
(1967) 07 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3892 of 1966

Muneshar Ram and Others

APPELLANT

Vs

Ram Barat Ram and Others

RESPONDENT

Date of Decision : 27-07-1967

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 21(6), 7

Citation : (1967) 37 AWR 591

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This petition seeks to quash the order passed by the Dy. Director of Consolidation u/s 48(3) of the UP Consolidation of Holdings Act.

2. Three parties are involved in the dispute. Jhillu and others may be referred as party No. 1. They are Respondents 1 to 4 in the present petition. The second party was Jokhu and others. They are Petitioners here. The third party was of Charbharan and Others, who are Respondents 5 to 10 in the writ petition. These three parties were co-sharers in Khata No. 961. On 10-4-1960 an order was passed purporting to be u/s 10-A of the Act as it stood after its amendment by Act V of 1954. This order was passed on some compromise and it purported to allot certain shares in the khata to the three parties. Thereafter an objection appears to have been filed by parties 1 and 2 before the Consolidation Officer u/s 12 of the Act. These objections were decided on 3-6-61 by the Consolidation Officer. He held that parties 1 and 2 had a half share each in the khata. Party No. 3 was not impleaded in this proceeding, No objection was taken by any of the parties to their share or non impleadment. The courts also did not notice that one set of co sharers were not represented before it. Jhillu and others party No. 1 went up in appeal, but failed. The findings were confirmed by the Settlement Officer Consolidation on 2-8-1961. The Revision was dismissed on 27-8-1962. Jhillu and others, part No. 1, filed a writ petition in this Court, No. 3765 of 1962,

which was also dismissed on 30th April, 1963. It is noticeable that in none of these appeals or revisions did the present Petitioners, who were contesting Respondents, took any objection that party No. 3, who were also co-sharers as such necessary parties, had not been impleaded and therefore the proceedings were invalid. In the meantime statement of proposals were published. Valuations were allotted to the various co-sharers in the khata. According to the Petitioners, the valuations were allotted in accordance with the order passed u/s 10-A. There is a dispute on it. According to the Respondents and the Deputy Director of Consolidation as mentioned in the impugned order, the allotment of valuation was not strictly in accordance with that order. There was some difference. It is not necessary to go into it, because that is not material. On 31-3-1962 the statement of proposals were confirmed u/s 23(3) of the Act.

3. When the plots were being demarcated on the spot, party No. 1 Jhillu and others found that the matter is being proceeded on contrary to the orders passed in proceedings u/s 12. They consequently made an application on 11-2-1965 for action being taken to effectuate the orders passed in proceedings u/s 12. The Deputy Director called for a report. The Consolidation Officer's report was confirmed by the Settlement officer and has now been accepted by the Deputy Director by the impugned order. According to this report and orders the position is that at the time of the preparation of C.H. Form No. 20 a clerical mistake was committed by the authorities by joining up khata No. 961 with another khata No. 485. It is unnecessary to give the details. They are mentioned in the report of the Settlement Officer dated 25-8-1966 because of which the statement of proposals were not in accordance with the orders passed u/s 12. The order u/s 12 had specifically set aside the order passed u/s 10-A, but since party No. 3 was not impleaded in proceedings u/s 12, the order u/s 12 would not affect the shares allotted to party No. 3 in proceedings u/s 10-A. The authorities below then held that the proceedings u/s 12 had to be given effect to because they were the last orders determining the title and shares of the parties. They are binding between the persons who were parties in those proceedings. Hence they will apply and operate on that part of the holding which remains after excluding the shares allotted to party No. 3. Since the ultimate finding was that parties Nos. 1 and 2 had an equal share, that will operate on that part of the holding No. 961 which remains after excluding from consideration the shares originally allotted to party No. 3. At this finding they have varied the statement of proposals and made necessary amendments.

4. For the Petitioner it was urged that the proceedings were governed by the Act as it stood prior to its amendment in 1958. The Deputy Director has come to a contrary conclusion. The finding in that respect is perfectly correct. The proceedings u/s 7 had not been concluded when the Act was amended in 1958. Hence in view of Section 49 of the Amending Act 38 of 1958, the proceedings would be governed by the Act as amended thereby.

5. It was then urged that Section 48(3) in any case will not apply or confer

jurisdiction on the Deputy Director to interfere in the matter. That seems to be correct, see *Lalji v. SOC* 1966 RD 206, but this does not conclude the matter. The proceedings being governed by the Act as it stood after its amendment by the 1958 Act, Section 21(6) which came on the statute book by the 1958 amendment, would cover the situation and thereunder the Deputy Director will have ample jurisdiction to pass an order of the kind made here. u/s 21(6) the Dy. Director can act either in the course of hearing an appeal Under Sub-section (5) of Section 21, "or otherwise". The jurisdiction is very wide. The Dy. Director can act of his own accord or on an application made by any party. The condition which has to be satisfied before he can interfere is that material injustice is likely to be caused to a tenurerholder in giving effect to the statement of proposal as confirmed u/s 23. The Dy. Director has come to the conclusion that this condition was on facts satisfied. Jhillu and others, party No. 1, were entitled to an equal share along with party No. 2, but they had been given in the statement of proposals evaluation of 3133 annas, whereas party no was given a valuation of 63-49 annas. Clearly material injustice was likely to be caused to a tenure holder. It cannot therefore be urged that the Dy. Director had no jurisdiction to consider the matter or pass suitable orders. The proceedings really were for implementing the orders passed in proceedings u/s 12. That has been done.

6. It was also urged that in view of the provisions of Section 23(2) of, the Act, the Deputy Director could not interfere after the statement of proposals had been confirmed. The Act of 1958 amended Section 23(2). It then stated that the statement of proposals so confirmed shall be published in the unit and shall, except as otherwise provided by or under this Act, be final. This phrase except as otherwise provided by or under this Act has been held by a Division Bench to include Section 48. An order in a revision will, therefore, prevail and the statement will be liable to be modified in accordance with it, vide *Kishan Singh v. Deputy Director of Consolidation* 1965 AWR 207.

7. For the Petitioner, however, reliance was placed upon the decision of a Division Bench of this Court in *Atar Singh v. Dhoop Singh* 1963 ALJ 975. This case was distinguished by the later Division Bench in *Kishan Singh's* case. It noticed that *Atar Singh's* case was decided on the basis of the provisions of Section 23 as they stood prior to their amendment in 1958. So, *Kishan Singh's* case will be applicable to the present proceedings which are governed by the Act as it stood after its amendment in 1958. In the Full Bench case of *Sunder Lal v. Sonu* 1967 AWR 426 this legal position was noticed and the decision in *Kishan Singh's* case was not disapproved.

8. The position, therefore, is that the finality of the statement of proposals is subject to the other provisions of the Act or orders passed thereunder Section 21(6) is one of such provisions. The present proceedings could be treated as u/s 21(6), because they fulfil the requirements of that provision. It is settled that mention of a particular provision at the heading of an order is not decisive of the matter. On a true view of the law, the impugned order was within the jurisdiction

of the Dy. Director and was valid.

9. It was then urged that the proceedings u/s 12 were in fact initiated and conducted on the footing that they were governed by the Act as it was prior to its amendment in 1958. The mention of the old provisions will not affect the jurisdiction, if it did in law exist. After the amendment in 1958 the proceeding for partition which was previously provided in Section 10-A was dealt with in Section 12-C. Similarly the proceedings for adjudication of title or shares which were previously contained in Section 12, were now dealt with in Sections 9 and 10. So the Consolidation Officer had jurisdiction to entertain such matters, though the provisions quoted by him were not applicable.

10. It is true that if the proceedings are treated as being governed by the Act as it stood after its amendment in 1958, the order of the Dy. Director deciding the revision on 27-8-1962 would be without jurisdiction, because at that time no revision lay directly against the order of the Settlement Officer. Section 48 as it then stood directed a revision only against the order passed by the Deputy Director, which can be done in second appeals. It is not the case of the parties that there was any second appeal. The revision is said to have been filed against the order of the Settlement Officer. Even this will not have any material effect on the validity of the present impugned order, because they will only nullify the Deputy Director's order. The Deputy Director merely confirmed the order passed by the Settlement Officer. The legal position would be that the Settlement Officer's order passed on 2-8-1961 remained effective and became final. That had to be given effect to.

11. In the result the impugned order does manifest justice between the parties. It cannot be said that the Deputy Director lacked inherent jurisdiction to touch the matter or interfere. On the findings the interference was justified. This, therefore, is not a fit case for interference by way of Article 226 of the Constitution.

12. The petition is dismissed, but without any order as to costs.