

(1966) 10 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 378 of 1965

Balbhadra and Another

APPELLANT

Vs

Assistant Director of Consolidation and Others

RESPONDENT

Date of Decision : 25-10-1966

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11A
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65

Citation : (1967) 37 AWR 86

Hon'ble Judges : B.N. Nigam, J

Bench : Single Bench

Advocate : Hargur Charan Srivastava, for the Appellant; R.N. Shukla and B.L. Shukla for Opp. Party No. 8, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Nigam, J.—Balbhaddra and Smt. Daryai have filed this petition under Article 226 of the Constitution. As it was found that the dispute related to two separate holdings, Khata no. 113 of village Lalupur Khas and Khata No. 131 of village Mubarakpur, the learned Counsel was called upon to elect. The learned Counsel has however filed court fee for one more writ petition. I condone the defect of multifariousness and proceed to hear the two matters.

2. In the writ petition I have heard learned Counsel for the Petitioners and the learned Counsel for opposite party No. 8.

3. Though the arguments have ranged over a wide area it is not necessary for me to express myself in respect of all the arguments of the learned Counsel I confine myself to the arguments which are necessary to be decided in this writ petition.

4. It is stated that Smt. Gaura preferred no objection in respect of either village before the Assistant Consolidation Officer. The Assistant Consolidation Officer, however, made reference in respect of both the villages giving rise to case No.

294 of village Mubarakpur and case No. 634 in respect of village Lalupur Khas. In respect of village Mubarakpur the Consolidation Officer directed that half of the Khata be recorded in the name of Smt Gaura and half be entered in the name of Petitioner No. 1. In respect of village Lalupur Khas the Consolidation Officer directed that Petitioner No. 1 alone, under the guardianship of his maternal uncle, be entered and the objection of Smt. Gaura be dismissed. As regards the dispute in village Mubarakpur an appeal was preferred to the Settlement Officer (Consolidation) who remanded the case for retrial and thereupon it was ordered that the name of Smt. Gaura be added as a co-tenant.

5. Aggrieved by the order in respect of village Lalupur Khas, opposite party no. 8 preferred an appeal but described it both in the original memorandum of appeal as well as in Annexure 4 as relating to village Mubarakpur and not village Lalupur Khas. The two objections taken by the learned Counsel for the Petitioners that as no written objection had been filed before the Assistant Consolidation Officer these disputes could not have been heard and that the appeal was in respect of village Mubarakpur and not in respect of village Lalupur Khas do not appeal to me. The first argument does not appeal to me for the simple reasons that after a reference has been made by an Assistant Consolidation Officer that reference has to be decided by the Consolidation Officer whether any written objection is filed before him or not. Once that position is accepted the filing of a written objection is unnecessary and does not create any defect to the disadvantage of the person presenting that written objection. Unless it can be urged that the reference made by the Assistant Consolidation Officer was being dealt with separately that reference has to be decided irrespective of the provisions of Section 11-A of the UP Consolidation of Holdings Act which debar the filing of an objection at any subsequent stage. As regards the defect in describing the village that is of a little significance as it is definite that the judgment that was being appealed against was the judgment dated 26-3-1964 and it is accepted by the learned Counsel that that judgment related to village Lalupur Khas.

6. The objection in respect of the appeal filed against the judgment dated 26-3-1964 is that the Settlement Officer (Consolidation) had, in terms of Rule 65 of the rules framed under the UP Consolidation of Holdings Act, transferred the appeal to the court of V.P. Singh by name. The appeal was, however, heard by Ram Singh, Assistant Settlement Officer (Consolidation). This fact has not been challenged. It has not been asserted that there was any order withdrawing the case from the file of V.P. Singh to the file of the Settlement Officer (Consolidation) and again transferring it from the file of Settlement Officer (Consolidation) to that of Ram Singh, nor is it stated that Ram Singh succeeded V.P. Singh who was transferred. It appears that both these officers were appointed Assistant Settlement Officer (Consolidation) in respect of the whole State. I am, therefore, of opinion that the disposal of this appeal by Ram Singh was without jurisdiction. That order has, therefore, to be set aside and the appeal restored on the file of V.P. Singh. It will then be open to the Settlement Officer (Consolidation) in exercise of his powers under Rule 65 to withdraw the

appeal to his own file and subsequently to transfer it to any other officer competent to dispose of the same.

7. As regards the appeal in respect of village Mubarakpur no defect is pointed out but the defect pointed out is in respect of the revision application arising out of it. It appears that the Petitioners preferred two revision applications before the District Deputy Director (Consolidation) on 12-10-1964 and 12-12-1964 respectively. These revision applications were not transferred by the District Dy. Director (Consolidation) yet they have been disposed of by opposite party No. 1 the Assistant Director (Consolidation). I am not of the opinion that the Assistant Director (Consolidation) could not have disposed of these revision applications. It, however, appears to me that he could deal with them only when they were properly on his file. The District Deputy Director (Consolidation) was competent to dispense of these revision applications or he could also transfer them to any officer for disposal under Rule 65 of the rules framed under the UP Consolidation of Holdings Act. As such opposite party No. 1, in whose favour no transfer order was made in respect of this revision application, was not competent to deal with it.

8. In that view I am of opinion that the order, Annexure 8 must be quashed partly because it is without jurisdiction and partly because the order of the Assistant Settlement Officer (Consolidation) against which one of the revision applications was preferred has to be quashed. Further it appears to me that the order, copy Annexure 6, has also to be quashed because the Assistant Settlement Officer Consolidation had no jurisdiction to hear the appeal. I direct the issue of writ of certiorari quashing these two orders. The result is that in one case the appeal will stand restored on the file of V.P. Singh to be disposed of in accordance with law and in the other case the revision application. Revision filed on 12-12-1964 will stand restored on the file of the District Deputy Director (Consolidation). Parties will be at their own costs.