

(1992) 09 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3382 of 1982

Brahma Deo

APPELLANT

Vs

Assistant Director of Consolidation and Others

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5

Uttar Pradesh Land Revenue Act, 1901 — Section 197

Citation : (1993) 1 AWC 176 : (1993) RD 22

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : Hari Mohan Srivastava, for the Appellant; Birendra Kumar Yadav, Uma Kant Misra and Anjani Kumar Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Misra, J.—This petition is directed against an order of the Deputy Director of Consolidation dated 16-3-1982.

2. The brief facts of the case are that permission was sought from the Settlement Officer (Consolidation) for executing a sale deed in respect of chak Nos. 1 and 60. Thereafter, sale deed was executed by the Petitioner in favour of the Respondent Nos. 4 and 5. An application was filed by Respondent Nos. 4 and 5 for mutation of their names on the basis of a registered sale deed executed by the Petitioner in their favour. Petitioner however, filed an objection in respect of chak no 1. Mutation application in respect of chak No. 60 was allowed by the Consolidation Officer but that in respect of chak no 1 was rejected. The appeal preferred by the Respondent Nos. 4 and 5 was allowed by the Settlement Officer (Consolidation) as a result whereof their application for mutation of their names in chak No. 1 also stood allowed. Petitioner went on revision, which too was rejected by the Deputy Director of Consolidation. Aggrieved, the Petitioner has come before this Court by way of present writ petition.

3. Sri. H.M. Srivastava, learned Counsel for the Petitioner has urged 4 points, that (i) the finding of the Deputy Director of Consolidation itself is that there was mistake in the number mentioned in the application for permission for sale and in the sale deed (ii) the sale was in respect of a part of the chak of the holding and, the therefore, the same is hit by the provisions of U.P. Consolidation of Holdings Act. (Hit there was non-compliance of Section 197 of U.P. Land Revenue Act, and (iv) once the Deputy Director of Consolidation has come to the conclusion that there was mistake, which has been termed as clerical mistake by the Deputy Director of Consolidation, his order is bad. Therefore, he contended that instead of maintaining the order of Settlement Officer (Consolidation), he should have allowed the revision on merits. Lastly he pointed out that the permission was sought for chak Nos. 1 and 60 and the plots therein. In this connection he took me through the paragraph 7 of the writ petition.

4. Sri. U.K. Mishra, learned Counsel for the Respondents tried to justify the revisional order, on merits. He pointed out that the Petitioner after executing registered sale deed in favour of Respondents No. 4 and 5 challenged the same on mere technicalities and not on merits. He contended that once the permission was accorded for the whole chak No. 1 which is the subject matter of this writ petition, any omission or deletion in respect of any plot of that chak will not invalidate the sale deed. Thus there is no error at all in the judgments of the Settlement Officer (Consolidation) or the Deputy Director of Consolidation.

5. Having considered the submissions of the learned Counsel for the parties, I am satisfied that the Respondents No. 1 and 2 have not committed any error calling for any interference under Article 226 of the Constitution.

6. So far as the submission of the Petitioner that since the Deputy Director of Consolidation has observed that there were certain mistakes of clerical nature and even then he allowed the mutation application of the Respondents, is concerned, there is no force in the same. Even if there is variance between the numbers mentioned in the permission sought and actual sale deed, it will not make any difference as admittedly, Petitioner had executed the sale deed in question and the permission was sought for the sale of chak No. 1 as a whole.

7. The provisions of Section 197 will have no application to the controversy involved in the case and therefore, the submission in this regard is also without any force, specially when the Petitioner has already contested the mutation application.

8. So far as the contention of the Petitioner that the sale deed was in respect of a part of holding and is hit by the provisions of the Section 5 of the U.P. Consolidation of Holdings Act is concerned. I do not agree even with this submission as the permission was in respect of whole chak and when the area of the whole chak was the subject matter of the sale deed, any omission that too on account of clerical error in making mention of a plot number, will not render the sale deed bad in the eye of law. Even otherwise, this Court is not expected to

interfere in such technical matters in the writ jurisdiction, if substantial justice has been done between the parties.

9. In the result the writ petition falls and is dismissed. The parties are directed to bear their own costs. Stay order passed by this court on 28-5-1982 is hereby vacated