
(2003) 12 AHC CK 0162
In the Allahabad High Court
Case No : C.M.W.P. NO. 13296 of 1981

Kanta and Another

APPELLANT

Vs

Assistant Director of Consolidation and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A

Citation : (2004) 2 AWC 1254 : (2004) 96 RD 255 : (2004) 1 RD 255

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Radhey Shyam and A.B. Singh, for the Appellant; R.C. Singh and R.S. Misra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Radhey Shyam and Sri A. B. Singh, learned counsel for the petitioners and Sri R. C. Singh, learned counsel, appearing for respondent Nos. 2 to 5.

2. This writ petition has been heard along with Writ Petition No. 20839 of 1996 filed by respondent Nos. 2 to 5 against the present petitioners which has been allowed today by separate order of the date.

3. This writ petition discloses a glaring instance of abuse of process of the Court by petitioners who have dragged the contesting respondents in a frivolous litigation which is continuing for last more than twenty years.

4. Brief facts necessary for disposal of the writ petition are ; dispute between the petitioners and respondent Nos. 2 to 5 arose in proceedings u/s 9 of U. P. Consolidation of Holdings Act, 1953. Objections were filed u/s 9A (2) by the petitioners and respondent No. 6 claiming sole tenancy over the khata in dispute. The case of the petitioners was that they are sole tenants. In the basic year name of both the parties were recorded. The Consolidation Officer decided in

favour of the petitioners on 23rd March, 1976. An appeal was filed by respondents before the Settlement Officer of Consolidation. The Settlement Officer of Consolidation vide his judgment dated 30th December, 1976 dismissed the appeal. A revision was filed by the contesting respondents u/s 48 of U. P. Consolidation of Holdings Act which revision was allowed by the Deputy Director of Consolidation on 16th April, 1977. The Deputy Director of Consolidation directed for maintaining the basic year entry over khata in dispute. The share of respondent Nos. 2 to 5 was held to be 1/6th each and share of petitioners and respondent No. 6 as 1/9th each. Against the judgment of Deputy Director of Consolidation dated 16th April, 1977 a writ petition was filed by the petitioners in this Court under Article 226 of the Constitution being Writ Petition No. 580 of 1977 by Kanta, Mukhtar and Paramhansh. In the writ petition the order passed by Deputy Director of Consolidation dated 16.4.1977 was challenged. The counsel appearing for the petitioners contested the writ petition on merit and raised four grounds challenging the order. This Court considered the submissions raised by the petitioners on merits and rejected all the contentions raised by the petitioners. The writ petition was ultimately dismissed on 8th March, 1978 by this Court. Against the order of dismissal of the petitioner SLP (Civil) No. 1840 of 1978 was filed in the Apex Court which too was dismissed by the Apex Court on 16th July, 1979. After dismissal of the aforesaid Special Leave Petition, a suit was filed by the petitioners praying for setting aside the judgment and order of Deputy Director of Consolidation dated 16th April, 1977. The said suit was dismissed with costs on 9th September, 1981. After dismissal of the said suit, the petitioners filed an application for recall of the order dated 16th April, 1977 by which the Deputy Director of Consolidation has allowed the revision filed by the respondents. In the recall application, it was stated by the petitioners that before the Deputy Director of Consolidation they did not appear nor prosecuted the revision. It was stated that the order of Deputy Director of Consolidation was ex parte. A plea was also taken that writ petition as well as SLP was also not filed by them. However, in paragraph 19 of the application it was stated by the petitioners that they filed a suit being Suit No. 802 of 1979 in the Court of Munsif for setting aside the judgment passed by the Deputy Director of Consolidation. The application for recall has been rejected by the Deputy Director of Consolidation by the impugned order dated 17th August, 1981. The Deputy Director of Consolidation has rejected the application and recorded a finding that the said application has been filed only to harass the other side. Specific finding has been recorded by Deputy Director of Consolidation that Kanta, Mukhtar and Paramhansh appeared before the Deputy Director of Consolidation and they filed writ petition and SLP also. The Deputy Director of Consolidation in the order has noted that proceedings for referencer pursuance of the order dated 16th April, 1977 was stayed and the respondents could not get their share till the date of passing of the order.

5. Sri Radhey Shyam, learned counsel for the petitioners, contended that restoration was filed before the Deputy Director of Consolidation since the order

passed by Deputy Director of Consolidation was ex parte.

6. Sri R. C. Singh, learned counsel appearing for the respondents, contended that the application of restoration filed by the petitioners was abuse of process of the Court. The petitioners having lost up to the Apex Court, have filed the application only with the intention to deprive the respondents from the benefits of the judgment of the Deputy Director of Consolidation. Sri R. C. Singh further contended that petitioners contested the revision before the Deputy Director of Consolidation as well as in this Court and Apex Court. A frivolous suit for setting aside the Judgment of Deputy Director of Consolidation dated 17th April, 1977 was also filed which was dismissed. He submitted that exemplary cost be Imposed on the petitioners.

7. I have considered the submissions and perused the record.

8. From the facts brought on the record, it is clear that petitioners filed objections before the Consolidation Officer claiming sole tenancy over the land in dispute. The Consolidation Officer and Settlement Officer of Consolidation decided in their favour which orders were challenged before the Deputy Director of Consolidation. The Deputy Director of Consolidation after hearing both the parties allowed the revision on 17.4.1997 against which writ petition was filed by the petitioners. After judgment of the Apex Court dismissing the SLP filed by the petitioners, a suit being Suit No. 802 of 1979 was filed. In the aforesaid suit issues were framed by the learned Munsif as to whether the order passed by the Deputy Director of Consolidation in Revision No. 1965/1233/1345, dated 17.4.1977 was passed by fraud played on the plaintiffs and as to whether they did not receive any notice in the revision or did not engage any counsel. All the issues have been decided against the plaintiffs and the suit was dismissed with costs vide its judgment dated 9th November, 1981. It is relevant to note that in the restoration application filed by the petitioners filing of the suit, at least, has been admitted by the petitioners in paragraphs 16 and 17. The sequence of events clearly establish that petitioners have challenged the orders passed by the Deputy Director of Consolidation by filing the writ petition in this Court and contested the matter on merits up to the Apex Court. After dismissal of the writ petition on 8th March, 1978 and SLP on 16th July, 1979, the restoration application was filed on wholly false and frivolous grounds, which is nothing but an abuse of process of the Court.

9, The Deputy Director of Consolidation in the impugned order dated 17th August, 1981 while rejecting the application of the petitioners to recall the judgment dated 16th April, 1977 has recorded categorical finding that petitioners have appeared in Revision No. 1345/1233 (Mukhtar v. Dadhibal) and have prosecuted the said case. It has further been held that being aggrieved by the Judgment of the Deputy Director of Consolidation dated 16th April, 1977, a writ petition was filed by the present petitioners in this Court which was dismissed and after dismissal of the writ petition, SLP was filed in the Apex Court which too was dismissed. A copy of the judgment of this Court in writ petition, being Writ

Petition No. 580 of 1977, filed by petitioners has been enclosed as Annexure-2 to Writ Petition No. 20839 of 1996, decided today. Before this Court in the aforesaid writ petition, the petitioners raised several arguments challenging the judgment of Deputy Director of Consolidation but no such argument was made that order of Deputy Director of Consolidation is ex parte and they were not heard by the Deputy Director of Consolidation. It is also relevant to note that after losing from this Court and Apex Court, the petitioners have filed a civil suit in the Court of Munsif being Suit No. 802 of 1979 praying for setting aside the judgment dated 16th April, 1977 of the Deputy Director of Consolidation. The civil suit was also dismissed on 9.11.1981 in which finding was recorded by the civil court that order of Deputy Director of Consolidation was passed on 16th April, 1977 without hearing both the parties and no fraud was played on the petitioners in the Court of Deputy Director of Consolidation. A finding was also recorded that petitioners filed writ petition in this Court and thereafter SLP before the Apex Court which were dismissed. From the counter-affidavit filed to the stay application in this case by the respondents, it is clear that since Consolidation Officer decided in favour of the petitioners, chak of the entire area was carved out in favour of the petitioners and after judgment of the Deputy Director of Consolidation dated 16th April, 1977 proceedings of reference were initiated to give effect to the order dated 16th April, 1977 and the reference could be approved by the Deputy Director of Consolidation only on 14th September, 1979 and order could be passed by Additional Director of Consolidation on 18th June, 1980 for demarcation. The petitioners were continuing in possession of entire share of the plot including 2/3rd share of the contesting respondents and in spite of the order of Deputy Director of Consolidation declaring 2/3rd share to the contesting respondents, the petitioners had succeeded in not giving effect to the order of Deputy Director of Consolidation. The order of Deputy Director of Consolidation dated 16th April, 1977 having affirmed by this Court and Apex Court, the petitioners filed application in the Court of Deputy Director of Consolidation for recalling the order with intent and object of resisting the implementation of the order of Deputy Director of Consolidation dated 16th April, 1977. Filing of application for recall of the judgment, which has been affirmed by this Court as well as Apex Court, is a clear abuse of process of the Court and shows disrespect to the decisions of the highest court. The efforts of the petitioners were to somehow continue to remain in possession of the entire land by creating hindrances in implementation of the order. The petitioners have dragged the contesting respondents and prolonged this litigation for more than two decades causing harassment and loss to the contesting respondents.

10. In the facts and circumstances of the case, the petitioners are liable to be saddled with exemplary cost for filing frivolous and false application against the respondents to recall the Judgment of Deputy Director of Consolidation, which was affirmed by this Court as well as by Apex Court.

11. The writ petition is dismissed with exemplary cost of Rs. 10,000. The petitioners are directed to pay the amount of cost to respondent Nos. 2 to 5

within two months failing which the cost shall be recoverable from the petitioners as decree of civil court at the instance of respondent Nos. 2 to 5 either jointly or separately.