
(2014) 01 AHC CK 0019
In the Allahabad High Court
Case No : Writ-B No. 3391 of 2014

Nihal Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3)

Citation : (2014) 122 RD 543

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Ramesh Chandra and Bipin Kumar, Advocate for the Appellant;
Diwakar Singh, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Anjani Kumar Mishra, J.—The petitioner has filed this writ petition seeking writ of certiorari quashing the impugned order dated 3.7.2013 passed by the Deputy Director of Consolidation whereby his name has been ordered to be expunged from the land in dispute in reference proceedings u/s 48(3) of the U.P. Consolidation of Holdings Act, 1953. By the said order one plot had been recorded as pond and the other Navin Parti. Against this order the petitioner has filed restoration application alleging that the order was ex parte and had been passed without any notice or hearing. The Deputy Director of Consolidation by the order dated 16.11.2013 has rejected the restoration application saying that order passed by him on 3.7.2013 is complete in itself and the restoration is not in accordance with law and is therefore being rejected. This order dated 16.11.2013 is the second order impugned in the writ petition.

2. I have heard learned Counsel for the petitioner, learned standing Counsel for the State and the Sri Diwakar Singh who represents the respondent No. 3 Gaon Sabha and have also perused the record.

3. From a perusal of the order passed on the restoration application, it is clear

that no finding has been recorded as to whether any notice was actually served upon the petitioner or not and as to whether he was provided sufficient opportunity for appearing in the reference proceedings.

4. In the absence of any such consideration and a relevant finding in this regard, I am of the opinion that the order cannot be sustained. While deciding the restoration application it is incumbent upon the Court concerned to consider the aforesaid aspects which has not been done in the instant case. Even otherwise it is not disputed that the order dated 3.7.2013 was passed without hearing the petitioner. This is recorded in the order dated 3.7.2013 itself. It is also not in dispute that the said order has grave civil consequences.

5. Under the circumstances this Court is of the opinion that the petitioner is entitled to at least at one opportunity of hearing, even if it is only post-decisional hearing.

6. In view of the above, the order dated 16.11.2013 is set aside and the matter is remanded back to the Deputy Director of Consolidation to pass fresh order after hearing the petitioner. For this purpose the petitioner will appear before the Deputy Director of Consolidation on 19.2.2014 along with a detailed objection as also any evidence that he may wish to rely upon for assailing the order dated 3.7.2013. The Deputy Director of Consolidation shall consider the case on merits. Opportunity of hearing will also be provided to the State and the Gaon Sabha in the matter. The order dated 3.7.2013 passed earlier by the Deputy Director of Consolidation on merits shall abide by the final order passed by the Deputy Director of Consolidation in pursuance of this order. With the aforesaid directions, this writ petition is allowed in part. No order as to costs.