
(2012) 01 AHC CK 0747
In the Allahabad High Court
Case No : C.M.W.P. No. 74746 of 2011

Jairam

APPELLANT

Vs

D.D.C. Gorakhpur and Another

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 2 AWC 2102

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : M.D. Misra, for the Appellant; A.P. Tewari, S.S. Tripathi and C.S.C.,
for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri M.D. Misra, learned counsel for the petitioner. Sri A.P. Tewari for respondent No. 2 and the learned standing counsel for respondent No. 1. Learned counsel for respondents submit that since the issues involved are purely legal, therefore, they do not propose to file any counter-affidavit at this stage and the matter be disposed of finally, on the basis of the documents already on record with the consent of the parties. Accordingly, the matter is being disposed of finally at this stage.

2. A supplementary-affidavit has been filed bringing on record certain averments including the pedigree by which the parties are governed. Kamta, son of Govind, was the recorded tenure holder. The petitioner-Jairam is the grand son of Ram Patti, sister of Govind. The claim of Jairam is to the effect that the said property came to be settled between the petitioner and late Kamta during consolidation operations under an order of the Assistant Consolidation Officer dated 20.11.1969. The village was de-notified u/s 52 sometimes in the year 1976, after the death of Kamta in 1975. The name of the petitioner continued to be recorded thereafter and the petitioner claims continuous cultivatory possession over the land in dispute since then.

3. After 36 years, a time-barred appeal came to be filed by the respondent-Radhey Shyam and another appeal came to be filed by one of the sons of Kamta, Jawahar. These two appeals were dismissed by the Settlement Officer, Consolidation vide order dated 25.11.2005. One of the appellants Jawahar did not prefer any revision against the said order. It is only the respondent No. 2-Radhey Shyam, who preferred a revision, which has been allowed on 15.11.2011 giving rise to the present petition.

4. Sri M.D. Misra submits that there is no valid explanation for the delay of 36 years and the Deputy Director of Consolidation, without adverting himself to the aforesaid issue in correct perspective and condoning the delay in filing of the appeal, has proceeded to remand the matter to the Settlement Officer, Consolidation after recording findings on the merits of the claim of respondent No. 2. He submits that this two fold approach of the Deputy Director of Consolidation is erroneous and ignores all relevant issues relating to the existence of the order of the Assistant Consolidation Officer dated 20.11.1979. He submits that the file relating to the order of the Assistant Consolidation Officer did exist for which reliance is being placed on the extract of a Goswara, copy whereof is Annexure-1 to the writ petition, which indicates that the said file has been weeded out in the year 1977. Sri Misra submits that no appropriate finding has been recorded by the Deputy Director of Consolidation before passing the remand order and further the Deputy Director of Consolidation has entered into the merits of the order of the Assistant Consolidation Officer by making comments in order to create an impression by drawing an inference of fraud without there being any evidence to that effect. He, therefore, submits that on both the counts, the order of Deputy Director of Consolidation is erroneous.

5. Sri Tewari, on the other hand, submits that as a matter of fact the order of the Assistant Consolidation Officer if at all in existence is an order without jurisdiction and is an outcome of a fake proceeding. For this, the Deputy Director of Consolidation has recorded findings indicating that the order of the Assistant Consolidation Officer suffers from procedural defects as well and the endorsement does not bear the date or the appropriate verification in relation to the said order. He, therefore, contends that Deputy Director of Consolidation was justified in remanding the matter to the Settlement Officer Consolidation for decision afresh.

6. Having heard learned counsel for the parties, the first issue is in relation to the delay of 36 years being explained by respondent No. 2. The Deputy Director of Consolidation, in my opinion, could not have proceeded to remit the matter before the Settlement Officer, Consolidation to decide the case on merits without recording a clear finding as to what was the justification for condoning the delay of 36 years. This was not a routine matter and the issue of delay could not have been dealt with casually treating it to be irrelevant on a prima facie inference of a theory of alleged fraud. Fraud has to be established on record, and without any firm finding on cogent material or ignoring relevant material like the Goswara on

record, the Deputy Director ought not to have passed an order of remand. An enquiry could have been made about the proceedings before the Assistant Consolidation Officer. This having not been done, the order impugned falls within the disrepute of surmises and conjectures. In the absence of any such finding having been recorded by the Deputy Director of Consolidation, the order of remand cannot be passed in order to fill up the gaps and the lacuna in the explanation, which according to the petitioner, was very much evident in the delay condonation application preferred before the Settlement Officer, Consolidation.

7. Secondly, even on merits the manner in which the finding has been recorded by the Deputy Director of Consolidation, there remains hardly any scope for the Settlement Officer, Consolidation to comment otherwise and in my view the said order of remand; therefore, suffers from gross infirmities. Accordingly, the order dated 15.11.2011 is unsustainable. The writ petition is, therefore, allowed and the order dated 15.11.2011 is hereby quashed. The matter is remitted to the District Deputy Director of Consolidation/Collector, Gorakhpur, to himself decide the matter in the light of the observations made herein above as expeditiously as possible preferably within a period of 3 months from the date of production of a certified copy of this order before him.