
(2015) 03 AHC CK 0093
In the Allahabad High Court
Case No : Writ-B No. 36842 of 1992

Daulat	Vs	APPELLANT
D.D.C. and Others		RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2015) 3 AWC 2444 : (2015) 127 RD 304

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : B.G. Yadav, for the Appellant; S.N. Tripathi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Sri B.G. Yadav, learned Counsel for the petitioner. No one appears for the respondent No. 2 even in the revised list, except learned Standing Counsel who appears for the State-respondents. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 25.4.1992 passed by the Deputy Director of Consolidation, Jalaun, by which the revision filed by the respondent No. 2 has been allowed in terms of compromise.

2. It is submitted by the learned Counsel for the petitioner that before passing the order dated 25.4.1992, no notice was served to the petitioner, whereas the petitioner was the affected party. This writ petition was filed in October, 1992 and Sri S.N. Tripathi, learned Counsel who appears for the respondent No. 2 had sought 10 days time to file counter-affidavit on 15.10.1992, but the same was not filed. On 28.10.1992, three weeks further time was granted to file counter-affidavit and thereafter, on 5.2.2015, again three weeks and no more time was granted to file the same but that too of no avail as neither any counter-affidavit has been filed, nor Sri Tripathi appeared in the revised list.

3. In paragraph No. 5 of the writ petition, the petitioner has made the following averments:

"5. That in the aforesaid revision pending before the respondent No. 1, no notice was served nor an opportunity of being heard was given to the petitioner. The respondent has been fraudulently successful to get the revision as allowed by producing imposter person as alleged to be the son of the petitioner. The petitioner and his son has no knowledge of the said revision, nor they appeared before the Court for contesting the same."

4. From the perusal of the contents of para 5 of the writ petition, it transpires that the impugned order has been passed without affording an opportunity of hearing to the petitioner. This fact has not been controverted by filing counter-affidavit; meaning thereby, narration of fact is correct and the impugned order has been passed ignoring the provisions contained under sub-section (1) of section 48 of the U.P. Consolidation of Holdings Act, 1953, which requires that before passing the order under the aforesaid section, opportunity of hearing is must. Further, it suffers from breach of principles of natural justice, which has resulted in serious prejudice to the petitioner. Such type of order cannot be sustained in the eye of law in view of the law laid down by Apex Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, AIR 1975 SC 266 : (1975) 1 SCC 70 : (1975) 2 SCR 674 : (1974) 6 UJ 737, *Raghunath Thakur Vs. State of Bihar and Others*, AIR 1989 SC 620 : (1988) 4 JT 728 : (1988) 2 SCALE 1326 : (1989) 1 SCC 229 : (1988) 3 SCR 867 Supp : (1989) 1 UJ 6 and *Grosos Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others*, (2001) 7 AD 479 : AIR 2001 SC 3707 : (2001) 3 ARBLR 298 : (2001) 7 JT 500 : (2001) 6 SCALE 209 : (2001) 8 SCC 604 : (2001) AIRSCW 3533 : (2001) 6 Supreme 840 and the decisions of the Division Bench of this Court in *Smt. Rajni Chauhan Vs. State of U.P. and Others*, (2010) 6 AWC 5762 . and *Society for Education and Welfare Awareness (Sewa) Vs. Union of India and Others*, (2011) 6 ADJ 787, wherein it has been held that an order which leads to civil consequences cannot be passed without affording an opportunity of hearing and the same must be passed in conformity with the principle of natural justice.

5. Furthermore, the order impugned has been passed in terms of compromise of which the petitioner was not party, meaning thereby, it is an outcome of the collusive exercise, which amounts to fraud. It is well settled that fraud vitiates even the very solemn proceeding. Reference may be given to *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481, *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, AIR 2007 SC 1546 : (2007) 4 JT 186 : (2007) 2 RCR(Civil) 431 : (2007) 4 SCALE 88 : (2007) 4 SCC 221 : (2007) 3 SCR 603 : (2007) AIRSCW 2212 : (2007) 2 Supreme 837, *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, AIR 1994 SC 853 : (1993) 2 BC 546 : (1993) 6 JT 331 : (1995) 109 PLR 293 : (1993) 4 SCALE 277 : (1994)

1 SCC 1 : (1993) 3 SCR 422 Supp : (1994) 1 UJ 1 , Meghmala and Others Vs. G. Narasimha Reddy and Others, (2010) 8 JT 658 : (2010) 8 SCC 383 : (2010) 10 SCR 47 : (2010) 9 UJ 4376 and Smt. Vibha Shukla And Another Vs. Director Of Education (Basic) U.P., Allahabad And Others, (2012) 6 ADJ 246 . In my considered opinion, the learned Deputy Director of Consolidation has failed to exercise the power vested in him and made the decision making process defective contrary to the statutory provisions. In the result, the writ petition succeeds and is allowed. The impugned order dated 25.4.1992 passed by the Deputy Director of Consolidation, Jalaun is hereby quashed. The matter is remitted back before the Deputy Director of Consolidation, Jalaun to pass afresh order expeditiously in accordance with law, after hearing all concerned within a period of six months from the date of receipt of certified copy of the order of this Court.