

(1994) 09 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 10411 of 1987

Mangroo and Another

APPELLANT

Vs

Dy. Director of Consolidation, Varanasi and Another

RESPONDENT

Date of Decision : 27-09-1994

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)

Citation : (1994) 09 AHC CK 0068

Hon'ble Judges : Binod Kumar Roy, J

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—The petitioners pray to quash the Revisional Order, dated 931987 passed by the Deputy Director of Consolidation, Varanasi (Respondent No. 1) in Revision No. 1964 preferred by Respondent No. 2, Lallu against Kishore and others.

2. Sri Triveni Shanker, the learned counsel for the petitioners states that Kishore aforementioned had died issueless.

3. On 2111988 the following order was passed by the Bench :

"Counsel for the parties are agreed that the case be decided at the admission stage. Put up the case on 2711988 as unlisted. It is made clear that the case will be heard and finally decided on that date.

When this case was called out no one appeared on behalf of the respondents, though the learned counsel for the petitioners on that account requested for a pass over. For the reasons not known the said learned Advocates for the Respondent No. 2 do not enter. However, in terms of the aforementioned order, dated 2111988 I proceed to dispose of this writ petition on its merit at the admission stage.

4. Respondent No. 2, Lallu preferred an objection under section 9A (2) of the U.P. Consolidation of Holdings Act asserting that the lands in question should be

entered in his name. The petitioner No. 2, Raghunath filed an objection that the land in question abadi and hence the consolidation court has got no authority to adjudicate the question of title. The stand of the petitioner No. 2 found favour of the Consolidation Officer, Raja Talab, who by his order, dated 22111981, while rejecting the objection of Respondent No. 2, directed continuance of the basic entries. Respondent No. 2 went up in Revision No. 1964 where his grievance was that the Consolidation Officer should have decided the question of title after taking evidence which Respondent No. 1 accepted and remitted back the case with further direction to investigate as to whether the land was abadi before the commencement of the consolidation proceedings or it became abadi thereafter.

5. Learned counsel for the petitioners submitted that the reasons given by the revisional authority for remittance are erroneous and accordingly the impugned orders be quashed as it was not the case of Respondent No. 2 that the construction on the disputed land was made after the publication of the relevant notification under the Act. The Consolidation Officer has not made any reference to any evidence adduced by any party. In fairness to the learned counsel I must consider his further submission that Aakar Patra, as contained in Annexure1 clearly show that the lands are recorded in the consolidation proceedings as abadi under column No. 16 and also as abadi on the spot under column No. 24 and that in Jot Chakbandi Aakar Patra as contained in Annexure2, it has been stated as Chakbandi Bahar (i.e. out of consolidation) and thus it should be presumed that the land in question was an abadi from before the commencement of the consolidation proceedings. He also further submitted that Section 5 of the Act bars construction of any house without any prior permission and it was not the case of Respondent No. 2 that he had taken any prior permission before making the construction or any construction was. made, by him without any permission permmand was unnecessary.

6. In .my view the question, as to whether at the relevant time the land in question was abadi or not was is such a question, which ought to have been decided after giving opportunity to both sides to adduce evidence. I do not find reference of the aforementioned documents or submission in the impugned orders and thus it is difficult for me to record a positive finding that the land in question at the relevant time was abadi and to interfere with the impugned order for the aforementioned reasons though I agree that from the aforesaid documents a presumption arises in favour of the petitioner which has to be considered by the authority.

7. In the result this writ petition is dismissed clarifying that if the authority comes to a conclusion that" the land in question at the relevant time was abadi it will be obliged to pass consequential orders in accordance with law.

8. No cost.

9. Let a copy of this order be sent to the Consolidation Officer, Raja Talab, Varanasi.