

(2009) 11 AHC CK 0183
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61768 of 2009

Madhu and Another

APPELLANT

Vs

The Settlement Officer, Consolidation and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Citation : (2009) 11 AHC CK 0183

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma,J.

Heard Sri M.C. Singh, learned counsel for the petitioners as well as learned Standing Counsel, representing the State respondents and perused the materials on record.

Here is a writ petition, which has been filed by Smt. Madhu and Smt. Babli, who had subsequently purchased the plots of land situate in Village Dadupur, Pargana Dhankaul, Tehsil Sadar, District Gautam Buddhnagar on 22nd June, 2006 by getting sale deed executed from one Sabir, Son of Alia, also resident of the said Village.

Through this writ petition, the subsequent purchasers of the land, who had entered the scene on 22nd June, 2006, have assailed the order passed by the Settlement Officer, Consolidation on 12.10.2009.

It emerges from the record that the consolidation proceedings were held in the abovesaid village in and around 1980. While the consolidation proceedings were pending, abovesaid Sabir, Son of Alia, land owner, wanted to sell the plots of land to Dharampal, Veer Singh and Satyawati etc. and, therefore, a formal application was submitted to the Settlement Officer, Consolidation by filing ApplicationNo. 592, under Section 5Ga(2) of the U.P. Consolidation of Holdings Act, which was allowed by the Settlement Officer, Consolidation on 22.5.1985. After obtaining

permission to sell the land to abovesaid persons on 22.5.1985, a sale deed was executed by Sabir in favour of Dharampal, Veer Singh and Satyawati etc. on 6.6.1985. The Assistant Consolidation Officer, in Case No. 3144, had recorded the names of purchasers in the consolidation proceedings on 5.12.1985. An objection was raised by one Sukhram, which was also dealt with. A compromise was entered into between the objectors and the land owners, purchasers. Chak Nos. 246, 595 and 697 etc. were carved out and the possession were handedover to the Chakholders. Thereafter, after about 17 years of selling the land to the aforementioned persons, Sabir had made an attempt to challenge the order passed by the appropriate consolidation authorities on 5.12.1985 by which names of Dharampal etc. were recorded in the consolidation records. An appeal was preferred in the Court of Settlement Officer, Consolidation on 17.8.2002 seeking a relief in respect of Gata No. 819. Certain developments took place in this matter when Sabir sold the land to Smt. Madhu and Smt. Babli, the petitioners, by executing a sale deed on 22.6.2006. Interestingly, Smt. Madhu etc. in the same Appeal, shown Sabir as dead on 13.8.2006. They had entered into the litigation on this ground and sought to challenge the order passed in the year 1985. The Court has noted that Sabir, who had sold the land in the year 1985, had filed the Appeal on 17.8.2002 (not by Smt. Madhu and Smt. Babli, who are petitioners before this Court). In the Application seeking condonation of delay, Sabir had submitted that he could learnt about the order, passed on 5.12.1985, only on 25.7.2002, when he obtained Khatauni from the Lekhpal. According to him, Sukhvir and Ramji Lal etc. have got their names entered in the revenue records illegally. He had submitted that he is a simple and uneducated person and as such he had no knowledge of issuance of the order dated 5.12.1985.

Sri M.C. Singh, learned counsel for the petitioners has placed reliance on the judgments reported in 2009 (3) ARC 563 D.D. Vaishnav Vs. State of M.P. and others and 2009 (3) ARC 204, State of Jharkhand and others Vs. Ashok KUMar Chokhani and others in support of his submission that the Settlement Officer, Consolidation could have entertained the application seeking condonation of delay, passed an order in the light of the submissions putforth in the said application. He has unnecessarily gone into background and merits of the case.

In the present case, the Settlement Officer, Consolidation in its judgment has dealt with in 78 pages background of the case and issue of condonation of delay, while deciding the appeal. In fact, the Settlement Officer, Consolidation has dealt with the background of the case and the facts. In Appeal, the Court has to mention basic facts to introduce the case and then to indicate reasons as to on what basis and how it has dealt with an application under Section 5 of the Limitation Act, which has come up before him for consideration alongwith an appeal. Whatever has been done by the Settlement Officer, Consolidation in dealing with the facts and indicating background of the case was in continuance of passing a well considered, reasoned and speaking order. He has recorded a categorical finding of fact that the said Sabir, Son of Alia had obtained permission

from the Settlement Officer, Consolidation on 22.5.1985 to sell his land and thereafter he had executed a sale deed on 6.6.1985. Moreover, mutation proceedings were carried out and the names of the purchasers were recorded in the consolidation records. A mistake was crept in Akar Patra 5 of Consolidation record (Mistake No. 292). Said Sabir had contested the case, took part in the proceedings and finally the order dated 15.12.1985 became final and binding on the parties. The court had held that after selling the land and after mutation proceedings, Chaks were carved out and consolidation records were corrected and as such Sabir had no right to sell the land to some other persons in the year 2006 after selling the land in the year 1985. Moreover, a perusal of the application seeking condonation of delay also reveals that no proper explanation has been given as to what had prevented Sabir (not Smt. Madhu and Smt. Babli, who are petitioners in this Court) in not approaching the court from 5.12.1985 to 13.8.2002. All of a sudden, he required a copy of Khatauni and went to the office of the Consolidation authorities to obtain copy of the order after knowledge about the order passed in the year 1985. There are categorical findings of facts that Sabir had not only obtained permission from the Settlement Officer, Consolidation to sell the land in dispute, but he had executed a sale deed on the basis of which mutation proceedings were carried out and the names of purchasers were entered in the consolidation records. He had also took part in the mutation proceedings. After being associated with these proceedings, he cannot be permitted to take a turn around and put a manufactured and concocted story before the Settlement Officer, Consolidation and thereafter on his behalf by the present petitioners to pursue the Court to believe the said fabricated, manufactured and concocted story. In fact, the Settlement Officer, Consolidation has rightly held that Sabir had, in fact, cheated the subsequent purchasers, that is, the petitioners, who appears to have purchased litigation. The Settlement Officer, Consolidation has relied upon the judgments reported in 2005 R.D. 440, 2006 R.D. 447, 2007 RD 625, 2003 RD 570, 1998 RD 607 (S.C., 2006 RD 119, 2005, R.D. 54, 1998 AWC 537 and 1994 RD 148 to strengthen his views.

In view of the discussions made above, I do not find any illegality or infirmity in the impugned order. Accordingly, the writ petition lacks merits and is dismissed.