
(1978) 11 AHC CK 0004
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2976 of 1973

Devi Sunder

APPELLANT

Vs

The Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 03-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 48(3)
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 111

Citation : (1979) AWC 354

Hon'ble Judges : R.C. Srivastava, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; U.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.C. Srivastava, J.—The Petitioner filed a revision u/s 48 of the U.P. Consolidation of Holdings Act before the Deputy Director of Consolidation. The revision was admittedly beyond time. The Petitioner filed an application u/s 5 of Limitation Act for seeking condonation of delay in filing the revision. In the said application the Petitioner alleged that although he applied for certified copy of the order of the Assistant Settlement Officer, Consolidation within time but the copy was delivered after a long gap and the date of preparation was wrongly shown in that copy prior to delivery. In order to substantiate his allegations he also filed an affidavit of the clerk of an advocate who applied for the certified copy of the judgment. The Dy. Director of Consolidation rejected the application for seeking condonation of delay on the ground that the affidavit filed in support of the application was incomplete and was filed in order to make an attempt to fill up the lacuna. Consequently the Deputy Director of Consolidation rejected the revision also being barred by time. Aggrieved, the Petitioner has come to this Court under Article 226 of the Constitution.

2. Learned Counsel for the Petitioner has urged that the Deputy Director of Consolidation failed to consider the allegations of the Petitioner made in the application and the affidavit and rejected his revision without considering merits of the application. According to him the Deputy Director of Consolidation did not apply his mind to the facts of the case. He has further urged that the Deputy Director of Consolidation also failed to consider that even if the delay could not be condoned-whether it was a fit case for the exercise of suo moto power by the Deputy Director of Consolidation u/s 48 of the U.P. Consolidation of Holdings Act or not. In support of his contention he has placed reliance on Full Bench decision of this Court in Ramakant Singh v. Deputy Director of Consolidation 1974 A.L.J. 834.

3. Learned Counsel for the Respondents, on the other hand, urged that the Deputy Director of Consolidation summoned record from the copying department and thereafter arrived at a conclusion that the allegations made by the Petitioner in his application had no substance. He has further urged that it is not necessary for the Deputy Director of Consolidation to express in the order for non-exercise of suo-moto power and if he does not exercise suo moto power it should be assumed that he did not consider the case to be fit for the exercise of suo moto power.

4. I have carefully considered the respective contentions of the Learned Counsel for the parties. The Petitioner specifically made allegation in his affidavit that the copy prepared was ante-dated. His allegations were supported by an affidavit. of a clerk. It may be, as urged by the Learned Counsel for the Respondents that the Deputy Director of Consolidation summoned the original record but unless there was something to indicate in the order giving reasons it cannot be accepted whether he applied his mind while examining that record. He did not mention in his order as to what was found in the original record and whether the facts found were contrary to the allegations made in the application. He has not considered the allegations made in the application at all. He has not given reasons which would have shown that he applied his mind to the facts and the allegations made by the Petitioner. It may be, that on inquiry the allegations made by the Petitioner may not be found to be correct but once he made such wild allegations it was necessary for the Deputy Director of Consolidation to have inquired into the allegations and thereafter decided the application. Merely mentioning that the affidavit was incomplete, was not sufficient to reject the application. He has not indicated as to what was not complete in the affidavit. He has further not mentioned whether the allegations contained in the affidavit were correct or not. The order passed by the Deputy Director of Consolidation shows that he did not apply his mind to the facts of the case and without considering as to whether the allegations made by the Petitioners were correct or not rejected the revision.

5. The order of the Deputy Director of Consolidation is also not in consonance with the principles laid down by the Full Bench of this Court in Rama Kant Singh v. Dy. Director of Consolidation referred to above. The Full Bench has specifically

held that when a revision is beyond time and if the record of the authorities below has been summoned and the notices have been issued, the Deputy Director of Consolidation has to apply his mind whether it was a fit case for exercise of suo moto power or not. In the present case it is not in dispute that the record of the authorities below was summoned and notices were issued, then it was necessary for the Deputy Director of Consolidation to decide whether it was a fit case for exercise of suo moto power or not. The purpose and the intention for providing suo moto power u/s 48 of the U.P. Consolidation of Holdings Act is that a party should not be denied an opportunity of hearing and decision on merits on technical grounds. It is true that the question of limitation in cases has been considered to be a bar for consideration of the case on merits, but it has been held by the Full Bench of this Court in *Rama Kant Singh v. Dy. Director of Consolidation U.P.* referred to above that even in the cases where the revision has been filed beyond time the Deputy Director of Consolidation can decide the case on merits while exercising suo moto power. This principle clearly envisages a situation that once the the Deputy Director of Consolidation is of the view that the revision is incompetent on any of the grounds mentioned under Rule 111 of the U.P. Consolidation of Holdings Rules it is open to him to exercise suo moto power and decide the revision on merits. Rule 111 of U.P. Consolidation of Holdings Rules speaks of limitation as well. Once this position is clear, it means that the Deputy Director of Consolidation has to make up his mind in the cases whether he has to exercise suo moto power or not. Once such discretion is there it has to be exercised judicially and in each and every such case he must determine whether the case was fit for the exercise of suo moto power or not. The aforesaid principle is based on the chain of decisions and judicial experiences.

6. The litigation in consolidation proceedings is taken very lightly by the consolidation authorities. It should not be forgotten by them that our country is mainly an agricultural country and the majority of the people depend upon the agriculture. For a mill-owner or an industrialist a handsome amount or non-manufacture of an article may not matter much but for a poor agriculturist even a single Bigha of land is everything for his life. It may be that the right of property may not be considered to be more valuable than the other fundamental rights (although the Constitution does not envisage) but it should also not be forgotten that unless State discharges the responsibility of providing the essential necessities of life of the people, the agriculturist has to depend solely on the sources available to him in the form of land. Right of freedom or liberty is meaningless unless a person has something to maintain his life. In determining the rights of agriculturists the entire jurisdiction has been conferred upon consolidation authorities which formerly vested with civil and revenue courts. It shows that the responsibility of consolidation authorities is much more than even civil and revenue courts. After enforcement of U.P. Consolidation of Holdings Act the dispute cannot be agitated in civil and revenue courts in view of the provisions under U.P. Consolidation of Holdings Act which is cognizable under that Act. As all the matters which come under consolidation have to be decided

by the consolidation authorities, they should be more careful while deciding the dispute. The authorities should also not forget the purpose of the Act (U.P. Consolidation of Holdings Act). The additional purpose is to provide speedy and cheap remedy for determination of the rights of the parties by the consolidation authorities. If the dispute is decided only in a routine way and not in accordance with the settled principles the very purpose of the provisions of U.P. Consolidation of Holdings Act would be frustrated. Merely because the case is one of small area or is of allotment of chak, they must not take the matters lightly and must decide the case after application of mind. Once it is necessary for the Deputy Director of Consolidation to decide the case after application of mind, it is not sufficient that he keeps the decision in his mind only, but it is also obligatory on his part to express the same in the order in writing. In the cases which are held to be incompetent either by virtue of limitation or by non filing of copy of the judgment of the consolidation officer, the Deputy Director of Consolidation has to arrive at a decision, after summoning the record and issuing notices to the parties whether he should or should not exercise suo moto power as contemplated u/s 48(3) of U.P. Consolidation of Holdings Act. This decision should come in writing if he has to exercise suo moto power, he has to give notice to the parties and then to hear them before deciding the revision. Once it is incumbent upon the Deputy Director of Consolidation, it is also obligatory on his part to show by order that the case was not fit for exercise of suo moto power. In the present case the Deputy Director of Consolidation did not decide the application filed by the Petitioner u/s 5 of the Limitation Act nor did he consider the allegations made therein. The Deputy Director of Consolidation also did not consider whether it was a fit case for exercise of suo moto power or not. The Deputy Director of Consolidation, therefore, committed a manifest error of law while dismissing the revision of the Petitioner.

7. In the result this writ petition is allowed and the order passed by the Deputy Director of Consolidation dated 254-1973 is quashed. The case is sent back to the Deputy Director of Consolidation for deciding the application filed by the Petitioner u/s 5 of Limitation Act on merits, and in case he allows the application, he will hear the revision on merits. However, in case he comes to the conclusion that the allegations made by the Petitioner are not substantiated or the case is not fit for condoning the delay, then he will also decide whether it is a fit case for exercise of suo moto power or not. In the circumstances of the case, the parties shall bear their own costs.