
(2006) 03 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9268 of 1980

Kunta and Ors.

APPELLANT

Vs

Asstt. Director of Consolidation & Ors.

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2006) 03 AHC CK 0138

Hon'ble Judges : Krishna Murari, J

Final Decision : Disposed Of

Judgement

Krishna Murari, J.—Heard Sri Sri Kant learned Counsel for the petitioners and Sri P.N. Khare for the contesting respondents.

2. The dispute relates to plot No. 1032/1 situate in village Manhan Tehsil Kerakat, District Jaunpur.

3. In the basic year the aforesaid plot No. 1032 area 2.96 acre was recorded in the name of petitioners and respondent Nos. 3 and 4. During Consolidation operation the Consolidation Officer vide order dated 2931968 divided the said plots into the two parts, 1032/1 and 1032/2 plot No. 1032/1 was in the nature of grove and it was excluded from Consolidation scheme while 1032/2 was cultivable and was included in the scheme. At the time of division area of plot No. 1032/1 was recorded as 0.75 acre. When petitioner came to know about the same he filed a timebarred appeal against the order dated 2931968 alongwith an application under Section 5 of the Limitation Act for condoning the delay. The Settlement Officer Consolidation vide order dated 2111978 dismissed the application under Section 5 of Limitation Act and accordingly dismissed the appeal as timebarred. Feeling aggrieved the petitioners filed a revision. During the pendency of revision the Deputy Director of Consolidation directed the Assistant Consolidation Officer to submit a report after making spot inspection and measurement. The Assistant Consolidation Officer after making spot inspection and measurement submitted a report on 291979. It was clearly

mentioned in the said report that area of plot No. 1031/1 is 1 acre. Respondent No. 1 vide order dated 1171980 dismissed the revision filed by the petitioner.

4. It has been urged by the learned Counsel for the petitioners that Deputy Director of Consolidation though called for a report but without considering the same he has illegally dismissed the revision. It has further been urged that in the facts and circumstances, the delay in filing the appeal was liable to be condoned and explanation submitted by the petitioners has not been appreciated either by Settlement Officer Consolidation or by the Deputy Director of Consolidation. In reply learned Counsel for the respondents has tried to justify the impugned order. It has been urged that since the Deputy Director of Consolidation found that the Settlement Officer Consolidation has rightly refused to condone the delay as such there was no occasion for him to consider the report of Assistant Consolidation Officer.

5. I have considered the arguments advanced by the learned Counsel for the parties and perused the records.

6. It is no doubt correct that appeal filed by the petitioners was belated. However, considering the facts that dispute between the parties was with regard to the actual area of plot No. 1032/1 which could have been adjudicated by making measurement on the spot. The Deputy Director of Consolidation though had called for a report in this regard from Assistant Consolidation Officer which was duly submitted but without considering the same he dismissed the revision. In my opinion, the explanation submitted by the petitioners for delay in filing the appeal was reasonable and in the facts and circumstances of the case, delay ought to have been condoned. Once the Assistant Consolidation Officer has submitted a report after making measurement on the spot the Deputy Director of Consolidation ought to have decided it on merit after taking into account the same rather than entering into the technicalities of the matter.

7. In view of the above the impugned order of Deputy Director of Consolidation dated 1171980 is hereby quashed. The writ petition stands allowed. The case is remanded back to Deputy Director of Consolidation to decide the same afresh after considering the measurement report submitted by the Assistant Consolidation Officer dated 291979 in accordance with law and after hearing the parties within a period of three months from the date of production of certified copy of this order before him. However, in the facts and circumstances of the case there shall be no order as to costs.