
(2009) 08 AHC CK 0096
In the Allahabad High Court

Ball Ram and Another

APPELLANT

Vs

Deputy Director, Consolidation and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (2010) 4 AWC 3413

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Shri A.K. Misra, learned Counsel for the petitioners and Shri A.K. Shukla, learned Standing Counsel.

2. In brief the facts of the case are that Case No. 9/34/41/20, u/s 9A(2) of U.P. Consolidation of Holdings Act is pending before the opposite party No. 4, Consolidation Officer, Salliya, Camp Lakhimpur, Distt. Kheri.

3. The petitioners have filed an application for transfer of the said case from the court of Consolidation Officer to opposite party No. 2 (Settlement Officer Consolidation, Camp Kheri) on the ground that the Presiding Officer (Consolidation Officer) is related to Geeta Yadav, who is a party in the proceeding before the Consolidation Officer, they have got no hope to get justice from him.

4. The said application of the petitioners" was rejected by opposite party No. 2 vide judgment and order dated 9.3.2009 and aggrieved by the same the petitioners filed a revision on 17.6.2009 before the Deputy Director of Consolidation, Kheri, opposite party No. 1, which was also rejected by means of the judgment and order dated 11.8.2009.

5. Aggrieved by the order dated 11.8.2009, passed by the Deputy Director of Consolidation, Salliya, Camp Lakhimpur, Distt. Kheri and the order dated

3.6.2009, passed by opposite party No. 2, the petitioners have filed the present writ petition whereby challenging the said order learned Counsel for the petitioners has made the submission in support of his case on the following points:

(a) Consolidation Officer, Salliya, Camp Lakhimpur, Distt. Kheri (opposite party No. 4) is closely related to Geeta Yadav, who is a party in proceeding before him.

(b) The husband of opposite party No. 5 is a Senior Police Officer in the police department, so there is a likelihood that he may cause pressure on the Consolidation Officer for giving illegal benefit to opposite party No. 5 Geeta Yadav.

(c) The petitioners have heard a rumour that Geeta Yadav is saying that she will get the case decided in her favour by the opposite party No. 4.

6. After hearing the Counsel for the parties and perusing the papers on record, it is crystal clear that the opposite party No. 1 had given a categorical finding in its judgment dated 11.8.2009 on the basis of the documentary evidence available before him that Smt. Geeta Yadav is not related to Consolidation Officer, Salliya, (opposite party No. 3) in any manner. It was also observed by the opposite party No. 1 if the Presiding Officer is of the same caste, which one of the party belongs, then the same cannot be a ground for transferring the case from the court of Presiding Officer.

7. The opposite party No. 1 has further recorded the finding that on the request/ consent of the parties the matter in dispute had been transferred by the Settlement Officer Consolidation to the Court of Consolidation Officer, Salliya, Camp Lakhimpur, Kheri, opposite party No. 3.

8. It is also observed by opposite party No. 1 while passing the impugned judgment that a case is decided on merit by the court after taking into account and not by the pressure exercised by the party.

9. In view of the above said findings opposite party No. 1 had rejected the submission advanced on behalf of the petitioners that alleged presumption on the part of the petitioners that Presiding Officer (Consolidation Officer) is related to Smt. Geeta Yadav.

10. It is well settled proposition of law as laid down by the Supreme Court and by this Court that if the finding of facts are recorded by the court below and are based on facts and the material on record, this Court while exercising his power of judicial review under Article 226 of the Constitution of India cannot review the said findings, but the same can be reviewed only if it is shown that they are contrary to the facts of the case and perverse in nature.

11. In the present case, the learned Counsel for the petitioners fails to point out any reason or circumstances whatsoever on the basis of which it can be said that the findings of fact recorded by the opposite party No. 1 in the impugned judgment is contrary to the facts on record or perverse in nature.

12. In the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, the Supreme Court has held as follows:

finding of fact cannot be challenged in a proceeding on the ground that the relevant and material evidence was insufficient to sustain the finding and that adequate or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction of the Tribunal.

13. In the case of State of West Bengal v. A.K. Shaw AIR 1990 SC 2205, the Supreme Court has observed that of quasi judicial Tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding on the High Court. By the process of Judicial review, the High Court cannot appreciate the evidence and record its own findings of fact.

14. In the case of Dharamraj and Ors. v. Chhitan and Ors. 2007 (102) RD 73, the Supreme Court has observed that:

It is now well settled law that in exercise of its extra ordinary writ jurisdiction High Court is not supposed to interfere with the findings of fact arrived at by the Consolidation authorities unless and until High Court concludes that such findings of fact are either perverse or based on no evidence.

15. This Court in the case of Bano v. State of U.P. Through Collector, Bulandshar and Ors. has held that the findings recorded by the Deputy Director Consolidation is a finding of fact, and cannot call for any interference unless it is shown that the findings are perverse or based on no material.

16. In view of the facts and reasons stated hereinabove, the submission made by the learned Counsel for the petitioners in this regard have no force and the same are accordingly rejected.

17. The next contention raised by the learned Counsel for the petitioners to the effect that the husband of opposite party No. 5 is a Senior Police Officer in the police department so there is a likelihood that she may cause pressure on the Consolidation Officer for giving illegal benefit to opposite party No. 5 Geeta Yadav is vague, bald in nature and the same has been allegedly levelled with the oblique motive and purpose only in order to get the matter transferred from the court of the Presiding Officer (Consolidation Officer), as such according to my opinion the said allegation levelled by the petitioners is an after thought and having no cogent reason or base, but the same is an outcome of the malafide intention on the part of the petitioners, as such the same are baseless, unfounded and having no force, accordingly the said alleged allegations are rejected.

18. In view of the findings recorded hereinabove, no interference is called for in the present case while exercising the power under Article 226 of the Constitution of India by this Court, as such the present writ petition lacks merit and the same is hereby dismissed.