
(1961) 03 AHC CK 0006

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 932 of 1960

Jwala

APPELLANT

Vs

Shiamlal and others

RESPONDENT

Date of Decision : 06-03-1961

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20(2), 21(1)

Citation : (1961) 31 AWR 505

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; K.P. Singh for Respondents, for the Respondent

Final Decision : Allowed

Judgement

A.P. Srivastava, J.—This is a petition under Article 226 of the Constitution. The facts leading up to it may be briefly stated. Consolidation of holdings proceedings were going on in the village of the parties and the Petitioner filed an objection u/s 12 of the Consolidation of Holdings Act. The objection was decided against him and he preferred an appeal against that decision to the Settlement Officer (Consolidation). While the appeal was pending proposals u/s 19 of the Consolidation of Holdings Act were framed and finding that the point he had raised in his objection u/s 12 had not been finally decided the Petitioner filed an objection u/s 20 of the Act. Along with the objection he filed an application u/s 5 of the Indian Limitation Act for condoning the delay in filing of the objection. As required by Clause (2) of Section 20 of the Consolidation of Holdings Act the objection was filed before the Assistant Consolidation Officer. That officer by his order dated 27th of August, 1959 rejected the objection taking the view that delivery of possession had taken place and an affidavit had not been filed to support the application u/s 5 of the Limitation Act. The order of the Assistant Consolidation Officer was itself not appealable. The Petitioner, therefore, went up in revision against it to the Deputy Director (Consolidation) who rejected the

application on 23rd of December, 1959. The Petitioner then filed this petition praying that the order of the Assistant Consolidation Officer and the order of the Deputy Director (Consolidation) upholding it be quashed by a writ of certiorari. AS the petition had been filed with some delay the Petitioner offered an explanation in para. 8 of the affidavit filed in support of his petition.

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2. On merits the Petitioner appears to have a very good case. He filed an objection u/s 20 before the Assistant Consolidation Officer as was required by Sub-clause (2) of that section. Clause (1) of Section 21 of the Act provides as follows:

All objections received by the Assistant Consolidation Officer, shall, as soon as may be, after the expiry of the period of limitation prescribed therefore be submitted by him to the Consolidation Officer, who shall dispose of the same, as also the objections received by him, in the manner hereinafter provided, after notice to the parties concerned and the Consolidation Committee.

3. In the present case instead of forwarding the objection filed by the Petitioner to the Consolidation Officer as required by Clause (1) of Section 21, as quoted above what the Assistant Consolidation Officer did was that he rejected the objection on the ground that the delivery of possession had already taken place and that there was no affidavit in support of the application made u/s 5 of the Limitation Act. This rejection of the objection by the Assistant Consolidation Officer was clearly without jurisdiction. He had no power under the Act to dispose of the objection. He could only submit it to the Consolidation Officer who alone was entitled to dispose it of. Under Clause (2) of Section 21 an appeal could be filed had the objection been disposed of by the Consolidation Officer in the present case the objection having been rejected by the Assistant consolidation Officer the Petitioner could not go in appeal against the order of rejection. He, therefore, filed an application in revision before the Deputy Director of Consolidation but that application in revision was rejected and the order of the Assistant Consolidation Officer was confirmed. As the latter order is void for want of jurisdiction the subsequent order in revision confirming it cannot be of any effect.

4. Learned Counsel for the Petitioner is, therefore, correct in his submission that the objection filed by the Petitioner u/s 20 of the Consolidation of Holdings Act has not been properly decided and the order rejecting it must be quashed.

5. Learned Counsel also wanted to challenge in this petition the order by which the Petitioners appeal in proceedings u/s 12 of the Consolidation of Holdings Act had been stayed. That stay had compelled the Petitioner to file the objection u/s 20 but the stay was ordered long before the petition was filed and the applicant cannot, therefore, be allowed to object to it in this petition.

6. The petition is, therefore, allowed to this extent that the order dated 27th

August, 1959 rejecting the Petitioner's objection u/s 20 of the Consolidation of Holdings Act and the subsequent order of the Deputy Director of Consolidation dated the 23rd of December, 1959 confirming the order of rejection are quashed by a writ of certiorari. The objection must now be dealt with by the Assistant Consolidation Officer according to law. In other respects the petition is dismissed. The Petitioner will get half of his costs from the opposite parties who contested it. The opposite parties will bear their own costs.