
(2008) 02 AHC CK 0197

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7044 of 2008

Krishn Kumari

APPELLANT

Vs

Deputy Director of Consolidation, Bareilly and others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2008) 02 AHC CK 0197

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Partly Allowed

Judgement

Ashok Bhushan, J.—Heard learned Counsel for the petitioner and Sri H.M.B. Sinha, learned Counsel appearing for respondents No. 2 to 14. Learned Counsel for the petitioner submits that respondents No. 15 to 17 are proforma respondents and respondents No. 18 and 19 are the original tenure holders who had withdrawn the appeal.

2. With the consent of learned Counsel for the parties, the writ petition is being disposed of at the admission stage itself without inviting counter affidavit.

3. By this writ petition the petitioner has prayed for quashing the order dated 31.10.2007 by which the Deputy Director of Consolidation, Bareilly has set aside the order of the Consolidation Officer and Settlement Officer Consolidation and remitted the matter to the Consolidation Officer for deciding the same on merits after hearing the parties.

4. The dispute between the parties lies in a very narrow compass. The respondents No. 18 and 19 who were the original tenure holders, they executed a power of attorney in favour of one Jagdish Chandra Sharma, who executed sale deeds dated 12.4.1983 and 1.6.1983 in favour of the petitioner and respondents No. 15 to 17. On the basis of the sale deeds, they moved an application for mutation before the Tahsildar under section 34 of the U.P. Land Revenue Act, which was allowed. An appeal was filed by the original tenure holders against the

mutation order which was partly allowed by the Sub Divisional Officer and the matter was remanded to the Tahsildar. Again Tahsildar vide order dated 23.4.1991 mutated the name of the vendees. The respondents No. 18 and 19 filed appeal which was dismissed in default on 19.9.1991 and a restoration application was filed seeking recall of the order dated 19.9.1991. The SubDivisional Officer passed the order dated 29.1.1992 that since the village has come under consolidation operation, the proceedings are abated. The petitioner filed objection before the Consolidation Officer seeking mutation of her name on the basis of sale deed whereas the respondents No. 2 to 14 filed objection, seeking mutation of their names on the basis of sale deeds executed by the original tenure holders in their favour on 19.12.1984 and 8.7.1987. The Consolidation Officer heard the parties and relying on the mutation order, allowed the objection filed by the petitioner directing for implementation of the order of the Sub Divisional Officer dated 31.8.1991, passed in the mutation proceedings against which order an appeal was filed by the original tenure holders as well as subsequent purchasers i.e. respondents No. 2 to 14. It has come on record that original tenure holders withdrawn their appeal but subsequent purchasers contested the appeal. The appellate authority by order dated 28.2.2007 dismissed the appeal of Ram Gopal and confirmed the order dated 3.8.2006. Subsequent purchasers respondents No. 2 to 14 filed revision before the Deputy Director of Consolidation. The Deputy Director of Consolidation vide the impugned order remanded the matter to the Consolidation Officer.

5. Learned Counsel for the petitioner challenging the impugned order contended that the Deputy Director of Consolidation committed error in allowing the revision and remanding the matter. He submits that against the sale deed in favour of the petitioner, a suit for cancellation was filed which was withdrawn hence, the Deputy Director of Consolidation himself ought to have decided the dispute between the parties as the remand order will further prolong the litigation between the parties, which is going on for the last more than a decade. Sri H.M.B. Sinha, learned Counsel for the respondents contends that Deputy Director of Consolidation has rightly remanded the matter since no opportunity was given to the subsequent purchasers. He further contends that the Consolidation Officer and Settlement Officer Consolidation committed error in relying upon the orders passed in mutation proceedings, which is of summary nature.

6. I have considered the submissions of Counsel for both the parties and perused the record.

7. The Deputy Director of Consolidation in the impugned order has rightly observed that the orders passed in mutation proceedings under section 34 of the U.P. Land Revenue Act, neither operates as resjudicata nor decides title between the parties. There cannot be any doubt to the said findings recorded by the Deputy Director of Consolidation as held by this Court in the case of Lal Bachan v. Board of Revenue and others 2002 RD 6 = 2002 (46) ALR 564 The Settlement

Officer Consolidation committed error in relying on the order passed in mutation proceedings by upholding the claim of the petitioner. The consolidation proceedings are regular proceedings for deciding titles between the parties and consolidation authorities were not bound by any decision taken in the mutation proceedings. The Deputy Director of Consolidation has rightly set aside the order of the Consolidation Officer and Settlement Officer Consolidation.

8. Now coming to the second question regarding entitlement of the petitioner along with respondents No. 15 to 17 and respondent No. 2 to 14, the subsequent purchasers. The issue being legal ought to have been decided by the Deputy Director of Consolidation himself. Although the Deputy Director of Consolidation remanded the matter to the Consolidation Officer giving liberty to the parties to lead evidence, looking to the nature of dispute and facts that the dispute is prolonging for the last more than two decades, evidence, if any could have been recorded by the Deputy Director of Consolidation himself to shorten the litigation and end the dispute. Remand of the matter to the Consolidation Officer is nothing but starting a fresh inning of litigation. The dispute between the parties lying in a very narrow compass that is a to whether the sale deed executed by the owner of attorney holder in favour of the petitioner is valid or sale deed executed in favour of respondents No. 2 to 14 by the tenure holders themselves was valid. The Deputy Director of Consolidation ought to have given opportunity to the parties to bring additional evidence in the revision, if any including the oral evidence and decide the matter.

9. In the facts of the present case, the Deputy Director of Consolidation committed error in remanding the matter. Ends of justice be served in setting aside the order dated 31.10.2007 to the extent it remits the matter to the Consolidation Officer. However, the order of the Deputy Director of Consolidation in so far as it set asides the order of the Settlement Officer Consolidation and order of Consolidation Officer is maintained. The Deputy Director of Consolidation will hear the revision afresh and after hearing the parties may decide the same in accordance with law. As observed above, the Deputy Director of Consolidation shall also give opportunity to the parties to lead additional evidence both oral as well as documentary, if any and decide the revision expeditiously without granting any unnecessary adjournment to the parties. It is relevant to note that both the parties have prayed for opportunity to lead evidence before the Deputy Director of Consolidation which is being allowed as indicated above.

10. Subject to as directed above, the writ petition is partly allowed.