

(2014) 10 AHC CK 0067
In the Allahabad High Court
Case No : Writ-B No. 57703 of 2014

Naushaba Begam

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 5

Citation : (2015) 126 RD 180

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Arjun Singhal, Advocates for the Appellant; Rajesh Yadav, Advocates for the Respondent

Judgement

Anjani Kumar Mishra, J.—Sri Ramesh Pundir has filed his appearance on behalf of respondent No. 2 in Court today, which is taken on record. Heard Sri Arjun Singhal, learned Counsel for the petitioner and Sri Ramesh Pundir, learned Counsel for respondent No. 2.

2. This writ petition has been filed challenging the order dated 18.9.2014 passed by the Deputy Director of Consolidation in Revision No. 201 under section 48 of the U.P. Consolidation of Holdings Act. By this order, the parties have been directed to maintain status quo.

3. The petition arises out of proceedings for allotment of chaks. By the order passed by the Consolidation Officer, the chak of the contesting respondents was modified. The consequential appeal was dismissed and, therefore, the revision has been filed, wherein the interim order has been granted.

4. Learned Counsel for the petitioner has submitted that the revision was belated and was accompanied by an application for condonation of delay. It has further been stated that the copy of the order impugned in the revision was not filed. The revision was therefore incompetent and yet an interim order has been

granted without condoning the delay in filing the same.

5. He has relied upon the judgment reported in, *Jahirunnisha Vs. UP Sanchalak, Chakbandi Basti and Others*, , in support of his contention. Learned Counsel for the petitioner has also relied upon paragraph 8 of the judgment in, *Parbhu and Another Vs. Deputy Director of Consolidation, Ghazipur and Others*, , relevant portion whereof is extracted below:--

"Notice has to be issued to other-side for having his version for disposal of section 5 application and in no case, without issuing notice and without condoning the delay, the appeal can be decided."

6. The portion quoted above therefore lays down that a section 5 application cannot be allowed without issuing notices to the other side and without having his version.

7. As already noted hereinabove, the impugned order records that the opposite party in the revision, namely, the petitioner has been heard.

8. It has also been submitted by Sri Singhal that this statement of fact recorded in the order impugned that it is being passed after hearing the parties is incorrect. In this regard, I have examined the averments made in the writ petition. There is no categorical averment in the writ petition that none had appeared on behalf of opposite parties in the revision. The only relevant averment in this connection is to be found in paragraph 12 of the writ petition, which is being extracted below:--

"That the learned Deputy Director of Consolidation had passed order on 18.9.2014 on memo of revision in his own writing. There was no occasion for hearing parties as mentioned in order dated 18.9.2012 as notices issued on the same day, and passing stay order separately."

9. It is clear from the averment quoted above that it has only been stated that there was no occasion for hearing the parties as mentioned in the order dated 18.9.2012. It also appears that the date transcribed as 18.9.2012 in this paragraph is a typing mistake and should read as 18.9.2014 as has been submitted by Sri Singhal.

10. In my considered opinion, the averment made in the paragraph referred to above does not categorically dispute the statement of fact, which has been recorded by the Deputy Director of Consolidation while granting the interim order.

11. Insofar as the judgments relied upon by learned Counsel for the petitioner are concerned, there is no dispute that till such time the delay in filing the appeal, revision etc. is condoned, it is not open for the Court to address the merits of the appeal, revision etc. However there is lack of sufficient material on record to substantiate the contentions made by learned Counsel for the petitioner. Although no specific order appears to have been passed condoning the delay, yet since the interim order has been granted after hearing the parties, at

this stage, there appears no illegality in the interim order granted. Accordingly, I am not inclined to interfere with the impugned order and entertain the writ petition.

12. In case, as alleged, the statement of fact recorded in the impugned order is incorrect, the only remedy available for the petitioner is to file an application before the Court concerned for clarification in this regard. A statement of fact recorded in an order, which has not even been categorically denied by means of any specific averment in the writ petition, must necessarily be taken to be correct.

13. In case, the statement of fact is wrong, as submitted by learned Counsel for the petitioner, the petitioner may file an appropriate application for clarification and or for recall of the order passed on wrong facts or on misconception of facts.

14. Accordingly and for the reasons given above, I refuse to exercise my jurisdiction under Article 226 of the Constitution of India in favour of the petitioner. The writ petition is accordingly dismissed.