
(2015) 06 AHC CK 0027
In the Allahabad High Court
Case No : W.P. No. 473 (Conso) of 2015

Dharam Veer Singh

APPELLANT

Vs

D.D.C., Barabanki and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9-A(2), 9-B, 9-B(1)

Citation : (2015) 129 RD 235

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Mohan Singh, for the Appellant; B.L. Mishra, for the Respondent

Final Decision : Disposed Off

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Mohan Singh for the petitioner and Sri Rama Kant Dixit holding brief of Sri B.C. Mishra for the caveator. The writ petition has been filed against the order of Settlement Officer Consolidation dated 30.9.2012 and Deputy Director of Consolidation dated 19.2.2015 passed in the proceedings under section 9-A (2) U.P. Consolidation of Holdings Act 1953 (hereinafter referred to as the "Act"). The dispute between the parties is in respect of deletion of valuation of plot No. 636/3 area 0.287 hectare situated at village Shivdaha, pargana and district Baharaich. Initially the Assistant Consolidation Officer determined its valuation and allotted it in the chak of contesting respondent. It appears that after allotment of chak, the petitioner filed a time barred objection (registered as Case No. 328/2009-10) under section 9-A (2) of the Act for deleting of valuation of plot No. 636 and keeping the entire area of this plot as chak out. The Consolidation Officer by the order dated 20.3.2010 allowed the objection of the petitioner and directed to delete the valuation of plot No. 636/3 area 0.287 hectare. The contesting respondent filed an appeal against the aforesaid order. The appeal was heard by the Settlement Officer Consolidation who by the order dated 20.7.2013 allowed the appeal and remanded the matter to the Consolidation Officer with direction to make spot

inspection and decide the objection afresh. It appears that after the remand the petitioner moved an application dated 13.9.2013. A perusal of the application dated 13.9.2013 shows that it was moved in the format of original objection under section 9-A (2) of the Act and prayer was also made for allowing the objection and deleting the valuation of plot No. 636/3 area 0.287 hectare of village Shivdaha. However, in paragraph 4 of the objection it has been mentioned that matter has been remanded by the Settlement Officer Consolidation by order dated 20.7.2013 and thereafter it appears that the Consolidation Officer called for a report from Assistant Consolidation Officer and relying upon that report, by order dated 4.4.2014 directed for deleting the valuation of plot No. 636/3 area 0.287 hectare. The contesting respondent Smt. Gyanwati filed an appeal against the order dated 4.4.2014. The appeal was heard by the Settlement Officer Consolidation who by the order dated 30.9.2014 found that although the original objection of the petitioner was pending before the Consolidation Officer in pursuance of the remand order dated 20.7.2013 but in the meantime a fresh objection under section 9-A (2) has been filed by the petitioner on 13.9.2013 which has been allowed by the Consolidation Officer without considering the earlier objection, accordingly fresh objection was not maintainable. On this finding the appeal was allowed and the order dated 4.4.2014 was set aside. The petitioner filed a revision against the aforesaid order which has been dismissed by the Deputy Director of Consolidation by the order dated 19.2.2015. Hence this writ petition has been filed.

2. The Counsel for the petitioner submits that application dated 13.9.2013 was not a fresh objection but it was only an application to bring on record the fact relating to the remand made by the Settlement Officer Consolidation. However, inadvertently, a prayer has been made for allowing the objection and deleting the valuation of plot No. 636/3 area 0.287 hectare. This was not a separate objection but it was a miscellaneous application in the same objection and the Settlement Officer Consolidation has illegally treated it as a separate objection under section 9-A (2) of the Act and setting a side the order dated 4.4.2014 passed by the Consolidation Officer. He further submits that there is nothing on the order of Settlement Officer Consolidation to show that the Consolidation Officer has been given liberty to decide the original objection of the petitioner. In such circumstances, after passing the order dated 4.4.2014 the original objection of the petitioner will remain undecided and thus the right of the petitioner has been closed forever. But the Deputy Director of Consolidation has illegally dismissed the revision of the petitioner.

3. The Counsel for the caveator however submits that a perusal of the application dated 13.9.2013 shows that it was an independent objection under section 9-A (2) of the Act and prayer has also been made in it for deleting the valuation of plot No. 638/3 area 0.287 hectare of village Shivdaha and there was no prayer for deciding the earlier objection. Since this objection was independently filed as such it was independently allowed by the Consolidation Officer. In such circumstances the order dated 4.4.2014 which was passed in the objection dated

13.9.2013 has been rightly set aside by the Settlement Officer Consolidation and the impugned orders do not suffer from any illegality.

4. I have considered the arguments of the Counsel for the parties and examined the records. A perusal of the record shows that the petitioner has already filed an objection for deleting the valuation of plot No. 636 so far as it is in respect of the area which has been purchased by the petitioner in this plot. In the objection/application dated 13.9.2013 the reference of the original objection as well as the order of remand passed by the Settlement Officer Consolidation has been made although the format of the application does not show that this application has been moved in the original objection filed by the petitioner but a perusal of paragraph 4 of the objection shows that reference of previous objection has been made in it. In such circumstances this application dated 13.9.2013, is not liable to be treated as a separate objection but it was as miscellaneous application in the original objection of the petitioner. In any case, it is neither denied nor it has been found either in the order of Settlement Officer Consolidation or in the order of Deputy Director of Consolidation that original objection of the petitioner has been decided finally. Thus the original objection of the petitioner is still pending. In such circumstances there is no impediment in the jurisdiction of the Consolidation Officer to decide the original objection of the petitioner if the order of Settlement Officer Consolidation dated 30.9.2014 is treated to be a order passed in the subsequent objection of the petitioner. In such circumstances, the Consolidation Officer is required to decide the original objection of the petitioner on merit after hearing the parties.

5. The procedure for disposal of the objection under section 9-B has been provided under section 9-B (1), Rule 24 D and Rule 26 (5) which clearly provides for spot inspection by the Consolidation Officer himself. In this case, the Consolidation Officer has not made any spot inspection rather he called for a report from Assistant Consolidation Officer. The dispute between the parties is that the land in dispute is a shape of grove and its valuation cannot be determined. The law requires that the Consolidation Officer himself to make spot inspection and verify as to whether the land in dispute is grove or not. In such circumstances the reliance cannot be placed on the report of Assistant Consolidation Officer in violation of statutory duty imposed upon the Consolidation Officer.

6. In such circumstances, the writ petition is disposed of with direction to the Consolidation Officer to decide the original objection of the petitioner after making spot inspection and preparing the spot inspection memo according to Rule 24-D and 26(5) of U.P. Consolidation of Holdings Rules, 1954 and after giving proper opportunity of hearing to the parties as well as to file their objection against the spot inspection, within a period of two months. The parties are appearing before this Court they shall appear before the Consolidation Officer on 13th July, 2015. Thereafter the Consolidation Officer shall fix a date in the matter for spot inspection as well as hearing of the parties.