
(2001) 12 AHC CK 0032

In the Allahabad High Court

Case No : Writ Petition Nos. 7918 with 7923 of 1986

Chandra Pal Singh and Ors., Man Phool and Ors.

APPELLANT

Vs

Bhikham & Anr., Govind Singh & Anr.

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2001) 12 AHC CK 0032

Hon'ble Judges : R.H.Zaidi, J

Judgement

R. H. Zaidi, J.—In both these writ petitions, common questions of law and facts are involved, they also arise out of the same judgment. As desired by learned counsel for the parties, they were heard together and are being disposed of by this common judgment. Writ Petition No. 7918 of 1986 shall be the leading case.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the orders dated 7121983 and 831986 passed by the Deputy Director of Consolidation dismissing the revision and rejecting the application filed by the petitioners for recalling the earlier order respectively.

3. The relevant facts of the case giving rise to the present petition, in brief, are that the petitioners and the contesting respondent filed objections under subsection (2) of Section 20 of the U.P. Consolidation of Holdings Act for short ? the Act?, against the statement of principles before the Assistant Consolidation Officer, which were submitted to the Consolidation Officer for disposal. Parties, in support of their cases, produced evidence. The Consolidation Officer, after going through the evidence on record, rejected the objection filed by the petitioners, by order dated 661982. Challenging the validity of the said order, an appeal was filed by the petitioners before the Settlement Officer, Consolidation, which was after hearing the parties concerned, partly allowed by order dated 251983. Thereafter, the contesting respondent filed a revision before the Deputy Director of Consolidation challenging the validity of the order passed by the Settlement

Officer Consolidation. Before the Deputy Director of Consolidation, number of other revisions were also filed. One of the revisions was filed by Smt. Parvati. In the revision filed by the contesting respondent, father of the petitioners, since deceased and after him, the petitioners, were not impleaded as parties. However, in the revision filed by Smt. Parvati, grandfather and father of the petitioners were impleaded as parties. The said revisions were heard by the Deputy Director of Consolidation. The revision filed by the contesting respondent, in which the petitioners were not impleaded as party, was on the other hand, allowed by the Deputy Director of Consolidation and Chak of the petitioners was disturbed by order dated 7121983. The Deputy Director of Consolidation is stated to have passed the said order ex parte. Therefore, an application was filed by the petitioners for recalling of the said order, which was also rejected on 831986 observing that several revisions were heard together and petitioners were also given opportunity of hearing. Hence the present petition.

4. Learned counsel for the petitioners vehemently urged that in the revision filed by the contesting respondent, petitioners were neither impleaded as a party nor were afforded opportunity of hearing. The Deputy Director of Consolidation has, thus acted illegally in allowing the revision in violation of the provisions of Section 48 of the Act. The order passed by the Deputy Director of Consolidation is thus, liable to be quashed. On the other hand learned counsel appearing for the contesting respondent submitted that the requirement of Section 48 of the Act was fulfilled as the petitioners were heard in the revision of Smt. Parvati. The submission made by the learned counsel for the petitioners, to the contrary, is, therefore liable to be rejected and the writ petition deserves to be dismissed.

5. I have considered the submissions made by the learned counsel for the parties and also perused the record.

Subsection (1) of Section 48 of the Act provides as under :

48. Revision and reference. (1) The Deputy Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order [other than an interlocutory order] passed by such authority in the case or proceedings, may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

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6. A reading of the aforesaid Section reveals that it is mandatory for the Deputy Director of Consolidation before passing any order under the said Section that he should allow the parties concerned an opportunity of being heard. In the present case, admittedly, petitioners were not impleaded as party in the revision filed by the contesting respondent, therefore, there arose no question of affording an

opportunity of hearing to the petitioners while the said revision was heard. They might have been heard in revision of Smt. Parvati, which was in respect of different land and in which different controversy was involved. It is also evident from the order passed in the revision filed by Smt. Parvati that Chak of the petitioners has not been affected at all . Their Chak has been affected as the revision filed by the contesting respondent was allowed. Factually, the contesting respondent failed to implead the petitioners or their forefathers, if they were alive as parties in their revision, although they were necessary parties as by the order passed in their revision, petitioners' chak was likely to be affected. This fact is also evident from the copy of the memo of revision, which is contained in Annexure R.A. 6 to the rejoinder affidavit. Similarly, it was obligatory under the statute upon the Deputy Director of Consolidation to afford the petitioners an opportunity of hearing, if he intended to pass any order against the petitioners. Thus, in my opinion, the provisions of Section 48 have been violated in the present case and the judgment and order passed by the Deputy Director of Consolidation, therefore deserves to be quashed. The decisions cited by learned counsel for the contesting respondent in Ram Kant Singhv. Deputy Director of Consolidation, reported in 1974 R.D. 262 and in Shtrujeet and othersv. Deputy Director of Consolidation and others, reported in 1979 R.D. 154 in support of his submissions, have got no application to the facts of the present case. They are distinguishable on facts and actually the decision in Satrujit's case supports the submissions made by learned Counsel for the petitioners inasmuch it has been ruled in the said decision by a Division Bench of this Court that affording of an opportunity hearing to the parties under Section 48 by the Deputy Director of Consolidation was necessary.

7. In view of the facts and reasons noted above, present petition succeeds and is hereby allowed. The impugned order passed by the Deputy Director of Consolidation dated 8.3.1986 and 7.12.1983 are hereby quashed.

8. This judgment will also govern the connection petition No. 7923 of 1986.