

(2012) 10 AHC CK 0090
In the Allahabad High Court
Case No : Writ Petition No.672 of 1999

Krishna Kumar

APPELLANT

Vs

Deputy Director of Consolidation, Hardoi and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2012) 10 AHC CK 0090

Hon'ble Judges : Anil Kumar, J

Judgement

Anil Kumar, J.

Matter is taken in the revised cause list.

None appeared on behalf of the respondents.

Heard Shri Pankaj Gupta, learned counsel for the petitioner, learned State Counsel and perused the record.

Facts in brief of the present case are that the controversy involved in the present case relates to Khata No.385 recorded in the name of father of the petitioner.

Thereafter, in respect of the land in question certain dispute has arisen and the matter came up for consideration before the Consolidation Officer who has passed an order dated 3.1.1991 (Annexure No.2).

Aggrieved by the said order, an appeal bearing Appeal No.310/970 has been filed, allowed by order dated 27.5.1993 (Annexure No.3).

Lastly, the matter came up for consideration before the Deputy Director of Consolidation, Hardoi in revision bearing Revision No.836/776/709/682/690/507 under Section 48 of the U.P. Consolidation of Holdings Act, dismissed by judgment and order dated 29.10.1999 (Annexure No.1) and the matter was remanded to the Consolidation Officer to decide the same.

On 16.12.1999, this Court passed an interim order, on reproduction reads as

under:

"Heard the learned counsel for the petitioner on stay application. Till the next date of listing operation of the order dated 27.5.1993 contained in Annexure No.3 shall remain stayed."

Shri Pankaj Gupta, learned counsel for the petitioner submits that there is no justification or reason on the part of the Deputy Director of Consolidation, Hardoi to remand the matter to Consolidation Officer when all the material and document are available before him, so he should decide the matter himself in view of the provisions as provided under Section 48 of the U.P. Consolidation and Holdings Act. Hence, the impugned order dated 29.10.1999 is illegal and arbitrary in nature, liable to be set aside.

I have heard learned counsel for the parties and gone through the record.

The first question which arises for consideration is to whether under Section 48 of the Act, the Deputy Director of Consolidation in exercise of his powers of revision, can upset the findings recorded by the Consolidation Officer and the Settlement Officer.

Section 48 of the Act was amended by amendment Act 8 of 1963. Before its amendment Section 48 read as under:

"48. The Director of Consolidation may call for the record of any case if the officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case, as it thinks fit."

Thereafter as stated above Section 48 has been amended by U.P. Act No.8 of 1963 and after amendment the Section 48 (1) reads as under:

"It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a factfinding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root of the matter, had been committed in recording the order or finding."

By U.P. Act No.20 of 1982 (w.e.f. 10.11.1980), the following explanation has been inserted after subsection 3 of Section 48 of the Act :

"Explanation ? [1] For the purpose of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation."

Thereafter by U.P. Act No. 3 of 2002 (w.e.f. 10.11.1980), the following explanation has been inserted after subsection 3 of Section 48 of the Act :

"Explanation ? [3] The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to reappraise any oral or documentary evidence."

In the case of Sheo Nand Vs. Dy. Director of Consolidation, Allahabad & Ors. 1991 RD (SC) 213, Honble the Supreme Court has dealt with Section 48 (1) as amended in the year 1963 held as under:

"The Section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the Revenue Records may be prepared accordingly."

Again in the case of Ram Dular Vs. Dy. Director of Consolidation 1994 Supp. (2) SCC 198, it has been held as under:

"It is clearly that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a factfinding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by its is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root of the matter, had been committed in recording the order or finding."

In the case of Shesh Mani and Ors. Vs. Dy. Director of Consolidation, District Basti, U.P. and Ors. 2000 (18) LCD 602 Supreme Court, the scope of revisional jurisdiction under Section 48 (after 1963 amendment) came up for consideration before Hon"ble the Apex Court, wherein it has been held as under:

"It is difficult to accept the contempt of the appellants. The Consolidation Officer as well as the Assistant Settlement Consolidation Officer had ignored the sales

certificate in favour of Ram Khelawan, predecessor of the respondents. To base a claim on adverse possession, it is not enough to allege that one is in possession of the land. The ingredients of adverse possession were missing as these were not alleged nor taken into consideration. The Consolidation Officer as well as the Assistant Settlement Consolidation Officer proceeded on a wrong premise and against the settled principles of law. The Deputy Director, Consolidation, therefore, was well justified in exercising his power of revision and coming to a different conclusion. The writ petition was rightly dismissed by the High Court and so also the review petition of the appellants."

In the case of Ram Nath (dead) through legal LRs. Vs. Deputy Director of Consolidation, Jaunpur and another, 2005 (98) RD 570, this Court has held that while exercising the power of revision under Section 48 of the U.P. C. & H. Act, Deputy Director of Consolidation possesses the powers to give his own findings by assigning reasons contrary to the findings given by the court below.

For the foregoing reasons, the impugned order dated 29.10.1999 is set aside and the matter is remanded to Deputy Director of Consolidation, Hardoi to decide afresh within a period of four months from the date of receiving a certified copy of this order after giving ample opportunity of hearing to the parties concerned in accordance with law.

For the period of four months or till the decision is taken by the said authority, parties are directed to maintain status quo as exists today.

With the above observations, the writ petition is allowed.