
(2012) 09 AHC CK 0295
In the Allahabad High Court
Case No : C.M.W.P. No. 48893 of 2012

Chaman Singh

APPELLANT

Vs

Dy. Director of Consolidation and another

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42A

Citation : (2013) 2 AWC 1321

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ayub Khan, for the Appellant; Hari Om Yadav and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Through this writ petition, the petitioner has prayed for issuing writ of certiorari quashing the order dated 7.9.2012 passed by the Deputy Director of Consolidation in revision No. 566. Rambir Singh v. Chaman Singh, by which the revision No. 566. Rambir Singh v. Chaman Singh, filed by Rambir Singh was allowed and the judgment and orders dated 31.12.2009 and 23.7.2012 passed by the Settlement Officer of Consolidation were set aside. Heard Sri Ayub Khan, learned counsel for the petitioner, Sri Hari Om Yadav and learned standing counsel appearing for the respondents.

2. The facts giving rise to this case are that, it appears, the petitioner herein has filed an application u/s 42A of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as, "the Act") before the Settlement Officer of Consolidation (in short "S.O.C."). The said application was allowed by the S.O.C. vide order dated 31.12.2009, allotting an area of 0.190 hectare adjacent to plot No. 344. This order appears to have been passed ex parte, without having the version of other side.

3. It appears, aggrieved by that, an application was filed by the other side for

recall of the order dated 31.12.2009. The S.O.C. has found that earlier order was passed ex parte, therefore, he recalled the order dated 31.12.2009 vide order dated 1.8.2011 and restored the application on its original number. However, after recall of the order, the S.O.C. has passed a fresh order on 23.7.2012. maintaining his earlier order dated 31.12.2009.

4. Aggrieved by these orders, the respondents herein have filed revision on the ground that the S.O.C. has passed the order dated 23.7.2012 beyond the scope of Section 42A of the Act, therefore, the said order is without jurisdiction and cannot be sustained.

5. The Deputy Director of Consolidation, after hearing both the sides, has found that both the orders, i.e., orders dated 31.12.2009 and 23.7.2012, were beyond the scope of Section 42A of the Act for the simple reason that u/s 42A of the Act, only clerical or arithmetical mistake can be corrected and here, the S.O.C. has passed the order for adjustment of the chak by allotting 0.190 hectare to the petitioner adjacent to plot No. 344. That order apparently has been passed beyond the scope of Section 42A of the Act, therefore, he dismissed the revision.

6. Sri Khan contends that no prejudice has been caused to the other side as only adjustment has been made on equitable ground, therefore, even if the order is without jurisdiction, the Court should not interfere with the same under Article 226 of the Constitution of India.

7. On the other hand, learned counsel appearing for Gaon Sabha, learned standing counsel and learned counsel for the contesting respondents have submitted that once the order is without jurisdiction, it cannot be sustained being nullity in the eye of law.

8. I have heard learned counsel for the parties and perused the records.

9. For appreciating the controversy, the language used in Section 42A of the Act would be necessary to be looked into, which is reproduced herein under:

Section 42A. Correction of clerical or arithmetical errors.-- Notwithstanding anything contained in any law for the time being in force, if the Consolidation Officer or the Settlement Officer. Consolidation, is satisfied that a clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provision of this Act. he shall, either on his own motion, or on the application of any person interested correct the same.

10. From the perusal of Section 42A of the Act. It is clear that if the Consolidation Officer or S.O.C. is satisfied that a clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provision of this Act, he shall, either on his own motion, or on the application of any person interested, correct the same. This section confers even suo motu power to the Consolidation authorities to correct the clerical or arithmetical mistake, if that comes to their notice and the same is contrary to the earlier orders passed by the consolidation courts. This section also provides remedy for

the aggrieved person to file an application in this regard for correction of clerical or arithmetical mistake.

11. Here, the tenor of the order dated 31.12.2009. which has been later on maintained by the order dated 23.7.2012, goes to show that the clerical or arithmetical mistake has not been corrected by the S.O.C. What has been done by him is that he has adjusted the petitioner's chak adjacent to plot No. 344, by allotting an area of 0.190 hectare. It is apparently beyond the scope of Section 42A of the Act as it do not fall in the ambit of clerical or arithmetical mistake on the basis of the earlier order passed by the Consolidation authorities. Therefore, the order passed by the S.O.C. was without jurisdiction and the order passed by the Deputy Director, of Consolidation cannot be said to be an illegal order in any manner.

12. This is settled that an order without jurisdiction is a nullity as jurisdiction can neither be assumed nor presumed nor conferred or acquired by acquiescence of parties. Reference may be given to M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., ; Sarup Singh and Another Vs. Union of India (UOI) and Another, and a Division Bench of this Court in the case of Committee of Management Jawahar Inter College Bulandshahr Vs. State of U.P. and Others, .

13. So far as the submission of Sri Khan, that since the order has been passed on equitable grounds, therefore, the same should not be interfered with under Article 226 of the Constitution of India is concerned, it is to be noted that justice has to be dispensed with in accordance with law and equity and sympathy shall have no place or overriding effect over the statutory provisions. The Apex Court in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, . has held as under:

...Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

...

The Courts should endeavour to find out whether a particular case which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done....

14. In the case of Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, . The Apex Court has observed:

...It is well-settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with Latin maxim "dura lex sed lex" which means "the law is hard, but it is the law". Equity can only supplement the law but it cannot supplant or override it.

...what is administered in the Courts is justice according to law, and considerations of fair play and equity however they may be must yield to clear and express provision of the law.

In view of that, no interference is called for under Article 226 of the Constitution of India. The writ petition is dismissed. However, the dismissal of the writ petition will not preclude the petitioner to seek appropriate remedy under the provisions of the Acts and Rules framed thereunder.