(2006) 09 AHC CK 0281

In the Allahabad High Court

Bhagwan Bharthi and Others APPELLANT

Vs

Deputy Director Consolidation and Others RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9 A(2)

Citation : (2006) 2 RD 606

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard Sri S.L. Yadav, learned Counsel for the petitioner and counsel for the contesting respondents.

2. No counter affidavit has been filed in this writ petition

3. Counsel for the respondents states that since the matter involved is a legal question that is to be decided in the instant writ petition. He does not intend to file any counter affidavit. The writ petition is being heard finally.

4. Consolidation operation commenced in village Bhiura, Pargana Mali. Tehsil Handia, District Allahabad. Plots of Khata No. 2 was recorded in the name of Gulab Bharti, father of the petitioners. Khata No. 3 was recorded in the name of Gulab Bharti, Baba Bharti, Raja Ram Bharti, Triloki Nath, Dudh Nath and Amarnath Khata No. 4 was recorded in the names of Gulab Bharti, Beni, Brinda Prasad, Baba Bharti, Rajaram Bharti, Triloki Nath, Dudh Nath and Amarnath whereas Khata No. 47 was recorded in the name of Gulab Bharti. father of the petitioner An objection u/s 9 A(2) of UP. Consolidation of Holdings Act (hereinafter referred to as the Act) was filed claiming 4/5 share in Khata No 2, 4/10 share in Khata No 1 and 4/20 in Khata No 4 whereas Khata No. 47 was claimed as sole tenancy. The claim of the petitioner was contested by the respondent No. 4 claimed co-tenancy in Khata No 47 and respondent Nos. 5 and 6 claimed their share as sons of Nand Bharti The other respondents, who were

parties to the proceeding, did not dispute the quantum of their share. The Consolidation officer vide order dated 10.4.1970 decided the case and respective shares of the co-tenants. An appeal was filed whereby the order of the Consolidation Officer was set aside. During the pendency of the proceedings in appeal, the order of the Consolidation Officer was given effect to in the revenue records. The matter was remanded and finally the Consolidation Officer vide order dated 9.10.1972 decided the respective shares of the claimants. The appeal was filed by Rajaram against the order of the Consolidation Officer, which was allowed partly vide order dated 11.9.1973 A revision was preferred before the Deputy Director of Consolidation who allowed the revision of Gulab Bharti, father of the petitioner and dismissed the revision of Rajaram vide order dated 7.8.1975 holding that Khata No 47 to be an exclusive holding of the petitioner. The order of the Assistant Settlement Officer Consolidation stood modified. No writ petition was tiled challenging the order of the Deputy Director of Consolidation dated 7.8.1975, thus the adjudication became final. However, it appears that behind the back of the petitioner, a reference was made on the basis of the order of the Consolidation Officer and Assistant Settlement Officer Consolidation which was accepted vide order dated 29.1.1976. The order approving the reference is annexed as Annexure-4 to the writ petition. This order was passed behind the back of the petitioner. When he came to know about the order, he moved an application u/s 48(3) of the Act read with Rule 109-A of the Rules. This application was filed on 9.11.1978, a copy of which is annexed as Annexure-5 and affidavit filed in support of the said application is Annexure-6. Another application was moved on 2 5 1979 bringing to the notice of the consolidation authorities that the reference which has been accepted, is in respect of the order of the Assistant Settlement Officer Consolidation and Consolidation Officer which has already been modified and practically set aside by final order of the Deputy Director of Consolidation, in fact the so called reference was never signed and there was no date mentioned It was said to be fabricated The Deputy Director of Consolidation rejected the recall application dated 9.11.1978 vide order dated 3.12 1980 which is also impugned in this writ petition.

5. The revisional authority came to a conclusion that since publication u/s 52(1) of the Act was made on 30.4.1977 therefore the village stood de-notified and the reference has already been accepted, therefore the matter can not be reopened.

6. Learned Counsel for the petitioner has submitted that the petitioners are still continuing in possession over the plot in dispute but in pursuance to the impugned orders, the respondents are trying to dispossess them and since the order accepting the reference was passed behind the back of the petitioners, the same is liable to be quashed. The question that has come up before this Court in the instant writ petition, is that whether in case the village having been de-notified, it can be safely concluded that the consolidation proceeding has not yet come to an end and the application u/s 52(2) of the Act read with Rule 109A of the Rules could be entertained. Counsel for the petitioner placed reliance on a

Division Bench decision of this Court in the case of Mukhtar Vs. Deputy Director of Consolidation and Others, . It is contended on the basis of the aforesaid decision that the notification u/s 52(1) of the Act does not ipso facto leads to the conclusion that the proceedings under the Act has come to an end. The Division Bench interpreted Section 52(2) of the Act read with Rule 109A of the Rules and it was held that till the order passed by the consolidation authority was not finally implemented as contemplated under the Consolidation Scheme, lite proceeding under the Act would be deemed to be pending. Paragraph 12 of the said decision is quoted below:

12. From the entire scheme of the Act and the Rules framed thereunder it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation, Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the CPC in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and no duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13.5 1974 was not finally implemented by the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would he deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The Consolidation Authorities having not done so, the proceedings in -respect thereof can not be said to have been concluded before de-notification of the village The proceedings for correcting the revenue records in pursuance of the order dated 13 5.1974 would necessarily be taken to be pending on the date of the notification issued u/s 52(1) of the Act. The Consolidation Authorities were thus hound to implement the directions contained in the final order dated 13.5.1974 under the Act even though a notification u/s 52(1) of the Act had taken place. In our opinion, the view taken by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law.

7. This argument has been disputed by the counsel for the respondents. He has placed reliance on a decision in Civil Misc. Writ Petition No. 2144 of 1988-Ram Niwas and Anr. v. Consolidation Officer and Ors. it is argued on the basis of the aforesaid decision that this Court was of the view that if there is any clerical mistake in the consolidation records, the same may be corrected by the revenue authorities after de-notification u/s 52(1) of the Act but in case de-notification has been done then the consolidation authorities cease to have jurisdiction whatsoever and no further adjudication can be done regarding title of the plots and chaks.

8. After hearing the respective counsel for the parties at length and perusing the decisions cited by the respective parties, I come to a conclusion that the reference, which was accepted vide order dated 29.1.1976, can not be said to be a legal and correct order for the reason that it was passed behind the back of the petitioner even without giving him notice whatsoever. Secondly that once the proceeding has already come to an end and the revision was decided in favour of the petitioner adjudicating the respective claims of the parties, no reference can be made as it has been done in the instant case. The revisional order was the last order dated 7.8.1975 and was the final order between the parties, was not given effect to, on the contrary, the earlier order of the Consolidation Officer and Assistant Settlement Officer Consolidation which stood cancelled by the Deputy Director of Consolidation was made effective. The impugned order dated 29.1.1976 has an effect of undoing the final order and adjudication by the Deputy Director of Consolidation u/s 48 of the Act which was an order in favour of the petitioner. Whenever a reference u/s 18(3) of the Act is made, it is initially proposed by the Assistant Settlement Officer Consolidation or Consolidation Officer and specific proposal for the reference is made to the next higher authority. The concerned authority gives an opportunity of hearing to the parties and thereafter a recommendation is made to the next higher authority i.e. Deputy Director of Consolidation. In the instant case, the process and procedure of law has been given a complete goodbye In this connection, it is necessary to examine the material question, as to whether the consolidation proceedings could be held to be pending on the date when the recall application was moved on behalf of the petitioner for setting aside the order dated 29.1.1976 which has resulted in an incorrect preparation of CM Form 23 or it is to be concluded that after publication u/s 52(1) of the Act "no proceedings are pending". The Division Bench decision in the case of Mukhtar (supra) is a complete answer to the controversy involved The final order of the Deputy Director of Consolidation dated 7.8.1975 has not been implemented. The said order was made inoperative by adopting a novel method of making a reference behind the petitioners back The recall application filed by the petitioner for recalling the order and its pendency is sufficient to hold that the proceedings are still continuing. Specially in view of what has been held in the aforesaid decision, it can safely be concluded that the proceedings before the consolidation authorities are still pending and the Deputy Director of Consolidation was fully empowered to decide the reference afresh in view of his final decision after giving an opportunity of hearing to the petitioner

9. In the circumstances, this writ petition is allowed and the orders dated 29 1 1976 and 3 12.1980 accepting the reference are set aside. A bare perusal of the order shows that it is a non speaking order. The consolidation authorities are directed to implement the order of the Deputy Director of Consolidation dated 7 8.1975 in accordance with Scheme of the Act.