

(1980) 09 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2668 of 1980

Gaon Sabha Rakshaha

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 02-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 11C, 48, 9A, 9A(2)

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C

Citation : (1980) AWC 547 : (1983) RD 75

Hon'ble Judges : B.D. Agarwala, J

Bench : Single Bench

Advocate : K.B. Garg, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwala, J.—Gaon Sabha Rakshaha through its Pradhan Sri Jaishri Sharma filed this petition under Article 226 of the Constitution challenging the judgment and order dated February 20, 1980 of the Deputy Director of Consolidation, Ghazipur.

2. The dispute in this case relates to plot Nos. 1949 and 1946 situate in village Rakshah, Pargana Zamaniya, District Ghazipur. These plots were recorded as Pokhari" in the Khatauni of several successive Fasli years. In the year 1970, the consolidation operations started in this village. It is stated that one Habibullah was the Pradhan of Gaon Sabha and he was relation of Tayab Khan, opposite party No. 2 to this petition. Tayab Khan applied for mutation of his name before the Tahsildar under Sections 33/39 of the U.P. Land Revenue Act. The Sub-Divisional Officer by an order dated 8th February, 1963 directed his name to be recorded as an Asami in class III. Later, proceedings under Rule 115-C of the U.P. Zamindari Abolition and Land Reforms Rules were initiated by the Gaon Sabha for ejectment of the opposite party No. 2 from this land. The Tahsildar dropped

these proceedings on the ground that a bonafide question of title was involved. The case of the Gaon Sabha was that it had no knowledge of the order of the Sub Divisional Officer dated 18th February, 1963, of which proceedings the Gaon Sabha had no notice and it was only upon the inspection of the consolidation records on 11th July, 1979 that it was revealed that the opposite party No. 2 had manipulated the incorrect entries in his favour in respect of the land in question and that soon thereafter objections u/s 9-A (2) of the U.P. Consolidation of Holdings Act was filed by the Gaon Sabha. Along with this objection, an application for condonation of delay duly supported by an affidavit of Sri Jaishri Sharma Pradhan was also filed. Counter and rejoinder affidavits were filed and ultimately the Consolidation Officer by his order dated 6th December, 79 condoned the delay in favour of Gaon Sabha. The Consolidation Officer also further held that prima facie it was established that the land was Pokhari and as such was in public use. Aggrieved the opposite party No. 2 filed a revision u/s 48 of the Act against the order of the Consolidation Officer dated 6th December, 1979 condoning the delay, in filing objection. The Deputy Director of Consolidation by his judgment dated 20th February, 1980 allowed the revision and set aside the order of the Consolidation Officer dated 6th December, 1979. It is this judgment and order of the Deputy Director of Consolidation which has been impugned in the present petition.

3. Shri K.B. Garg, Learned Counsel appearing for Gaon Sabha, has submitted that, in fact, an appeal lay against the order dated 6th December, 1979 and no revision lay directly before the Deputy Director of Consolidation u/s 48 of the Act and hence, the order of the Deputy Director of Consolidation was without jurisdiction.

4. I find no force in the submission of the Learned Counsel. The order dated 6th December, 1979 passed by the Consolidation Officer against which revision was filed before the Deputy Director of Consolidation was an order passed on the application u/s 5 of the Limitation Act whereby the delay in filing the objection was condoned. The order itself did not dispose of objections. After condoning the delay, a date had been fixed for further proceedings. An appeal u/s 11 lies to the Settlement Officer Consolidation against the order of the Assistant Consolidation Officer, or the Consolidation Officer u/s 9-A of the Act. The order condoning the delay on the application u/s 5 of the Limitation Act was not an order u/s 9-A of the Act. No appeal hence lay. Section 48 of the Act confers powers upon the Deputy Director of Consolidation to reach the facts and law and every kind of order passed by Consolidation Authorities subordinate to him. Clearly the order condoning the delay in filing the objection was amenable to revisional powers of the Deputy Director of Consolidation u/s 48 of the Act. The Deputy Director of Consolidation, in my opinion, acted within his jurisdiction in entertaining and deciding the revision.

5. It has next been contended by Sri Garg that the Consolidation Officer having once condoned the delay in filing the objection, the Deputy Director of

Consolidation ought not to have exercised his revisional powers to interfere with the discretion of the Consolidation Officer. Here again I am unable to agree. The Deputy Director of Consolidation after considering every aspect of the matter found on the basis of clear reasons recorded by him that the Consolidation Officer seriously erred in condoning the delay. As already noticed the delay in filing the objections was of several years. In this situation according to settled law on this subject, it was incumbent for the authority to satisfy that sufficient cause has been made out for condoning of each day's delay. This the Consolidation Officer failed to do. In fact, on going through the entire order of the Consolidation Officer, I am unable to find that he has given any reason for condoning the delay. He has merely paraphrased the cases set up by both the parties in this regard but has failed himself to apply his mind and to record reasons for condonation of delay. What appears to have weighed with him was that the Gaon Sabha had failed to point out the correct facts at the right time. There appears no justification for this approach. No provision has been pointed out to me under the Consolidation of Holdings Act nor any provision in any other Act under which Gaon Sabha has been conferred any special right or any special immunity from this law of limitation. Sri Garg then pointed out Section 11-C of the Act. This section was inserted by Act No. XXXIV of 74. It provides that in the course of hearing of an objection u/s 9-A or in appeal or revision under Sections 11 and 48 of the Act, the authorities concerned may direct that any land which vests in the State Government or Gaon Sabha or any local body, may be recorded in its name, even though no objection or appeal or revision has been filed by such government, Gaon Sabha or body or authority. In *Brij Lal v. State of U.P.* 1975 A.L.J. 684, a learned Single Judge of this Court rightly held that this section does not absolve Gaon Sabha from filing an objection or appeal or revision in cases in which its right is disputed and the land is not recorded in the name of Gaon Sabha. The Full Bench decision in the case of *Amir Husain and Others Vs. The Deputy Director of Consolidation and Others*, relied upon on behalf of Gaon Sabha merely lays down that the Consolidation Authorities can validly direct the name of Gaon Sabha to be recorded when it is found that there is no valid title holder and that under the law the land had vested in the Gaon Sabha even though Gaon Sabha had not filed any objection. The present is not the situation before us.

6. In my opinion, the power of consolidation authorities to record the name of Gaon Sabha even though no objection, appeal or revision has been filed by the Gaon Sabha can only be exercised in the course of hearing of objection or appeal or revision. Here in the present case, the Deputy Director of Consolidation having set aside the order of the Consolidation Officer condoning the delay there remained no objection pending, during the course of hearing of which, power u/s 11-C of the Act could have been exercised. In my opinion, therefore, the Learned Counsel for Gaon Sabha is not right in his contention that the Deputy Director of Consolidation ought to have directed the name of Gaon Sabha to be recorded, once the matter had come to his notice. I am unable to hold that the Deputy

Director of Consolidation in these circumstances committed any manifest error of a law.

7. It has strenuously been contended on behalf of the contesting opposite parties that the Petitioner Gaon Sabha cannot claim any interference by this Court under Article 226 of the Constitution since there is no manifest error of law in the impugned judgment and order dated 20th Feb., 1980 of the Deputy Director of Consolidation. Learned Counsel has submitted that the Deputy Director of Consolidation in clear terms recorded findings that the Gaon Sabha had clear knowledge of the entry of Asami in the name of opposite party No. 2, when the proceedings under Rule 115-C had been instituted by the Gaon Sabha on 31st March, 1973. A clear finding has been recorded that Sri Jaishri Jain who has filed the present petition in this Court, was the Pradhan even then who had instituted these proceedings. Gaon Sabha sat tight over the matter for almost six years and the case of Gaon Sabha that it had come to know only on inspection of the consolidation record on 11th July, 1979 was not accepted by the Deputy Director of Consolidation. I have been taken through the entire order of the Deputy Director of Consolidation and I am of the opinion that the contesting opposite party is right in his submission that in the face of these clear findings of fact recorded by the Deputy Director of Consolidation, no ground for interference by this Court is made out.

8. For the reasons given above, I do not find any merit in this petition.

9. It is, accordingly, dismissed. In the circumstances, however, there will be no order as to costs.