
(2016) 04 AHC CK 0210
In the Allahabad High Court
Case No : Writ-B No. 18987 of 2012

Jhinnu Prasad Yadav

APPELLANT

Vs

Additional District Magistrate and Others

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2016) 132 RD 241

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : R.P. Yadav, Advocate, for the Appellant; C.S.C., Jameel Ahmad Azmi, Mahesh Narain Singh, S.K. Yadav, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Sri R.P. Yadav, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents, Sri S.K. Yadav, learned counsel for respondent no.3 and Sri J.A. Azmi, learned counsel for respondent no.4.

2. By means of the present writ petition the petitioner has prayed for issuing a writ of certiorari quashing the order dated 19.3.2012 passed by the Deputy Director of Consolidation, Azamgarh (in short DDC) in Revision No. 709 ((Shiv Chand v. Budhram and others) as modified on 3.4.2012.

3. The aforesaid order was challenged on number of grounds and on the date of admission this Court after hearing the learned counsel for the petitioner, Sri M.N.Singh, learned counsel for the Gaon Sabha and Sri S.K.Yadav, learned counsel for respondent no.3 issued notice to respondent no.4. After the aforesaid order Sri J.A.Azmi, learned counsel has put in appearance on behalf of respondent no.3. None of the respondents has filed counter affidavit. However, learned counsel for respondents nos. 3 and 4 submitted that they do not propose to file counter affidavit and this writ petition may be heard and decided finally on

the basis of the averments made in the writ petition. With the consent of the learned counsel for the parties the writ petition is taken up for final disposal.

4. As would appear from the record that vide order dated 19.3.2012 the DDC has decided seven Revisions by a common order including the revision filed by Shiv Chand, respondent no.3 which was partly allowed. The revision was filed against the order dated 6.9.2010 passed by the Settlement Officer Consolidation (in short SOC). The petitioner not was affected by the order dated 19.3.2012. However, later on Shiv Chand has filed modification application for modifying the order dated 19.3.2012. The said application was allowed vide order dated 3.4.2012. For convenience the order dated 3.4.2012 is reproduced herein below:

"Jh f''ko pUnz iq= cynso ds izkFkZuk i= ds izfrizs{; esa i=koyh rFkk ikfjr vkns''k fnukad 19-03-2012 o la''kks/ku rkfydk dk voyksdu fd;k x;kA la''kks/ku rkfydk fnukad 19-03-2012 vkns''k ds vuq:i ugha cuh gSA vr% mDr la''kks/ku rkfydk fujLr djds ubZ la''kks/ku rkfydk layXu dh tkrh gS] tks vkns''k fnukad 19-03-2012 ds vuq:i gSA la''kks/ku rkfydk ds vuqlkj vfHkys[k o pdz Hkwfp= la''kks/ku gksA rnuqlkj f''kopUnz iq= cynso o la''kks/ku izkFkZuki= fuLrkfjr fd;k tkrk gSA i=koyh okn vuqiky nkf[ky nQ~rj gksA"

5. The ground of challenge of the order dated 3.4.2012 is that the DDC has erred in allowing the modification application without there being any notice or opportunity of hearing to the petitioner. As would appear from the perusal of the order dated 3.4.2012 it is apparent that the submission made by the learned counsel for the petitioner carries weight as the order does not mention that the parties were heard while passing the order dated 3.4.2012.

6. It is submitted by the learned counsel for the petitioner that after the final decision the modification application was not maintainable and had there been any defect in the order that should have been challenged before higher court or the order could only be modified on recall application that too after affording opportunity of hearing to the affected parties. Submission is that the petitioner has been substantially affected by the modification order dated 3.4.2012.

7. In view of the fact that no counter affidavit has been filed and the order dated 3.4.2012 apparently suffers from the breach of principal of natural justice, I am of the opinion that the impugned order dated 3.4.2012 by which order dated 19.3.2012 passed in Revision No. 709 ((Shiv Chand v. Budhiram and others)) has been modified cannot be sustained in the eye of law and the same are hereby quashed so far as it relates to the petitioner. The writ petition succeeds and is allowed. The DDC is directed to pass a fresh order on the modification application filed by respondent no.3.

8. It may be clarified that I have not addressed myself either on the merit of the modification or its maintainability and it is in the sole domain of the DDC to pass an independent order in accordance with after affording an opportunity of hearing to the affected parties.