

(2011) 07 AHC CK 0348

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33821 of 2011

Bale Ram and Others

APPELLANT

Vs

Deputy Director Consolidation, Meerut and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42A, 52

Citation : (2011) 7 ADJ 600 : (2011) 5 AWC 5274 : (2011) 113 RD 832

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Sri Hari Om Khare, Learned Counsel for the Petitioners.

2. The challenge in this petition is to the order of the Deputy Director of Consolidation passed in revision against an order passed by the Consolidation Officer u/s 42-A of the U.P. Consolidation of Holdings Act, 1953 (herein after referred to as "the 1953 Act").

3. Sri Khare in essence submits that the Chak road which was allotted during consolidation operations for approaching the Petitioners' plots was not adequate in area in view of the length of the chakroad, and was not in consonance with the intention of the consolidation scheme. The same has also been encroached upon by the contesting Respondents and hence the order of reversal passed by the Deputy Director of Consolidation without taking this aspect into notice is vitiated. Learned Counsel for the Petitioners has relied on the judgment of this Court in the case of Radhey Shyam v. Deputy Director of Consolidation Bareilly and Anr. 2006 (100) RD 692, to substantiate his plea that such a correction which was allowed by the Consolidation Officer to give benefit to the Petitioners was permissible u/s 42-A of the 1953 Act. He contends that the mistake has been corrected and the judgments relied upon by him permits for rectification of such mistakes. He has further invited the attention of the Court to the case of Mangal

and Anr. v. State of U.P. and Ors. 2010 (109) RD 349, to further buttress his submissions.

4. The question of correction of mistake is not the issue. The issue is as to what is the nature of the mistake and the nature of the remedy available to the Petitioners.

5. In the instant case, it is admitted that the consolidation operations were finalized 35 years ago whereafter the village was denotified u/s 52 of the U.P. Consolidation of Holdings Act, 1953. The application for correction u/s 42-A of the 1953 Act was moved after a lapse of 35 years before the Consolidation Officer upon denotification of the village. The judgments which have been relied upon by the Learned Counsel for the Petitioners therefore do not come to his aid in the wake of the aforesaid fact. Apart from this Section 42-A of the 1953 Act is not a remedy for each and every mistake it questions. The same can be invoked only for clerical or arithmetical errors occurring by any accidental slip or omission. It was not a case of accidental slip or omission. Therefore, the judgment relied upon by the Learned Counsel for the Petitioners in the case of Radhy Shyam (*supra*) does not come to his aid. In that case there was a clear finding that the mistake was due to inadvertence.

6. Here the nature of the pleadings are entirely different. The Petitioners moved an application u/s 42-A of the 1953 Act for increasing the area of the road and for allocation of additional area according to the length of the road. The report submitted in support of this application by the consolidation authorities was a proposal to allot further area which, in the opinion of the Court, was not a clerical or arithmetical error as claimed by the Petitioners. The application was moved after 35 years and the Consolidation Officer had no authority to entertain such an application for altering the nature of area of the land earmarked for Chakroad. If the Petitioners were aggrieved by any encroachment then the Petitioners remedy lay elsewhere and not by way of an application for correction. The procedure adopted by the Petitioners was therefore a clear abuse of the process of statutory " provisions of Section 42-A of the 1953 Act and the Consolidation Officer manifestly erred in proceeding to take such a decision keeping in view the nature of the alteration claimed by the Petitioners.

7. The writ petition is therefore misconceived and is hereby dismissed.