(1967) 03 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2275 of 1962

Mst. Isharaji and another APPELLANT

Vs

The Commissioner, Varanasi Division, Varanasi (The Director of Consolidation, Varanasi) and others. RESPONDENT

Date of Decision : 31-03-1967

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 41
Uttar Pradesh Land Revenue Act, 1901 — Section 200, 201

Citation : (1968) 38 AWR 51

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : B.L. Yadav, for the Appellant; Raj Kishore Singh for opp. parties, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This petition is directed against the orders passed by the consolidation authorities.

2. On commencement of proceedings under the Consolidation of Holdings Act three sets of objections were filed one of them being by the Petitioners in respect of the land in dispute. It is no body''s case that the Petitioners did not appear on the date specified in the summons. It can, therefore, be presumed that they appeared on the first day fixed. They led evidence in support of their objections. Ultimately 27-9-1961 was fixed for arguments on all the three objections. On that date, the Petitioners allege, they were present and sitting outside the court room but the case was not called out to their knowledge. On the other hand they were told that it had been adjourned for the next day. But it appears that the Consolidation Officer took up the case and decided the objections. The Petitioners'' objection was dismissed for default of appearance. The Petitioners went up in appeal. The Settlement Officer set aside the order of the Consolidation Officer and remanded the case for consideration afresh on the

merits. Respondents 5 to 7 filed a second appeal. The Assistant Director of Consolidation held that Section 11(1) of the Act was subject to Section 41 of the Act and consequently provisions of Sections 200 and 201 of the UP Land Revenue Act were applicable. In view of Section 201 no appeal lay against the order of the Consolidation Officer dismissing the Petitioners'' objection for default. He set aside the remand order. The Petitioners'' revision was also dismissed on 6-2-1962.

3. The first question is whether the provisions of Section 41 of the Consolidation of Holdings Act override those of Section 11. Section 41 says:

Unless otherwise expressly provided by or under this Act, provisions of Chs. IX and X of the UP Land Revenue Act, 1981 shall apply to all proceedings including appeal and applications under this Act.

Section 11 provides an appeal against the order of the Consolidation Officer within 21 days of the date of the order. u/s 11 there is no categorisation of the kind of order which alone is appealable. All orders of the Consolidation Officer are appealable.

4. Ch. IX of the UP Land Revenue Act deals with procedure of revenue courts and revenue officers. Ch. X deals with appeals, references and revision. Ch. X will not have an application where the Consolidation of Holdings Act specifically provides for appeals or revisions. Sections 200 and 201 are in Ch. IX. Section 200 reads as follows:

Whenever any party to such proceeding neglects to attend on the day specified in the summons or on any date to which the case may have been postponed, the court may dismiss the case for default or may hear and determine it ex parte.

Then Section 201 lays down that no appeal shall lie from an order passed u/s 200 ex parte or by default.

5. Section 41 of the Consolidation of Holdings Act opens with the phrase "Unless otherwise expressly provided by or under this Act." So far as the applicability of Section 201 is concerned if any other provision of the Consolidation of Holdings Act provides for an appeal against an order passed ex parte or by default then Section 202 will not apply. Its applicability would be excluded by the opening part of Section 41. Section 11 of the Consolidation of Holdings Act is general. It provides an appeal against all kinds of orders of the Consolidation Officer passed u/s 10 of the Act. Section 10 relates to the disposal of disputed cases. Under it the Consolidation Officer has to hear the parties and record evidence tendered and decide the objections. A decision of the objections results in an order which has been made appealable u/s 11 without any distinction. Disposal of an objection ex parte or by default would also be an order u/s 10 and would hence be appealable u/s 11. Section 11 governing such an order, the result would be that there is a provision providing for an appeal against such an order. The provisions of Section 41 read with Section 201 of the Land Revenue Act will

hence not be attracted. The Assistant Director of Consolidation was, therefore, in error in holding that Section 11 was subject to Section 41 of the Act. The appeal before the Settlement Officer was maintainable and was validly decided.

6. In the result the petition is allowed. The orders of the Assistant Director, Consolidation dated 6-2-1962 and of the Director dated 23-4-1962 are set aside. The Consolidation Officer will now proceed to decide the case in accordance with the directions contained in the remand order dated 4-11-1961. The parties will bear their own costs.

