

(1965) 04 AHC CK 0022
In the Allahabad High Court
Case No : C.M. Writ No. 1177 of I960

Ajodhi

APPELLANT

Vs

Deputy Director, Consolidation, Etawah and Others

RESPONDENT

Date of Decision : 01-04-1965

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10A(3), 19, 20

Citation : (1965) 35 AWR 349

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.B. Asthana, J.—By this petition Under Article 226 of the Constitution of India, Ajodhi, the Petitioner, has brought up a revisional order passed by the Dy. Director of Consolidation u/s 48 of the UP Consolidation of Holdings Act (hereinafter called the Act) for being quashed by a writ of certiorari. The admitted and the undisputed facts are that the holdings in dispute originally belonged to the ancestor of the Petitioner and the opposite parties Bhikka and Lalai, who are members of one family but belong to different branches. In 1943 Lalai, opposite party No. 3, had brought a suit u/s 59 of the UP Tenancy Act in which the Petitioner Ajodhi and Bhikka, opposite party No. 2, were parties. A compromise decree was passed in that suit to the effect that Ajodhi was declared to have half share in the total holding and in the other half 1/4th share was declared to belong to Bhikka and Lalai each. There is nothing on the record in this writ 10 indicate whether after the compromise decree any actual partition was affected or any entry was made in any of the revenue records specifying the shares of each of the parties concerned. When the area, in which the disputed holding was situate, came under consolidation, the entries in the revenue records appear to have stood in the name of the Petitioner and the opposite parties Nos. 2 and 3 showing that they were co tenants but there was no specification of the shares. In the statement of tenure-holders published u/s 11 of the Act the parties were

shown as co-tenants. Thereafter the Consolidation Officer suo motu determined the share and partitioned the holdings Under Sub-section (3) of Section 10A of the Act. The Consolidation Officer divided the disputed holdings equally and allotted 1/3rd share to each. When the Statement of Proposals was published u/s 19 of the Act the share of the Petitioner Ajodhi was shown as 1/3rd. He filed an objection u/s 20 of the Act claiming half share and praying for the correction of the entries. This objection was dismissed by the Consolidation Officer on the ground that the order passed u/s 10A was final and binding between the parties. On appeal by Ajodhi from the order of the Consolidation Officer the Settlement Officer (Consolidation) gave effect to the compromise decree in the suit of 1943 and held that that compromise being binding between the parties the share of Ajodhi had to be one half. Bhikka then went up in revision to the Director of Consolidation against the appellate order of the Settlement Officer (Consolidation). The Deputy Director of Consolidation, who heard the revision, set aside the appellate order and restored that of the Consolidation Officer. The Deputy Director held that the decision of the Consolidation Officer u/s 10A of the Act partitioning the disputed holdings into equal shares was final and had the force of res judicata. Being aggrieved Ajodhi has now come to this Court Under Article 226 of the Constitution.

2. Sri M.M. Shukla, learned Counsel for the Petitioner, contended that in taking the view that the decision of the Consolidation Officer u/s 10A of the Act was final and operated as res judicate the Deputy Director of Consolidation had manifestly erred in as much as the proceedings u/s 10A being in the nature of the administrative proceedings and not judicial proceedings could be reopened by filing objections u/s 20 of the Act by Ajodhi, who was effected by the Statement of Proposals published u/s 19 of the Act. Having heard the learned Counsel at some length and having perused the affidavits and the various orders passed by the consolidation authorities I do not think there is any tenability in the contention raised. I do not agree with the submissions made that the partition of holdings done suo motu by the Consolidation Officer Under Section 10A of the Act was in the nature of an administrative action. Sri Shukla did not dispute the proposition that if u/s 10A an application is made by a party for partition of the holdings and notices are issued to the other parties interested, who appear and raise a contest about the quantum of shares claimed by the applicant, then a decision arrived at by the consolidation officer, after hearing the parties and assessing the evidence produced, would be a judicial decision. That being the position when the partition is made on the basis of an application of a party u/s 10A I do not think there would be any difference if the proceedings for partition are initiated by the Consolidation Officer himself. Sub Rule (5) of Rule 32 framed under the Act indicates that even where the Consolidation Officer proceeds suo motu he is to give notice to the parties in the manner prescribed in CH Form 9. A perusal of that form shows that the notice which the Consolidation Officer causes to be served on the parties interested shows the quantum of the share which is to be the basis of the partition. The rule

further makes it incumbent on the consolidation officer to hear the parties who appear in response to the notice and file objections. Again in this case also the consolidation officer will have to apply his mind judicially to the case of each party and determine the quantum of the share on the assessment of the evidence and the other circumstances. There is further provision in Section 10A itself for an appeal by any aggrieved party. All this shows that the proceedings, which are contemplated u/s 10A of the Act, are not administrative but judicial. Any decision arrived at in proceedings u/s 10A of the Act would be binding between the parties and would serve as a proper basis for subsequent proceedings under the Act. It would be noticed that by itself Sub-section (4) of Section 10A provides that a person aggrieved by the order of the Consolidation Officer under Sub-section (2)-or (3) may file an appeal before the Settlement Officer (Consolidation) whose decision shall except as otherwise provided by or under this Act be final. It follows there from that the partition made by the Consolidation Officer would be binding between the parties if no appeal is preferred from the order passed by the Consolidation Officer. It appears to me that the only manner in which the Act contemplates a challenge by a party aggrieved by the order of the Consolidation Officer partitioning a holding is by filing an appeal before the Settlement Officer (Consolidation). If any party has a grievance against that, order and is dissatisfied with the order of the partition but he does not file any appeal in ventilation of his grievances then at any subsequent stage of the proceedings under the Act an objection to that order in any other manner is ruled out. Admittedly, Ajodhi did not prefer any appeal from the order of the Consolidation Officer passed under Sub-section (3) of Section 10A of the Act. Though he felt aggrieved by that order but he kept quiet till the Statement of Proposals was published u/s 19 of the Act. In my view it was not open to Ajodhi to challenge the partition made by the Consolidation Officer by filing an objection u/s 20 of the Act for in the view, which I have expressed above, that is not the manner for questioning the partition. Even assuming therefore, that the orders passed u/s 10A of the Act by the Consolidation Officer are administrative in nature and not judicial, the manner of questioning them is provided by sub S. (4) of Section 10A and they cannot be questioned by filing objection u/s 20 of the Act.

3. Relying on the case of *Ganga Singh and Anr. v. The Dy. Director of Consolidation and Ors.* (1) (1962 AWR 450) Sri Shukla, for the Petitioner, strenuously contended that an objection u/s 20 of the Act to the effect that Ajodhi's share was one half and not one third in the disputed holdings would be competent even though he did not file any objection in response to the notice u/s 10A of the Act or did not file any appeal from the order of the Consolidation Officer partitioning the disputed holdings. A reference was also made to the Division Bench decision given in Special Appeal in *Ganga Singh's case* (2) (1964 AWR 589) and it was submitted that the ratio of the decision of the Single Judge was approved. Approval of the judgment of the Division Bench in 1964 AWR 589 shows that the special appeal was dismissed from the order of the Single Judge

and the judgment under appeal was affirmed on different reasoning. It is not possible, therefore, to say that all the reasoning given by the learned Single Judge as reported in 1962 AWR 450 were approved by the Division Bench. I do not think that the learned Counsel can draw any assistance from this decision in as much as that Ajodhi had not filed any appeal from the order of the Consolidation Officer passed u/s 10A of the Act and no such appeal was pending when the Statement of Proposals was published u/s 19 of the Act. I am inclined to the view that the instant case is governed by the Division Bench decision in the case of *Rup Narain v. State* (3) (1962 AWR 727).

4. In his impugned order the Dy. Director of Consolidation did not proceed on the basis that the objection filed by Ajodhi u/s 20 of the Act was incompetent or was not maintainable. Though the view which I have taken would make such an objection incompetent and not maintainable. The Deputy Director of Consolidation, in my view, was right in holding that the order of the Consolidation Officer passed under Sub-section (3) of Section 10A was binding and final and operated as *res judicata*. The impugned order, if it be assumed, is open to challenge on the ground that the order of the Consolidation Officer u/s 10A did not have the effect of *res judicata* it would still be a good order as the only manner in which the Consolidation Officer's order u/s 10A could be questioned was by way of an appeal to the Settlement Officer (Consolidation) irrespective of the nature of that order whether it was judicial or administrative.

5. For the reasons given above I dismiss this petition. As the parties are all members of one family I make no order for costs.