
(2016) 10 AHC CK 0041
In the Allahabad High Court
Case No : Writ B No. 48465 of 2016

Bechan

APPELLANT

Vs

Deputy Director of Consolidation, Azamgarh

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (2016) 133 RD 643

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

Bench : Single Bench

Advocate : Dan Bahadur Yadav and Lal Sahab Yadav, Advocates, for the Petitioner; C.S.C., Ramesh Chandra Upadhyay, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri D.B. Yadav for the petitioners.

2. The writ petition has been filed against the orders of Deputy Director of Consolidation dated 4.1.1996 and 2.8.2016 enhancing the valuation of plot no.461/2, area 0.547 hectare from 20 paisa to 60 paisa of Korauli Bujurga, pargana Nizamabad, tehsil Sadar, district Azamgarh.

3. Plot no.461/2 aforesaid was banjar land of Gaon Sabha. During consolidation operation the petitioner got its valuation determined at the rate of 20 paisa and allotted in his chak from the stage of Consolidation Officer. Later on District Government Counsel filed an application before Deputy Director of Consolidation stating that valuation of plot no.461/2 was wrongly determined although this land was road side land where various trees were also standing and it was a valuable land therefore, its valuation be deleted. On this application a report was called for and Consolidation Officer submitted his report dated 8.3.1995 and stated that east of plot no.461, plot no.459 was situated of which valuation was determined at the rate of 40 paisa and 100 paisa. Thereafter, Deputy Director of Consolidation by order dated 2.5.1995 directed for determining the valuation of

plot no.461/2 at the rate of 100 paisa.

4. The petitioners filed an application for recall of the aforesaid order on which the matter was again heard by Deputy Director of Consolidation. He called for a report from Consolidation officer and after hearing the parties he has determined the valuation of plot no.461/2, area 0.547 hectare at the rate of 60 paisa by order dated 4.1.1996. The petitioners challenged the aforesaid order in Writ Petition No.3899 of 1996, which was disposed of by order dated 31.1.1996 to decide objection of the petitioner if filed before the Deputy Director of Consolidation within 15 days and till disposal of the objection operation of the order dated 4.1.1996 was suspended. Thereafter the petitioners again filed objection before Deputy Director of Consolidation. The matter was contested by District Government Counsel. Deputy Director of Consolidation after hearing the parties by order dated 2.8.2016 held that as all the plots in the vicinity of plot no.461/2 were valued at the rate of 60 paisa as such the order dated 4.1.1996 determining the valuation at the rate of 60 paisa was legal and is not liable to be recalled. As this order was passed after hearing the parties. On this finding he rejected the recall application by order dated 2.8.2016. Hence, this writ petition has been filed.

5. The counsel for the petitioners submits that the petitioners challenged the order passed by Deputy Director of Consolidation dated 4.1.1996 in Writ Petition No.3899 of 1996 wherein this Court had directed the Deputy Director of Consolidation to decide recall application of the petitioner. Instead of deciding the recall application, it has been dismissed on the ground that order dated 4.1.1996 was passed after hearing the parties as such it is not liable to be set aside. He submits that in the order dated 4.1.1996 Deputy Director of Consolidation has illegally held that the plots surrounding of plot no.461/2 were valued at the rate of 60 paisa while other plots even the plot of the petitioners situated in that vicinity i.e. plot no.459 was valued at the rate of 40 paisa. Thus, determination of valuation of plot no.461/2 at the rate of 60 paisa was illegal and was liable to be set aside. At the time of passing of order dated 4.1.1996 the arguments were heard in the recall application of the petitioners. The recall application ought to have been decided but the Deputy Director of Consolidation has decided the case on merit without hearing the arguments on merit. Therefore, it was an ex parte order and was liable to be set aside.

6. I have considered the arguments of the counsel for the petitioners.

7. The petitioners have filed their CH form 23 in which plot no.459 is the original holding of the petitioners. The area of plot no.459 - 0.500 hectare was valued at the rate of 40 paisa, 0.560 hectare was valued at the rate of 60 paisa and 5.423 hectare was valued at the rate of 100 paisa. According to the report of Consolidation Officer plot no.459 is adjoining to plot no.461/2 situated in the eastern of it. Apart from it Consolidation Officer has submitted in his report that a part of plot no.461/2 i.e. 0.050 hectare was recorded as road in the consolidation record and remaining plot was parti land. Thus, plot no.461/2 is at

better locality than plot no.459 belonging to the petitioners. The major portion of plot no.459 was valued at the rate of 100 paisa, and only a small area of this plot i.e.0.500 hectare was valued at the rate of 40 paisa. Thus, determination of valuation of plot no.461/2 at the rate of 60 paisa cannot be said to be excessive in the fact of the case.

8. So far as the argument of the counsel for the petitioners that the order dated 4.1.1996 was an ex parte order is concerned, Deputy Director of Consolidation by order dated 2.5.1995 determined the valuation of plot no.461/2 at the rate of 100 paisa. The petitioners filed an application for recall of the order on 31.5.1995. Thereafter Deputy Director of Consolidation obtained a fresh report regarding valuation of plot no.461/2 and after obtaining the fresh report dated 26.8.1995 the matter was heard and decided by the order dated 4.1.1996. In view of the calling for fresh report regarding valuation from the subordinate authority it cannot be said that only recall application was heard by Deputy Director of Consolidation. The argument in this respect is not liable to be accepted.

9. So far as the order of this Court dated 31.1.1996 is concerned, before this Court argument was made that in pursuance of order dated 4.1.1996 the land was deleted from the record of the petitioners treating it as forged entry although no opportunity of hearing was giving to the petitioner before passing the order dated 4.1.1996. Thus, on the allegation of the petitioners, in the writ petition, this Court had directed the petitioners to file an objection/recall application before Deputy Director of Consolidation and he was directed to decide that recall application. Thus, there is no finding of this Court that order dated 4.1.1996 was an ex parte order. In any case, this order was not passed before calling for the counter affidavit by State of U.P. or Gaon Sabha and it appears that writ petition was disposed of at the time of fresh hearing for admission. Therefore, no benefit can be given to the petitioners of this order. Deputy Director of Consolidation has not committed any illegality in the order dated 2.8.2016 in holding that order dated 4.1.1996 was passed after hearing the parties.

10. In view of the aforesaid discussion the writ petition has no merit and it is dismissed.