

(1967) 03 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 109 of 1966

Baqar and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 17-03-1967

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65(1A)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65(1A)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65(1A)

Citation : (1967) 37 AWR 566

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : Hargur Charan Srivastava, for the Appellant; Standing Counsel for Opposite Parties Nos. 1 to 5 and M.L. Trivedi, for Opposite Party No. 6, for the Respondent

Final Decision : Allowed

Judgement

Lakshmi Prasad, J.—This is a petition under Article 226 of the Constitution. The dispute in the case relates to plot No. 522 specified in paragraph 1 of the petition. Opposite party No. 6 preferred an objection u/s 9 of the UP Consolidation of Holdings Act claiming himself to be a sirdar of the disputed plot. The objection was contested by the Petitioners, who claimed that they were the sirdars. The Consolidation Officer dismissed the objection on 30-3-1965. Opposite party No. 6 preferred an appeal which was allowed on 24-8-1965. The Petitioner then preferred a revision which was dismissed on 6-11-1965. It is in these circumstances that the present petition is filed for the quashing of the order of the Deputy Director passed in revision.

2. The petition is opposed by opposite party No 6. I have heard the learned Counsel for the contesting parties. The only point raised by the learned Counsel

for the Petitioner is that, as required by Rule 111 of the UP Consolidation of Holdings Rules, the revision was preferred in the court of the District Deputy Director and as such it could not be disposed of by any other Deputy Director, unless there was an order of transfer as envisaged by Rule 65(1-A) of the aforesaid Rules. The record of the case has been summoned and is before me. The impugned order has been passed not by the District Deputy Director but by a deputy Director. The order sheet indicates that the case was listed for hearing on 6-10-1965, but was adjourned to 6-11-1965, because of the absence of the Deputy Director. It shall thus be seen that the record of the case had its way from the court of the District Deputy Director to the Deputy Director some time earlier than 6-10-1965. Yet it appears from the record, more precisely the slip pasted on the order sheet that the order of transfer was passed by the District Deputy Director on 26-10-1965. The allegation in the petition is that the particular officer, viz., Sri R.K. Sharma, Opposite Party No. 4, was not the District Deputy Director of Consolidation, Barabanki on 26-10-1965, but Mr. B.B. Sahi was the District Deputy Director of Consolidation, Barabanki on that date. As shall appear from the allegations in paragraph 9 of the petition, the material portions of which are sworn on personal knowledge, Sri R.K. Sharma became the District Deputy Director Barabanki some time after 6-11-1965, the date on which the impugned order was passed. The congesting opposite party has vaguely said in the counter affidavit that the allegations in paragraph 9 of the petition are denied. What is of significance is that notwithstanding the serious nature of the aforesaid allegations made in paragraph 9 of the petition, none of the opposite parties including Sri R.K. Sharma has cared to controvert any of them. If the allegations are correct, which in the circumstances of the case must be held correct for the purpose of the Case at any rate, all this reflects seriously on the officer concerned, viz., opposite party No. 4. However, be that as it may, the fact remains that the transfer order indicated in the case inspires no confidence and must be taken to have come into existence some time subsequent to the passing of the impugned order, as is the contention of the Petitioners. At any rate, the very order sheet shows that the record of the case had its way to the Deputy Director on 6-10-1965; whereas the supposed order of transfer came to be passed on 26-10-1965. In that view of the matter, it, must be held that the impugned order is bad as being without jurisdiction.

3. Learned Counsel for opposite party No. 6 contends that unless the impugned order be found defective in some respects, it need not be quashed for the technical reason which the Petitioners have been held to have proved in the case. I do not agree with the contention. An order which is entirely without jurisdiction cannot be sustained regardless of its merits.

4. In the circumstances, the petition is allowed and the impugned order passed by the Deputy Director on 6-11-1965 is set aside with the direction that the revision shall be heard afresh according to law either by the District Deputy Director himself or by such other Deputy Director competent to dispose it of after an order of transfer as required by law has been passed. Parties are directed to

bear their costs.