
(2013) 11 AHC CK 0125
In the Allahabad High Court
Case No : Writ B. No. 60779 of 2013

Anwarul Haq

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2013) 121 RD 657

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : K.N. Shukla, for the Appellant; Govind Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri K.N. Shukla, Counsel for the petitioner and Sri Govind Krishna, Counsel for the contesting respondent No. 3. The writ petition has been filed against the order of the Settlement Officer, Consolidation dated 21.2.2011 by which delay in filing the appeal has been condoned and the order of the Deputy Director of Consolidation dated 13.9.2013, dismissing the revision against the aforesaid order.

2. Harishchand filed an appeal against the order of the Consolidation Officer dated 7.1.2000 along with a delay condonation application on 31.12.2008. In the memorandum of appeal, delay condonation application and affidavit attached to it, Harishchand has stated that his house and construction was existed on the land in dispute since before the date of vesting. No one filed any objection within the time u/s 9 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") claiming any right over it. However, the petitioner filed objection on 2.7.1999 in which a collusive compromise was filed and the case was decided on the basis of the said compromise by the order dated 7.1.2000. According to Harishchand Phoolmati Devi and others parties to the compromise have no interest in the land in dispute and they have no right to enter into compromise.

3. The petitioner filed his objection in delay condonation application and also

raised an objection regarding maintainability of appeal. It has been stated by the petitioner that the name of Harishchand was not recorded over the land in dispute and he has not filed any objection claiming his right u/s 9 of the Act. There is prima facie no evidence to prove the possession of Harishchand over the land in dispute, accordingly, he is not a person interested in the land in dispute and has no right to file appeal against the order of the Consolidation Officer dated 7.1.2000 and the inordinate delay of about 9 years was not liable to be condoned. The application for condonation of delay has been heard by the Settlement Officer, Consolidation, who by order dated 21.2.2011 held that Harishchand has claimed his possession over the land in dispute and has also stated that he has been litigating in respect of his right over it before the Civil Court. According to the allegation, he further has found that Harishchand was not the party in the objection as such the limitation for filing appeal would start running from the date of knowledge of the order and the cause being sufficient, condoned the delay in filing the appeal and held the appeal as maintainable on behalf of Harishchand and fixed a date for hearing the appeal on merit.

4. The petitioner filed a revision (registered as revision No. 444/2012-13) from the aforesaid order. The revision was dismissed by the Deputy Director of Consolidation by the impugned order dated 13.9.2013.

5. The Counsel for the petitioner submits that the Deputy Director of Consolidation has neither considered nor dealt with the various grounds raised by the petitioner in the memorandum of revision and the revision has been dismissed without application of mind. He submits that Harishchand could not prove his interest in the land in dispute by adducing any evidence as such the finding of the Settlement Officer, Consolidation that he was an interested person was illegal and ought to have been considered by the Revisional Court while deciding the revision.

6. He further submits that Harishchand has not filed any objection u/s 9 of the Act although the village was placed under consolidation operation in 1972, accordingly, the appeal filed by him in the year 2008 was not maintainable and ought to have been rejected. He further submits that in any case no application has been filed for grant of leave to appeal, accordingly the appeal was not maintainable and the liable to be dismissed on this ground alone as held by this Court in Radhey Shyam Vs. Kamla Shanker and Others,

7. I have considered the arguments of the Counsel for the parties and examined the record.

8. The allegation of Harishchand is that he has raised his house over the land in dispute since before the date of vesting. On this allegation the jurisdiction of the consolidation authorities to decide the dispute itself has been challenged. In such circumstances as the land in dispute was allegedly abadi and since before the date of vesting the house was existing on it Harishchand was not required to file any objection u/s 9 of the Act. Mere not filing objection u/s 9 of the Act, it cannot

be said that Harishchand was not an interested party. Since the matter relating to condonation of delay and maintainability of appeal was summarily decided only on the affidavit as such at this stage no detailed enquiry was required to be made in this respect. The Settlement Officer, Consolidation has not committed any illegality in relying upon the statement of Harishchand in his affidavit in this respect.

9. So far as the delay is concerned admittedly Harishchand was not made party before the Consolidation Officer and there is nothing on record to show that prior to December, 2008 Harishchand had knowledge about the order. In the circumstances the delay has rightly been condoned by the Settlement Officer, Consolidation. So far as the objection of the petitioner that there was no application for leave to/appeal, accordingly, the appeal was liable to be rejected is concerned, it may be mentioned that under the Act and the Rules framed thereunder there is no such provision for taking leave to file appeal. The case law relied upon by the Counsel for the petitioner is based on the principles of CPC (CPC), although the Full Bench of this Court in *Bijai Narain Singh and Others Vs. State of Uttar Pradesh*, has held that C.P.C. is not applicable in consolidation proceedings. In such circumstances, the case law relied upon by the Counsel for the petitioner, which has not taken notice of the decision of the Full Bench of this Court in the case of *Bijai Narain Singh (supra)* is not liable to be applicable. Since the appeal is still pending before the Settlement Officer, Consolidation and is to be decided on merit, no interference is required by this Court. The writ petition has no merit and it is dismissed.