
(1967) 10 AHC CK 0018
In the Allahabad High Court
Case No : Special Appeal No. 17 of 1967

Gangoo

APPELLANT

Vs

Asharfi Lal and others

RESPONDENT

Date of Decision : 05-10-1967

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(2), 44(ii)

Citation : (1968) 38 AWR 308

Hon'ble Judges : V.G. Oak, C.J.; R. Chandra, J

Bench : Division Bench

Advocate : K.N. Misra and R.N. Misra, for the Appellant; Hargur Charan Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

V.G. Oak, C.J.—This special appeal arises out of consolidation proceedings. When notices u/s 9 of the UP Consolidation of Holdings Act were issued in village Darauli, district Unnao, an objection was filed by Asharfi Lal and Munni Lal claiming a certain plot as their Sir plot. Their objection was dismissed by the Consolidation Officer. Their appeal was allowed by the Assistant Settlement Officer (Consolidation) on 10-8-1964. Against that order a revision was filed by Gangu. The revision was allowed by the Dy. Director (Consolidation) on 12-2-1965. Asharfi Lal and Munni Lal filed before this Court a writ petition challenging the order of the Dy. Director dated 12-2-1965. Gangu has filed the present special appeal against the decision of the learned Single Judge allowing the writ petition.

2. UP Consolidation of Holdings Act is UP Act No. V of 1954. The Act has been amended from time to time. One such amendment was made by UP Act No. VIII of 1963. Parties are agreed that in view of the history of this litigation, the right of appeal and revision was governed by the Act as it stood before its amendment by UP Act No. VIII of 1963. It will be convenient to refer to the Act before its amendment by UP Act No. VIII of 1963 as the old Act. We are, therefore, largely

concerned with the provisions of the old Act.

3. The Petitioners pointed out that Gangu filed a revision against the Assistant Settlement Officer's decision. According to the plan of the old Act, the proper remedy for Gangu was to file a second appeal under Sub-section (2) of Section 11 of the old Act. That was not done. Instead Gangu filed a revision, which was allowed by the Dy. Director.

4. Mr. Misra, appearing for the present Appellants, conceded the position that the revision filed by Gangu was incompetent. But Mr. Misra suggested that the revision may be treated as a second appeal under Sub-section (2) of Section 11 of the Act. In order to decide whether this course can be permitted, it is necessary to examine the provision of Section 11 of the old Act carefully.

5. Section 11 of the old Act provided for appeals. Sub-section (2) of Section 11 ran thus:

Any person aggrieved by the order of the Settlement Officer, Consolidation under Sub-section (1), may, within 21 days of the date of the order, file an appeal against it on a question of fact or a question of law, or on both, before the District Dy. Director of Consolidation, who or such other Dy. Director, Consolidation, as may be authorised in this behalf by the Director of Consolidation, shall, after affording opportunity to the parties concerned, give his decision thereupon....

6. The order dated 12-2-1965 was passed by Sri Maheshwari, who described himself as a Dy. Director. The question arises whether Sri Maheshwari was competent to dispose of the proceedings as a second appeal under Sub-section (2) of Section 11 of the Act. Mr. Misra drew our attention to a number of notifications, which suggested that Sri Mahtshwari was competent to decide second appeals under Sub-section (2) of Section 11 of the old Act. Sri I.D.N. Sahi was initially appointed by the State Government as the Consolidation Commissioner. By a separate notification, powers of the Director of Consolidation were conferred upon Sri Sahi. Sri Sahi, in his turn issued an order empowering Sri Maheshwari to dispose of second appeals under Sub-section (2) of Section 11 of the Act. The question is whether these orders sufficiently qualified Sri Maheshwari to dispose of second appeal u/s 11 of the old Act.

7. The question whether such authorisation is permissible or not came up for consideration before this Court in several cases. In *Lallo v. Joint Director* 1965 AWR 666: 1965 UPRC 282 Desai, C.J. observed on page 667:

A person upon whom the State Government confers powers of Director u/s 44 is not Director because he is not appointed as such. The Commissioner of Consolidation upon whom Director's powers are conferred by the State Government u/s 44, remains Commissioner of Consolidation, though he also becomes competent to exercise Director's powers also....

Sri I.D.N. Sahi was not Director and had no power to authorise Sri Syed Husain

to hear the second appeal.

8. Similarly, in *Bhagwan Bux Singh v. Dy. Director* 1967 AWR 582: 1967 UPRC 267 Lakshmi Prasad, J. observed on page 584:

In so far as Sri I.D.N. Sahi was appointed Commissioner Consolidation and not Director, Consolidation, even though it may be that he was conferred the powers of Director of Consolidation, it could not be said that the authority to hear second appeals conferred by Sri Sahi was valid within the provisions of Section 11(2) of the unamended Act. In the circumstances, it is clear that Sri Vishnu Prakash who passed the order dated 14-2-1964 did not have authority to hear and dispose of second appeals....

9. A different view was, however, taken by Nigarn, J. in *Drigraj Singh and Ors. v. State of UP* 1966 RD (HC) 201. He observed on page 202:

It appears to me that Section 44(ii) empowers the State Government to confer powers of a Director of Consolidation on any officer or authority. It is true that the person on whom these powers are conferred will not become a Director.

The question, however, is whether the powers conferred include the power of authorising a Deputy Director of Consolidation within the meaning of Section 21(5) of the Consolidation of Holdings Act. It appears to me that the powers conferred are all the powers of a Director including the power to authorise a person to act as a Deputy Director....

10. We are inclined to accept the view taken by Nigam, J. in *Drigraj Singh's* case. However, Mr. Srivastave, appearing for the Respondents, points out another difficulty. He points out that Sub-section (2) of Section 11 of the old Act prescribes a period of limitation of 21 days. It is not possible to treat the revision as a second appeal unless the Court is satisfied that the proceeding in question was instituted within the prescribed period of limitation.

Para. 7 of the writ petition ran thus:

That Gangoo opposite party number 4 preferred no second appeal within the period of 21 days before the District Deputy Director of Consolidation (as required by Section 11(2) of the Act) and the order passed by Assistant Settlement Officer Consolidation became final u/s 11(1) of the Act.

11. This matter was disposed of in para 7 of the counter-affidavit. Para 7 of the counter-affidavit ran thus:

It is admitted that the opposite party filed no second appeal against the order of Assistant Settlement Officer (Consolidation) Hardoi, but the rest of the contents of para 7 are denied.

12. It is to be noted that in para 7 of the counter-affidavit it was conceded that no second appeal was filed. There was no clear allegation in para 7 of the counter-affidavit that the proceeding in question was instituted by Gangoo within

21 days of the impugned order. As the record stands, we are not in a position to say whether the revision or second appeal was filed by Gangoo within 21 days of the decision by the Assistant Settlement Officer. This is another difficulty in converting the revision into second appeal.

13. It is common ground that the revision filed by Gangoo was incompetent. As discussed above, it is not practicable to treat the revision as a second appeal. The learned Single Judge was, therefore, justified in interfering on the ground that the revision filed by Gangoo was incompetent. The order of the Deputy Director dated 12-2-1965 was rightly quashed. Since the factual position is by no means clear, parties may be left to bear their costs throughout.

14. The decision of the learned Single Judge quashing the order, Annexure 5 will stand. But parties shall bear their own costs before the learned Single Judge and in special appeal.