
(2011) 05 AHC CK 0422
In the Allahabad High Court
Case No : C.M.W.P. No. 31273 of 2011

Anandpal and Others

APPELLANT

Vs

Deputy Director, Consolidation and Others

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2011) 7 ADJ 520 : (2011) 5 AWC 4851 : (2011) 113 RD 569

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the Petitioners Sri Hari Om Khare, and Sri N.C. Rajvanshi, learned Senior Counsel for the Respondent Nos. 3, 4 & 5.

2. The facts that emerge and are being narrated hereinafter would indicate that it is not necessary to issue notice to the Respondent Nos. 6 to 11 at this stage of the proceedings.

3. Sri Rajvanshi, learned Senior Counsel states that no counter affidavit is required to be filed in view of the submissions raised and the matter can be disposed of finally at this stage itself.

4. Sri Hari Om Khare, learned Counsel for the Petitioners contends that several objections were filed with regard to the land in dispute including that by one Kewal who is now represented by his legal heirs the Respondent Nos. 6 to 11. During the pendency of the objections, the Petitioners also filed their objection on 20.1.2006, copy whereof has been filed as Annexure No. 5 to the writ petition. The description of the same appears to be in the nature of a counter-objection against the objections filed by Kewal. However, the nature of the counter objections, in view of the prayer made therein, also indicate that a request has been made to expunge the name of the recorded tenure holders and

to record the name of the objector, the Petitioner herein. Sri Khare states that this objection was u/s 9-A(2) and it has been treated as such by the Consolidation Officer while passing the order dated 12.4.2010. During the pendency of the said objections, Kewal filed an application that he does not want to press his objection. The said application was allowed on 12.4.2010. However, the objection filed by the Petitioners was treated to be a separate objection and the same was allowed to continue. A revision was preferred against the same by the Respondents-which has been allowed by the impugned order on 4.4.2011, holding that since Kewal's objection u/s 9-A(2) has been dismissed as withdrawn, the claim of the Petitioners can only be considered by filing of a fresh objection and not on the basis of the counter-objection as referred to hereinabove.

5. Sri Khare states that the Deputy Director of Consolidation has taken an absolutely erroneous view against the recital contained in the document of the Petitioners dated 20.1.2006 and further even otherwise it is a hyper technical view.

6. Sri Rajvanshi contends that the view taken by the Deputy Director of Consolidation is technically correct inasmuch as the Petitioners will have to file a formal objection of their own, in case they want a relief to get their names recorded against the holding of the Khata in dispute.

7. Heard learned Counsel for the parties and perused the records.

8. The technical objection that has been taken by the Deputy Director of Consolidation appears to be on a misreading of the document dated 20.1.2006. The objection filed by the Petitioners did begin with, in the shape of a written statement against the objection of Kewal, but the prayer clause clearly recites that the name of the recorded tenure holders be expunged and that their objections be allowed and the Petitioners be recorded as tenure holders. The Deputy Director of Consolidation should not have gone by the literal form of the objection raised by the Petitioners but by its pith and substance. The prayer and the nature of the pleadings are clearly an objection u/s 9A(2) of the U.P.C.H. Act, 1953.

9. In my opinion, the Deputy Director of Consolidation has committed an error and therefore, the impugned order can not be sustained. Accordingly, the order dated 4.4.2011 is hereby set-aside. The objection dated 20.1.2006 filed by the Petitioners shall be treated to be filed u/s 9A(2) of U.P.C.H. Act, 1953 and the Consolidation Officer shall proceed to decide the same in accordance with law.

10. The writ petition is allowed. It is needless to say that Kewal has already withdrawn his objection. In this view of the matter, it is not necessary to issue notice to the other Respondents while disposing of this writ petition.