
(1984) 10 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 2252 of 1978

Ghanshyam Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 29-10-1984

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1984) 10 AHC CK 0011

Hon'ble Judges : K.N.Misra, J

Final Decision : Allowed

Judgement

K. N. Misra, J.—The dispute in the present case relates to land of khata no. 221, consisting of 53 plots, situate in village Bangaon, Pargana Mijhora, JTahsil Akbarpur, District Faizabad. This holding was recorded in the basic year khatauni in the name of Adya Prasad Singh, opposite party No. 5 Petitioner Uma Dutt Singh, since deceased, had filed an objection claiming cotenancy rights in the said holding on the ground that the land of the disputed holding is ancestral jointfamily property. Prior to the starting of consolidation operations in the village, a litigation in respect of land in dispute was pending between the parties in the revenue court, but the same abated on account of notification of the village under Section 4 of the U.P. Consolidation of Holdings Act. The abatement order was passed under Section 5 of the Act. The Consolidation Officer, after taking evidence of the parties, rejected the objection filed by the petitioner vide order dated 28121970. The petitioner preferred appeal against that order which was dismissed by the Assistant Settlement Officer, Consolidation vide order dated 3111972. Still feeling aggrieved, the petitioner filed revision which was once dismissed on 10101976. It was restored on the application moved by the petitioner, vide order dated 1151977 on payment of Rs. 15/ as costs and the revision was listed for hearing on 2851977. But on this date as well, the petitioner did not appear when the case was called for hearing, as according to him he had gone to call his counsel but could not return well within time and the learned Joint Director of Consolidation, after hearing the opposite parties,

dismissed the revision. When the petitioner returned with his counsel he applied for restoration of the case on that very date that is, 2851977. It appears that although the order was dictated by the Joint Director of Consolidation on 2851977 but he signed that order on 3051977, as is evident from the certified copy of the order annexed to the writ petition. The petitioner, therefore, requested that the application for restoration dated 2851977 be treated to be one against the order which was signed on 3051977. This prayer was allowed, as is evident from the impugned order passed by the Joint Director of Consolidation dated 371978 by which he rejected the restoration application. Aggrieved by this order, the petitioner has filed this writ petition.

2. Learned counsel for the petitioner urged that there were no laches on the part of the petitioner in moving the application for restoration. He urged that since the petitioner was a lame person, and, as such, he could not return within time with his counsel and the learned Joint Director of Consolidation erred in dismissing the revision on merits. His contention was that if the petitioner was not present at the time when the case was taken up for hearing, the revision should have been dismissed in default instead of dismissing it on merits. Learned counsel urged that the impugned order dismissing the revision on merit was signed by the Joint Director of Consolidation on 3051977 and not on the date on which the learned Joint Director of Consolidation purports to have heard learned counsel for the opposite parties in the revision while proceeding to decide it ex parte on merits. It was further urged that the Joint Director of Consolidation has wrongly rejected the application of the petitioner for restoration on an erroneous ground that the costs awarded earlier while restoring the revision by order dated 1151977 were not paid. He had pointed out that on 1151977 the revision was ordered to be restored on payment of Rs. 15/ as costs and 2851977 was fixed for hearing in the revision. His contention was that on that very date the petitioner should have paid the costs, but since he could not return back with his counsel within time he could not pay the costs. In these circumstances the ground on which the application for restoration was rejected is apparently erroneous.

3. Having heard learned counsel at same length, I find much substance in the argument of the learned counsel for the petitioner.

4. If the petitioner was not present at the time when the case was taken up for hearing, the Joint Director of Consolidation should have dismissed the revision in default instead of proceeding to hear it on merits. If he was inclined to hear it on merits he should have waited for the petitioner to come back with his counsel and, at any rate, when the petitioner had returned with his counsel, he should have given an opportunity of hearing to him because on that very date the order dismissing the revision was not signed by the Joint Director of Consolidation. He had signed the order on 3051977, and, as such, it would have been proper for him to have heard arguments on behalf of the petitioner, especially when the order was not signed by him. I also find much substance in the argument of the

learned counsel for the petitioner that the application for restoration should not have been rejected on the ground that the earlier costs were not paid by the petitioner. Apparently, the earlier costs awarded could be paid by the petitioner on 2851977, but on that date he could not pay it as at the time when the case was called for hearing he had gone to call his counsel. In these circumstances I find that the Joint Director of Consolidation has taken erroneous view while rejecting the application for restoration.

5. In the result, the writ petition succeeds and is hereby allowed and the impugned order dated 2851977/3051977 contained in Annexure No. 4, and order dated 371978 contained in Annexure No. 6 by which the restoration application has been rejected, are quashed and the Deputy Director of Consolidation is directed to restore the revision to its original number and to decide it on merits according to law. Since this case is of the year 1978, and, as such, it is expected of the Deputy Director of Consolidation that he will expeditiously decide the revision. No order as to costs.

(Petition allowed)