

(1978) 08 AHC CK 0090
In the Allahabad High Court
Case No : Civil Misc. Writ No. 30 of 1973

Narendra Singh and Others	Vs	APPELLANT
Tulsi Ram and Another		RESPONDENT

Date of Decision : 30-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 102C

Citation : (1979) AWC 174

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Vijai Manohar Sahai, for the Appellant; Rajesh Ji Verma, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—The present petition under Article 226 of the Constitution is directed against the order of the Deputy Director of Consolidation dated 11th September, 1972.

2. The dispute between the parties is confined to plot No. 162/1, area 1.74 acres. The Petitioners and their predecessor-in interest were recorded as bhumidhars of the disputed plot.

3. Respondent No. 1 filed an objection u/s 9-A(2) of the U.P. Consolidation of Holdings Act on the allegation that the names of the Petitioners were wrongly entered and he had become Sirdar of the land in dispute as he had been in continuous possession for more than twelve years.

4. The Assistant Consolidation Officer referred the matter to the Consolidation Officer, as there could be no reconciliation. The Consolidation Officer took into consideration the oral and documentary evidence on the record and came to the conclusion that the entries made in favour of Respondent No. 1 were fictitious

and were not in accordance with law and, therefore, no right could be conferred on Respondent No. 1 on the basis of such entries. Respondent No. 1, feeling dissatisfied with the order of the Consolidation Officer, went up in appeal, but the Settlement Officer (Consolidation) confirmed the order and the finding of the Consolidation Officer. He further reiterated that it has not been established that P.A. 10 was issued and the entries were in accordance with law. Respondent No. 1, thereupon went up in revision and the Deputy Director of Consolidation has reversed the order of the Settlement Officer (Consolidation) and allowed the objection of the Respondent No. 1. The Petitioners have now come to challenge the order of the Deputy Director of Consolidation by filing the present petition.

5. Sri V.M. Sahai, appearing for the Petitioners, raised two contentions:

1. The Deputy Director of Consolidation has reversed the concurrent finding of the authorities below without discussing the oral evidence adduced by the parties, and,

2. The Deputy Director of Consolidation did not consider whether the entries in the revenue papers in favour of Respondent No. 1 were in accordance with law.

6. In support of his first contention, he placed reliance on *Paras Nath v. Wajil Hasan* 1974 U.R.C.1 615 wherein it was held:

It is well settled that a final court of fact must consider the oral and documentary evidence before giving final verdict on a question of fact.

7. Next, reliance was placed on *Ram Narain v. Deputy Director of Consolidation, Kanpur* 1974 U.R.C.1 464. In that case, the Deputy Director of Consolidation had completely lost sight of the circumstances and the evidence which had been taken into consideration by the authorities and the order of the Deputy Director of Consolidation, in the circumstances, was interfered with by this Court.

8. There is no denying the fact that the last court of fact has to consider the entire evidence on the record and then to record a finding specially in a case where the last court was reversing a concurrent finding recorded by the two courts below. In the instant case, the Consolidation Officer and the Settlement Officer (Consolidation) both found that burden lay on the objector to establish that he had a better title and to show that the entries of possession on the basis of which the objector was claiming title by adverse possession were genuine entries.

9. As there was non-compliance of Rule 102-C of the Land Record Manual, the Consolidation Officer and the Settlement Officer (Consolidation) were fully justified in observing that it was for the objector to prove that those entries were in accordance with law and were genuine entries. Rule 102-C of the Land Record Manual requires:

102-C. (1) The Lekhpal shall, while recording the fact of possession in the remarks column of the Khasra write on the same day the fact of possession with

the name of the person in possession in his diary also, and note the date and serial number of the diary in the remarks column of the Khasra against the entry concerned.

(2) As the list of changes in form P.A. 10, is prepared after the completion of the partial of a village, the serial number of the list of changes shall be noted in red ink below the entry concerned in the remarks column of the Khasra in order to ensure that all such entries have been brought on the list.

(3) If the Lekhpal fails to comply with any of the provisions contained in paragraphs A-80 and A-81 the entry in the remarks column of the khasra will not be deemed to have been made in the discharge of his official duty.

10. The khasras filed on behalf of the objectors did not contain the name of the objector. In none of the khasras, in the remarks column, the name of the objector was entered nor was the diary number or the date entered in the remarks column of the khasra concerned. Under the circumstances, a very heavy burden lay upon the objector to show that the entries were in accordance with law.

11. The Consolidation Officer as well as the Settlement Officer (Consolidation) have also taken into consideration the other evidence viz, the parcha apasi filed by the objector, but the parcha apasi could not be proved to relate to the plot in dispute and, therefore, the same was discarded. They have also taken into consideration the oral evidence adduced by the objector and after consideration of all this evidence, he came to the conclusion that the entries in the khasra on the basis of which the objector was claiming title by adverse possession, were not genuine entries. The Deputy Director of Consolidation took the view that unless it was shown by the other side that the entries in the khasra were not in accordance with law, the presumption would be that the entries are in order and according to law.

12. So far as the oral evidence is concerned, the only deal given by the Deputy Director of Consolidation is "Uprokt Kagji Va Javani Saboot Se Nigrani Karta Ka Kabja Kam Sb Kam 1368-f. Se Lagattar Sabit Hai". He has also not discussed the oral evidence produced by the parties and he simply relied upon the testimony of the witnesses without discussing it. The Consolidation Officer and the Settlement Officer (Consolidation) has given reasons as to why the statement of the witnesses produced on behalf of the objector should not be believed. The least that was expected by the highest court on fact was to consider whether the reasons given by the Consolidation Officer and the Settlement Officer (Consolidation) were valid or not. The Deputy Director of Consolidation has also not taken into consideration whether the apasi parcha and the irrigation slip produced by the objector have been proved to relate to the plot in dispute or not.

13. It is true that the Deputy Director of Consolidation appraised the evidence afresh and came to a different conclusion, but this he could do only after considering the materials which had been taken into consideration by the first

two authorities. So far as the burden is concerned, if the entries in the remarks column of the khasra themselves indicate that they were not in strict compliance of the requirements of Rule 102-C of the Land Record Manual, in that case it becomes all the more necessary for the objector to prove that inspite of the breach of specific requirement of Rule 102-C, entries were genuine. The Court cannot make an assumption if the khasra entries were not maintained in accordance with the mandatory requirements of Rule 102-C of the Land Record Manual.

14. Sri Rajesh Ji Verma, appearing for the Respondent, on the other" hand, contended that it is not a case where the Deputy Director of Consolidation has not considered the evidence. The observations made by him clearly indicates that he has clearly considered both oral and documentary evidence and, therefore, the finding recorded by him could not be set aside by this Court by making a fresh appraisal of evidence, as this Court has got only a limited jurisdiction under Article 226 of the Constitution of India. He further contended that the Court would normally presume that the entries in the revenue papers were in accordance with law and unless it was challenged by the other side on it was suggested that no P.A. 10 was issued or was prepared in this case, the Court will not disbelieve the entries as fictitious. In support of his contention, he placed reliance on Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, . In that case, dealing with the scope of Article 226 of the Constitution, a Full Bench of this Court observed:

If it appears that a court of fact has in substance based its finding on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. But if a Court or a Tribunal bases its finding on a consideration of all relevant evidence, but an appellate or a revisional court or Tribunal while affirming the finding does not refer to some material or some contrary evidence in its order, it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution.

15. There is no dispute with the proposition of law laid down about the scope of Article 226 of the Constitution, as enunciated by the Full Bench of this Court, but, in that case, the revisional or the appellate court was only confirming the finding of the subordinate authority and, in that case, it was not necessary to refer to each and every piece of evidence, but, in a case where the Deputy Director of Consolidation was reversing the concurrent findings of fact recorded by the two authorities below, it was incumbent on that Court to give reasons for arriving at the conclusion.

16. As observed earlier, the Deputy Director of Consolidation has neither discussed the oral evidence nor has he taken into consideration the circumstances, the absence of the diary number and the number from the

remarks column of the diary nor he has taken into consideration the other evidence on the record.

17. For all these reasons, I am quite satisfied that the Deputy Director of Consolidation has recorded a finding without taking into consideration the evidence on the record. Under the circumstances, his order cannot be sustained. For the reasons given above, the writ petition must succeed. It is, accordingly, allowed. The order of the Deputy Director of Consolidation is quashed and the case is sent back for deciding the revision afresh in accordance with law in the light of the observations made above. In the circumstances of the case, the parties will bear their own costs.