
(2005) 10 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 783 of 1977

Islam and Anr.

APPELLANT

Vs

D.D.C., Azamgarh & Ors.

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2005) 10 AHC CK 0120

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri Anil Bhushan, learned Counsel for the petitioners.

2. Though the case has been taken up in the revised list no one has appeared on behalf of the respondents.

3. By means of this writ petition, the petitioners have challenged the order dated 1711977 passed by the Deputy Director of Consolidation, Azamgarh dismissing the revision filed by the petitioners as barred by time.

4. It has been urged by learned Counsel for the petitioners that once the Deputy Director of Consolidation entertained the revision and issued notices it was not open to him to dismiss the same as barred by time. Reliance in support of the contention has been placed on a Full Bench decision of this Court in the case of Rama Kant Singh v. Deputy Director of Consolidation, 1974 RD 262. It has further urged that the finding recorded by the Deputy Director of Consolidation that the appellate order is dated 1711975 is based on misreading of record as the same is dated 17121975.

5. The Deputy Director of Consolidation while dismissing the revision has recorded a finding that the application to obtain certified copy of the appellate order dated 1711975 was made on 421976. The certified copy was made ready on 1021976 and was delivered on the same day and the revision has been filed on 11 21976 and thus barred by time. This Court vide order dated 1441980 has

summoned the record of the Deputy Director of Consolidation as well as Settlement Officer Consolidation and the same is available on the record of the writ petition. I have perused the same. A perusal of the record indicates that the revision was filed on 11/2/1976 on which notices were issued in November, 1976 fixing 27/11/1976. The record of the Settlement Officer Consolidation was also available with Deputy Director of Consolidation. The revision was finally heard on 15/11/1977 and was dismissed as barred by time on 17/11/1977.

6. The Full Bench of this Court in the case of Rama Kant Singh (*supra*) has held that after the record is called for by the Deputy Director of Consolidation under Section 48 of the Act, he should examine the record to decide whether it was a fit case for exercise of the revisional jurisdiction. Such opinion shall have to be formed where the application in revision moved by the parties is defective, having made beyond the prescribed period of limitation or all the necessary parties have not been impleaded.

7. In the present case not only the record was available with the Deputy Director of Consolidation but notices were also issued and thus it was not open for him to dismiss the revision as barred by time. Even otherwise, the Deputy Director of Consolidation has wrongly recorded that the appellate order was passed on 17/11/1975 whereas the record indicates that the said order is dated 17/12/1975.

8. From the aforesaid it is clear that not only the finding recorded by the Deputy Director of Consolidation are based on misreading of record but he has wrongly and illegally dismissed the revision as barred by time. Thus, the impugned order dated 17/11/1977 passed by the Deputy Director of Consolidation cannot be sustained and is hereby quashed.

9. The writ petition stands allowed.

10. The case is remanded back to the Deputy Director of Consolidation for decision afresh on merits in accordance with law within a period of six months from the date of production of a certified copy of this order before him after notice and opportunity of hearing to all the parties concerned.

11. In the facts and circumstances there shall be no order as to costs.