. The D.D.C. in the impugned order has totally failed to address this aspect of the matter and has proceeded to decide the revision on the basis of a compromise which was never verified and to which the petitioner had filed an objection at the revisional stage. He, therefore, submits that the order impugned is patently illegal and is liable to be set aside.

9. Learned Counsel for the caveator, on the other hand has submitted that by the adjustment made by the D.D.C. all the three brothers have been allotted chak on the plot No. 927 in such a manner that each of the chaks allotted abuts the road. In this view of the matter, substantial justice have been done between the parties. It is further submitted that the compromise was filed by the parties before the S.O.C. and the petitioner has not denied his signature on the said compromise. Under these circumstances, it is submitted that no illegality can be attributed to the impugned order in case such a compromise has been accepted by the D.D.C. and the chaks of the parties modified in consonance thereto.

10. Having considered the rival submissions and on a perusal of the impugned order, it is clear that the D.D.C. has failed to advert to the question of delay in filing the appeal. The appeal had admittedly been preferred more than a decade after the

C.O. passed the order. The S.O.C. did not find the explanation for the delay to be satisfactory and, therefore, dismissed the appeal. In view of these admitted facts, it was incumbent upon the D.D.C. to have considered this aspect of the matter and he should have passed an order on merits only after recording a finding that cause shown for the inordinate delay was sufficient.

11. In fact, learned Counsel for the caveators has very fairly admitted this lacunae in the impugned order. Under the circumstances, the impugned order cannot be sustained and is liable to be set aside.

12. Accordingly, I, set aside the impugned order dated 4.4.2014 and remand the matter to the D.D.C. for passing a fresh order after affording opportunity of hearing to the parties. In view of the fact that this dispute between the parties is very old one, it is provided that all the parties shall appear before the D.D.C. on 27th May, 2014. The D.D.C. shall thereafter proceed to hear the parties and shall pass an order in accordance with law without granting unnecessary adjournment to either of the parties within a period of four weeks thereafter. Accordingly and subject of the aforesaid directions, the order dated 4.4.2014 is quashed and this writ petition is allowed and the matter is remanded to the D.D.C. for a decision afresh.