
(1960) 02 AHC CK 0008

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No 2007 of 1957

Debi Singh and Others

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 30 AWR 318

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : H.C. Sharma, for the Appellant; Shambu Prasad, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution filed by three persons for quashing an order of the Dy. Director of Consolidation, Bulandshahr dated 24-6-57 and that of the Settlement Officer dated 24-12-56.

2. According to the Petitioners, in pursuance of consolidation operations, chak No. 14 which consisted of plots Nos. 145, 146, 59, 142, 157 and 158, was given to the Petitioners and opposite party No. 3 was allotted chak No. 8 consisting of plots Nos. 112/113/1, 113/2 and 114 in Block B. Opposite party No. 3 filed objections before the Consolidation Officer which were rejected. Thereafter Opposite party No. 3 went in appeal before the Settlement Officer, in which the Petitioners were not made parties. Behind their back the Chaks were altered. Against the order of the Settlement Officer the Petitioners went up in revision before the Deputy Director, Consolidation, who dismissed their revision. Aggrieved by the order of the Settlement Officer and the Deputy Director of Consolidation the Petitioners have come in writ petition to this Court.

3. It has been argued on behalf of the Petitioners that the Settlement Officer erred in law in deciding the case against the Petitioners without making them

parties or without issuing notice to them. The Deputy Director, Consolidation also did not consider this point. It is a principle of natural justice that a case should not be decided against a person without giving him opportunity of defending. Reliance was placed by learned Counsel for the Petitioners on a decision of a learned single Judge of this Court. In *Re. Udai Chand and Ors. v. Chandan Singh and Ors.* Civil Misc. Writ No. 2442 of 1956 dated 23-4-58, by Hon"ble Oak, J., wherein it was decided that there was a statutory provision for issuing notice to the "parties concerned." and apart from that, there was general principle of natural justice that a judicial body should not decide a matter against a party without giving him at least an opportunity of hearing.

4. It was further argued that, as in the present case, the Settlement Officer modified the order of the Consolidation Officer and made changes in the plots allotted to the Petitioners without giving them notice; the order is bad.

5. On behalf of opposite party No. 2 objections have been taken. Apart from that, it was challenged on merits, that notice had been properly served on the Petitioners. It was contended that in accordance with Section 21(3) a publication was made in the village as required by Section 3 Sub-section (8) and it was not necessary to give notice to a large number of persons, whose plots were readjusted. So far as this matter is concerned, I am in agreement with the learned single Judge that what Section 21(3) requires is, that all "parties concerned" should be informed. It is not that there should be a publication in the village. _ Section 3(8) only defines the words "publication" in "the village and wherever the Act provides for "publication in the village" the provisions of Section 3(8) will apply. Section 21(3) does not speak of "publication in the village" but speaks of "giving due notice of their intention to do so to the parties concerned." It is really a principle of natural justice that if an order is to be passed against a party he should be present and in any event, an opportunity is given to him.

6. The first preliminary objection of learned Counsel is that this objection could very well be taken before the Deputy Director of Consolidation as the Petitioners themselves were the Applicants there before him. They do not seem to have raised this point, otherwise the Deputy Director would have certainly dealt with that point and therefore, the Petitioners should not be allowed to take this point in a writ petition in the extraordinary powers of the Court.

7. Reliance has been placed on *Tika Ram and Sons Ltd. Vs. Its Workman (Bishamber Dayal)*, in order to establish that if the judgment is silent about a certain point it would be legitimate to infer that it had not been urged before the Appellate Tribunal, because if it had been urged there the Appellate Tribunal would have dealt with it. The Supreme Court in such cases do not allow objections to be raised on the ground of want of jurisdiction for the first time before it.

8. Reliance was also placed for this proposition on *Pannalal Binjraj Vs. Union of*

india (UOI), and Manak Lal Vs. Dr. Prem Chand, that if a certain objection, which should have been raised at an earlier stage, had not been raised, it should not be allowed to be raised before that Court. I think the objection of the State is well founded.

9. The second objection raised on behalf of the state was that so far as the order of the Deputy Director of Consolidation dated 24-6-57 is concerned, it does not suffer from any defect and therefore, this order cannot be set aside. The order of the Settlement Officer dated 24-12-56 has merged in the order of 24-6-57 of the Dy. Director of Consolidation. As the order of the Deputy Director, Consolidation cannot be set aside and if it continues to remain standing, then in that case, cancellation of the order of the Settlement Officer dated 24-12-56 would be of no avail and therefore, this Court should not interfere in its writ jurisdiction.

10. On behalf of the Petitioner it was contended that when a revision is filed then, in that event the order does not merge in the order of the revision court and the order can be set aside. I am unable to agree with the contention of learned Counsel for the Petitioner. This point had come before me in writ petition No. 1747 of 1957 Altaf-ur-Rahman v. Collector Central Excise Allahabad. The order in that case which had been passed by the Collector, Excise, had merged in the order of the Central Board of Revenue and I hold that since the order of the Central Board of Revenue could not be set aside on the ground that he was not a party and also beyond the jurisdiction, the setting aside of the order of the Collector would be useless and therefore, I dismissed the writ petition. The authorities of the Supreme Court, this Court, Rajasthan Court, Pepsu Court, Punjab Court and other Courts were discussed at length in that case and for the reasons that have been given in that case inextenso, in my opinion it would not be possible for me to set aside the order of the Settlement Officer without setting aside the order of the Deputy Director Consolidation; and since the order of the Deputy Director does not suffer from any defect, that order can not be set aside. Consequently, no relief can be given to the Petitioner in this case.

11. The petition is accordingly dismissed with costs.