
(2010) 11 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 8642 of 2003

Ganga Sagar

APPELLANT

Vs

Deputy Director of Consolidation, Siddharth Nagar and
Another

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Citation : (2011) 2 AWC 1331 : (2011) 112 RD 109

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Shri Triapthi B.G. Bhai, learned Counsel for the Petitioner and Shri B.P. Singh for the Respondents.

2. This writ petition arises out of chak allotment proceedings. Aggrieved by the chak proposed at the stage of Assistant Consolidation Officer, the Petitioner filed an objection before the Consolidation Officer, who consolidated various objections and by a common order dated 17.7.1996 decided the same. Objection filed by the Petitioner was allowed and he was allotted chak on Plot Nos. 109 and 110. Admittedly, Plot Nos. 109 and 110 are neither the original holding of the Petitioner nor of the contesting Respondent No. 2, but belongs to a third person. Aggrieved by the order passed by the Consolidation Officer, Respondent No. 2 went up in appeal, which was allowed vide order dated 2.2.1997 on the ground that Petitioner himself had given consent for allotment of Plot Nos. 109 and 110 in the chak of the contesting Respondent. Petitioner moved an application to recall the order dated 2.2.1997 on the ground that no notice was ever served upon him and he never entered appearance in the proceedings and the order passed was an ex-parte order. Settlement Officer, Consolidation vide order dated 19.7.1999 finding that the Petitioner was not heard before passing the order dated 2.2.1997 and his chak has been affected, recalled the order and decided the appeal allotting half portion of Plot Nos. 109 and 110 in the chak of the

Petitioner and the remaining half in the chak of the contesting Respondent No. 2. Respondent No. 2 preferred a time barred revision. Deputy Director of Consolidation vide order dated 14.11.2002 set aside the subsequent order of Settlement Officer, Consolidation dated 19.7.1999 and maintained the earlier order dated 2.2.1997.

3. It is contended by the learned Counsel for the Petitioner that Deputy Director of Consolidation without setting aside the finding recorded by the Settlement Officer, Consolidation that no notice was ever served upon the Petitioner and the order dated 2.2.1997 was an ex-parte order, wrongly and illegally allowed the revision. It has further been submitted that Deputy Director of Consolidation has also not recorded any finding that the Petitioner was served with any notice or was heard before passing the order dated 2.2.1997. The next contention of the Petitioner is that revision was time barred and without condoning the delay, Deputy Director of Consolidation has wrongly and illegally allowed the revision.

4. Reliance in support of the contention has been placed on a judgment of Hon"ble Single Judge in the case of Ram Baran v. Deputy Director of Consolidation, Gonda and Ors. 1987 RD 89 and Smt. Premwati v. Chief Revenue Officer, Allahabad 2003 (95) RD 487.

5. In reply, it has been contended that the Assistant Consolidation Officer has carved out the chak with the consent of the parties and the answering Respondent was allotted chak on Plot Nos. 109 and 110 with the consent of the original tenure holder of the said plots and in his objection, the Petitioner has not made any demand for allotment of Plot Nos. 109 and 110, as such, the Consolidation Officer had committed an illegality in allotting said plots in the chak of the Petitioner. It has further been contended that the Petitioner was duly served and was heard before passing order dated 2.2.1997 and the Settlement Officer, Consolidation wrongly allowed the recall application and the same amounted to review for which he had no power and the Deputy Director of Consolidation has rightly set aside the order. It has next been submitted that since the Deputy Director of Consolidation decided the revision on merits, it shall be presumed and deemed that delay was condoned.

6. I have considered the argument advanced on behalf of the parties and have perused the record.

7. It is an admitted fact that controversy between the parties revolves around Plot Nos. 109 and 110, which are not their original holding, but belongs to a third person and is a road side land having commercial value.

8. Answering Respondent asserts that original tenure holder of Plot Nos. 109 and 110 gave consent for the allotment of the said plot in his chak at the stage of Assistant Consolidation Officer and the Petitioner gave consent for allotment of the said plot at the stage of Settlement Officer, Consolidation. However, there is no material brought on record by either of the parties, which may go to establish that the consent, as alleged, was ever given either by the original tenure holder

of Plot Nos. 109 and 110 or by the Petitioner.

9. A perusal of the order dated 19.7.1999 goes to show that a categorical finding has been recorded by the Settlement Officer, Consolidation that Petitioner was not heard while passing the order dated 2.2.1997 and the Deputy Director of Consolidation has neither set aside the said finding nor has recorded any finding of his own that the Petitioner was served with any notice and was heard before passing the order dated 2.2.1997. Further admittedly against the order dated 19.7.1999, revision filed by the answering Respondent on 13.12.1999 was beyond the prescribed period of limitation and categorical objection was raised in this regard by the Petitioner. However, Deputy Director of Consolidation without going into the question of bar of limitation, allowed the revision on merits.

10. Hon"ble Single Judge in the case of Ram Baran (supra) has held that a time barred revision cannot be allowed without going into the question of bar of limitation and there can be no presumption that delay in filing the revision is condoned, if the same stands decided on merits. Similar view has been taken by another Hon"ble Single Judge in the case of Premwati (supra). In the case of Smt. Somana (D.) through L.Rs. Vs. Joint Director of Consolidation and Others, as well as Bhanu Pratap Singh and Others Vs. Chief Revenue Officer/Deputy Director, Consolidation and Others, same view has been taken that there cannot be a deemed condonation of delay and the Court has to apply its mind and consider the material brought on record for condonation of delay.

11. I am in respectful agreement with the aforesaid view taken by the Hon"ble Single Judges.

12. In view of the aforesaid facts and discussions, the impugned order passed by Deputy Director of Consolidation dated 14.11.2002 is not liable to be sustained and is hereby quashed.

13. In normal course, after quashing the order, the matter ought to have been remitted back to decide the revision afresh, but considering the fact that Plot Nos. 109 and 110, admittedly, are not the original holding of the contesting parties, but belongs to a third person, who has not made any claim and the Settlement Officer, Consolidation vide order dated 19.7.1999 allotted half portion of the said plots to the Petitioner and the other half to the contesting Respondent, the equity stands adjusted between the parties and there is no necessity to remand the matter back.

14. As a result, the writ petition stands allowed. However, in the facts and circumstances, there shall be no order as to costs.