

Raja Ram Vs Deputy Director of Consolidation

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: July 30, 2015

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 16 Rule 10, Order 16 Rule 13, Order 16 Rule 17, Order 16 Rule 18

Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 41, 48, 9A(2)

Uttar Pradesh Land Revenue Act, 1901 - Section 194

Citation: (2015) 8 ADJ 59 : (2015) 129 RD 685

Hon'ble Judges: Ritu Raj Awasthi, J

Bench: Single Bench

Advocate: Prabhat Kumar and Abid Ali, for the Appellant; V.S. Tripathi, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Ritu Raj Awasthi, J

Heard Mr. Abid Ali, learned counsel for petitioners and Mr. V.S. Tripathi, learned counsel appearing for respondent

Nos. 4 and 5 whereas learned Standing Counsel has put in appearance on behalf of respondent Nos. 1, 2 and 3. This writ petition was filed in the

year 1997 challenging the order dated 1.1.1997 passed by the Deputy Director of Consolidation as well as the order dated 16.9.1996 passed by

the Settlement Officer of Consolidation and the order dated 24.3.1994 passed by the Consolidation Officer in the proceedings pertaining to the

objections filed under Section 9A(2) U.P.C.H. Act, by the petitioners before the Consolidation Officer which were rejected and the appeal filed

by the petitioners was dismissed and the appeal of opposite party No. 4 was allowed. The revision filed by the petitioners against the order of

Settlement Officer of Consolidation was also dismissed by the Deputy Director of Consolidation.

2. At the time of admission, the Court had entertained the writ petition on limited issue as to whether the Deputy Director of Consolidation while

exercising jurisdiction under Section 48, U.P.C.H. Act can impose cost and whether the order for its recovery as arrears of land revenue is legally

valid. As an interim measure, the Court had also provided that the amount of cost imposed by the Deputy Director of Consolidation by the

impugned order shall not be recovered from the petitioners in any manner including as arrears of land revenue till further orders of the Court. The

order dated 9.5.1997, on reproduction reads as under:

Heard the learned counsel of the petitioners.

I am of the view that this writ petition needs to be admitted only on the ground that the Deputy Director of Consolidation has acted without

jurisdiction in imposing Rs. 1000/- as costs against petitioners and has also illegally directed its recovery as arrears of land revenue. On the other

ground of res judicata the finding recorded by the Deputy Director of Consolidation, Sultanpur is not incorrectly recorded. So this writ petition will

not be treated to be admitted on other grounds.

Notice on behalf of the opposite parties No. 1 to 3 has been accepted by the learned Chief Standing Counsel.

Issue notice to opposite parties No. 4 to 9. Steps within three days.

The opposite parties may, on the limited question as to whether the Deputy Director of Consolidation while exercising jurisdiction under Section 48

of the U.P.C.H. Act, can impose costs and also order its recovery as arrears of land revenue, file counter-affidavit within four weeks from the date

of receipt of the notice of the writ petition. In case counter-affidavit is filed then the petitioners may file rejoinder-affidavit within identical period of

four weeks.

List thereafter.

Having heard the learned counsel of the petitioners on interim relief application, I direct that the amount of cost imposed by the Deputy Director of

Consolidation in the impugned order shall not be recovered from the petitioners in any manner including as arrears of land revenue till further orders

of the Court.

3. Mr. Abid Ali, learned counsel for petitioners submits that although notice was issued on limited question as to whether the Deputy Director of

Consolidation while exercising jurisdiction under Section 48, U.P.C.H. Act was empowered to impose cost and whether such cost can be

recovered as arrears of land revenue, however there are certain other grounds in the writ petition which need to be considered by this Court. It is

submitted that even if the writ petition has been entertained on any limited issue, the Court is not precluded from considering other issues/grounds

while deciding the writ petition. It is submitted that the opportunity be given to argue the matter raising several other grounds as mentioned in the

writ petition.

4. Mr. V.S. Tripathi, learned counsel appearing for opposite party Nos. 4 and 5 submits that so far as the issue whether the Deputy Director of

Consolidation was empowered to impose cost and whether such cost can be recovered as arrears of land revenue under Section 48, U.P.C.H.

Act is concerned, Section 41 of U.P.C.H. Act empowers the consolidation authorities to make applicable the provisions of Section IX and X of

U.P. Land Revenue Act in all the proceedings including the appeals and applications under the Act. Section 194 of Chapter IX, U.P. Land

Revenue Act deals with the procedure of service of summons. It says that in case of non-compliance of summons the provisions of Order XVI,

Rules 10 to 13, 17 and 18 of the C.P.C. will be invoked.

5. Therefore, in view of above, the relevant statutory provisions of Rules 10 to 13, 17 and 18 of Order XVI, C.P.C. are applicable where the

Courts or authorities are empowered to impose cost while exercising the powers under the specified Act. Hence by virtue of general principles as

declared by this Court in the case of Ram Chandra v. D.D.C.; 1982 ALJ 129, the provisions of C.P.C. would be made applicable. As such, the

learned Deputy Director of Consolidation, Sultanpur while exercising judicial powers under Section 48, U.P.C.H. Act has not committed any

illegality while imposing cost.

6. It is further submitted by him that the writ petition has been entertained on limited issue and the Court has refused to grant indulgence with

respect to all other grounds taken in the writ petition, as such at this stage it is not open for the petitioners to raise all other grounds which have

been refused by the Court earlier. So far as the imposition of cost by the impugned order is concerned, he has no objection in case the Court

waives off the cost imposed by the opposite party No. 1 and decides the writ petition accordingly.

7. Mr. Abid Ali, learned counsel for petitioners in support of his submissions has relied on a decision rendered by Calcutta High Court in the case

of Eastern Railway Employees' Congress Vs. General Manager, Eastern Railway and Others, AIR 1965 Cal 389 : (1966) 2 LLJ 849 ;

particularly paragraph 6(ii) wherein the Court has observed that the Court is not precluded, at the final hearing of a rule from considering a ground

other than that on which the rule nisi might have been issued, of course after giving proper opportunities to the parties. The relevant sub-para (ii) of

paragraph 6 on reproduction reads as under:

(ii) It appears that this identical point was taken by Mr. Deb in a Civil Revision case before a Division Bench in Mahananda Dutt and Co. (P) Ltd.

Vs. Uma Charan Law and Others, 68 CWN 179 , but was overruled. In that case, the Bench clearly laid down that the Court is not precluded, at

the final hearing a rule, from considering a ground other than that on which rule nisi might have been issued, of course, after giving proper

opportunities to the parties. Since in the case before me, the ground of the impugned order being contrary to the rules was taken in the petition and

contradicted in the affidavit-in-opposition and also fully debated by Mr. Deb at the hearing, the preliminary objection raised by Mr. Deb must be

rejected.

8. I have considered the submissions made by the parties' counsel and gone through the records.

9. It is evident from the order dated 9.5.1997 passed by the Court at the time of entertaining the writ petition that the Court has very specifically

admitted the writ petition on the ground that whether the Deputy Director of Consolidation has acted without jurisdiction in imposing Rs. 1,000/-

as costs against the petitioners and has also illegally directed its recovery as arrears of land revenue. The Court has observed that on the other

grounds of res judicata, the findings recorded by the Deputy Director of Consolidation, Sultanpur is not incorrectly recorded, so this writ petition

will not be treated to be admitted on other grounds.

10. It is to be noted that the petitioners have not included or added any other ground by way of amendment or otherwise other than the grounds

taken in the writ petition at the time of filing of this case. As such, all other grounds which were taken by the petitioners at the time of filing of the

writ petition were considered by the Court at the time of admission and only on very limited issue the rule nisi was issued by the Court.

11. As such, I am of the considered view that this Court is not required to consider any other ground taken in the writ petition at this stage when

the Court at the time of admission has observed that the writ petition has been admitted only on the limited issue as to whether the Deputy Director

of Consolidation while exercising jurisdiction under Section 48 U.P.C.H. Act can impose cost and also whether it can direct for its recovery as

arrears of land revenue. There is no dispute to the legal proposition that the Court is not precluded from considering any other ground at the time of

final hearing, however in case the Court is satisfied that several other grounds are required to be considered.

12. In the given facts and circumstances of this case, the Court has already refused to entertain the writ petition on all other grounds and has

admitted the writ petition only on a limited ground as to whether the Deputy Director of Consolidation has the jurisdiction to impose cost while

exercising powers under Section 48, U.P.C.H. Act and whether such recovery can be made as arrears of land revenue.

13. As such, I do not find it necessary to exercise my discretion to consider the request of petitioners' counsel to allow him to raise all other

grounds which have been taken in the writ petition.

14. So far as the question of imposition of cost by the opposite party No. 1 while deciding the revision filed under Section 48, U.P.C.H. Act is

concerned, since learned counsel appearing for respondents has made a statement at the Bar that he does not want to contest the issue in question

and the cost imposed by the opposite party No. 1 may be waived off, I do not find it necessary to decide the said issue on merits. The writ

petition, as such, is disposed of with observation that the order impugned dated 1.1.1997 passed in the revision Nos. 2746 and 2747 by the

Deputy Director of Consolidation, Sultanpur, shall stand modified so far as it relates to the imposition of cost of Rs. 1,000/-. There shall not be any

cost imposed on the petitioners/revisionists and there shall not be any question of recovery of the said cost as arrears of land revenue.