

(2014) 12 AHC CK 0108

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5919 of 1984

Abdul Sami and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2015) 1 ADJ 214 : (2015) 126 RD 300

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : R.K. Awasthi, Arif, Aslam Khan, R.B.D. Mishra, R.G. Prasad and Ravi Kiran Jain, Advocates for the Appellant; Raj Kumar Jain, A.M. Zaidi, M.A. Zaidi, M.A. Zafari and Rahul Jain, Advocates for the Respondent

Judgement

Anjani Kumar Mishra, J.—Heard Sri M.A. Khan, learned counsel for the petitioners and Sri A.M. Zaidi for the contesting respondents.

This petition arises out of proceedings under Rule 109A of the U.P. Consolidation of Holdings Rules and seeks quashing of the orders dated 24.9.1982, 28.3.1983 and 21.3.1984 passed by the respondents 3, 2 and 1 respectively.

Facts of the case briefly stated are that on the start of consolidation operations, three plots, namely, 3056, 3058 and 3066 of Village Chandpur, Post Chandpur, District Bijnor, were recorded in the name of Mohd. Bux. The contesting respondents filed an objection claiming co-tenancy therein. Their claim was upheld by this Court in writ petition filed by the petitioners' predecessor in interest being Writ Petition No. 952 of 1963, which was dismissed on 7.4.1969 and the contesting respondents were finally held to be co-tenure holders of the land in question.

2. The contesting respondents thereafter filed an application under Rule 109A on 24.9.1982, which was allowed by the Consolidation Officer, Bijnor. The consequential appeal was dismissed on 28.3.1983 and the aforesaid two orders affirmed in revision vide judgment dated 21.3.1984. Hence this writ petition.

3. Learned counsel for the petitioners has contended that the writ petition was decided in 1969 and the village was denotified by issuance of notification under Section 52 on 26.8.1982. The application under Rule 109A was filed on 24.9.1982. Since no proceedings were pending on the date of notification under Section 52, the provisions of Rule 109A could not be invoked. It has also been contended that the application under Rule 109A was therefore beyond time and since the petitioners continued in possession after the dismissal of the writ petition in 1969 till the date of filing of the application under Rule 109A, they had perfected their rights over the land in question by adverse possession. It is also sought to be contended that the Amal daramad under Rule 109A has been made over land beyond the land, which was in dispute between the parties.

4. Sri A.M. Zaidi, learned counsel for the contesting respondents on the other hand submitted that no limitation has been provided for making an application under Rule 109A. He has secondly submitted that the three plots in dispute, namely, 3056, 3058 and 3066 were comprised in chak No. 2025 and Amal daramad has been made on this chak alone.

5. Placing reliance on the Division Bench decision in *Mukhtar v. D.D.C., Azamgarh*, 1993 AWC 1549, Sri A.M. Zaidi has further submitted that no limitation has been provided for making an application under Rule 109A. Orders passed by the consolidation Courts have to be incorporated in the revenue records by the consolidation authorities by themselves as a matter of course. The Consolidation of Holdings Act and the Rules framed therein are a complete code in themselves. There is no provision therein unlike the provisions of Civil Procedure Code, which requires a tenure holder to necessarily make an application for incorporating the orders passed by the consolidation Courts in the revenue records. He has also submitted that the Division Bench decision of this Court has held that in case an order passed during the consolidation operations has not been implemented in the revenue records by the consolidation authorities, the proceedings would be deemed to be pending on the issuance of a notification under Section 52(1), in view of sub-section 2 of Section 52. He therefore submits that the orders impugned have rightly been passed and the writ petition is liable to be dismissed. Upon hearing learned counsel for the parties and upon a perusal of the record, especially the decision cited on behalf of respondents, which holds as follows:

"From the entire scheme of the Act and the Rules framed thereunder it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the Code of Civil procedure in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and

no duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13.5.1974 was not finally implemented by the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The Consolidation Authorities having not done so, the proceedings in respect thereof cannot be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the order dated 13.5.1974 would necessarily be taken to be pending on the date of the notification issued under Section 52(1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13.5.1974 under the Act even though a notification under Section 52(1) of the Act had taken place. In our opinion, the view taken by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law"

It is therefore clear that the submissions made by learned counsel for the petitioner lack substance in view of the law laid down by the Division Bench of this Court, quoted above.

Accordingly, the writ petition is devoid of merits and is accordingly dismissed.