
(2011) 05 AHC CK 0324

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26293 of 2011

Devi Prasad and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 6A, 9, 9A, 9A(2)

Citation : (2011) 6 ADJ 383 : (2011) 113 RD 616

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Judgement

A.P. Sahi, J.—Heard learned Counsel for the Petitioners and Sri R.C. Singh for the Respondents.

2. Learned Counsel submits that the proceedings resulted in passing of the order dated 20.4.2005 that are protected u/s 6A of U.P.C.H. Act, 1953. He submits that it is a clear case of undisputed succession/undisputed mutation to which Ram Autar the contesting Respondent was a party and, therefore, the proceedings will be presumed to be in accordance with the provisions of U.P.C.H. Act. The Deputy Director of Consolidation could not have passed the impugned order treating the proceedings to be without jurisdiction and calling upon the Petitioners to file an objection u/s 9A(2) of U.P.C.H. Act. He contends that once the claim of the Petitioners for getting their names mutated was undisputed by Ram Autar, then there was no occasion for any objection being entertained or any dispute being raised in this regard. Accordingly, it is Ram Autar who ought to have filed objections if aggrieved against the recording of the names of the Petitioners.

3. The appeal filed by the Respondents was held to be non-maintainable but the Settlement Officer Consolidation erroneously observed that the order passed on 20.4.2005 shall remain stayed on administrative grounds. The Petitioners filed a revision against the said order whereas the contesting Respondent filed a revision against the original order dated 20.4.2005. The Deputy Director of Consolidation has set-aside the order dated 20.4.2005 and has allowed the

parties to file objections u/s 9A(2) as and when the proceedings u/s 9 are undertaken. Sri R.C. Singh states that this approach is erroneous in law.

4. Having seen the provisions of Section 6A, it is evident that the said Section was introduced w.e.f. 21.6.2002 in matters relating to undisputed mutations on the basis of transfer and cases of undisputed succession. In the instant case the Petitioners are claiming that they are co-sharers by virtue of a pedigree on which reliance is being placed in paragraph 3 of the writ petition. This obviously is not a case of undisputed succession and therefore, an objection ought to be filed u/s 9A for determination if the pedigree is believed to be correct.

5. In the opinion of the Court, the conclusion, therefore, ultimately drawn by the Deputy Director of Consolidation cannot be said to be erroneous. The Petitioners, therefore, ought to have filed an objection u/s 9A(2).

6. Learned Counsel contends that the Petitioners should have been provided an opportunity to file objections pursuant to the remedy available to them as observed in the impugned order passed by the Deputy Director of Consolidation dated 21.3.2011 and, therefore, even if the Petitioners are called upon to file objections, the delay should be condoned keeping in view of the provisions of the Indian Evidence Act giving him the benefit of a bona fide pursuit of litigation.

7. The facts as brought on record, therefore, clearly establish that the Petitioners have to file an objection u/s 9A(2) and for the reasons given hereinabove, the writ petition cannot be entertained against the impugned order which already provides for an opportunity to the Petitioners to file objections.

8. Accordingly, the writ petition is disposed of with liberty to the Petitioners to file an objection and in case such an objection is filed, the delay in filing the same shall be treated liberally by the Consolidation Officer and shall be proceeded with in accordance with law.