
(2013) 07 AHC CK 0266
In the Allahabad High Court
Case No : Consolidation Case No. 441 of 2014

Prahlad Singh

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 14-07-2013

Acts Referred:

Citation : (2014) 124 RD 539

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri M.E. Khan for the petitioner. The writ petition has been filed against the order of Deputy Director of Consolidation dated 12.12.2013 by which the revision filed by the petitioner against the order of the Settlement Officer, Consolidation dated 23.9.2013 granting ex parte interim order in the appeal under Rule 109-A (3) of U.P. Consolidation of Holdings Rules, 1954 (hereinafter referred to as "the Rules").

2. It is alleged by the petitioner that the petitioner has obtained a patta of the land in dispute from the then Zamindar on 15.12.1951. However, his name was not recorded in the revenue record. When the village was placed under consolidation operation, it is alleged that an objection u/s 9 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") was filed, which was registered as Case No. 207/1208. The Consolidation Officer by order dated 23.11.1987 allowed the objection of the petitioner and directed for recording his name over the land in dispute, deleting it from the khata of State of U.P. as well as Gaon Sabha as the land of usar and banjar. The petitioner filed an application under Rule 109-A of the Rules for giving effect to the order dated 23.11.1987 in the year 2004 on which a report has been called for and a report from the record room was submitted stating therein that the original record of the case has been weeded out. However, on the basis of the copy of the order produced by the petitioner it was recommended for recording the name of the petitioner over the

land in dispute. The report of the subordinate authorities has been accepted by the Consolidation Officer by order dated 25.7.2013.

3. The State of U.P. and Gaon Sabha filed an appeal against the order of the Consolidation Officer dated 25.7.2013 on 23.9.2013 on the ground that the record relating to the order passed by the Consolidation Officer dated 23.11.1987 was not available and the land in dispute was continuously recorded in the khata as banjar and usar from the date of vesting as such no right can be accrued to any person over it. In such circumstances the order of the Consolidation Officer dated 25.7.2013 directing for recording the name of the petitioner and deleting the land in dispute from khata as banjar and usar, was liable to be set aside. In this appeal the Settlement Officer, Consolidation by order dated 23.9.2013 directed for registering the appeal, summoned the lower Court record and stayed the operation of the order dated 25.7.2013. The petitioner filed a revision against the aforesaid order which has been dismissed by the Deputy Director of Consolidation by order dated 12.12.2014 holding that the revision against interlocutory order was not maintainable. Hence this writ petition has been filed.

4. The Counsel for the petitioner submits that the order dated 25.7.2013 has been passed under Rule 109-A(1) of the Rules as such no appeal is maintainable under Rule 109-A(3) of the Rules as the appeal as provided under this sub-rule is only against the order passed under Rule 109-A(2). He further submits that order was passed on 25.7.2013 while the appeal was filed on 23.9.2013 as such the period of 15 days is provided for filing appeal and the appeal being time barred was liable to be dismissed in view of the mandatory provision of section 3 of the Limitation Act, 1963. Instead of dismissing the appeal the Settlement Officer, Consolidation has illegally admitted the appeal and also granted interim order. He further submits that under the Act a duty has been cast upon the consolidation authorities to give effect to the orders passed under the Act and no limitation has been provided for giving effect to the order passed under the Act, Therefore, the order of Consolidation Officer dated 25.7.2013 directing to give effect to the order dated 23.11.1987 was well within his jurisdiction and there is no illegality in it. The appeal had no merit and was liable to be dismissed and in no circumstances the interim order could be passed. He further submits that the appeal was time barred as such so long as the delay was not condoned it should not have been registered and the petitioner was required to be heard on the question of condonation of delay.

5. I have considered the arguments of the Counsel for the petitioner and examined the record.

6. The controversy in the appeal has been raised in respect of the genuineness of the order of the Consolidation Officer dated 23.11.1987. The order was passed on 23.11.1987. Admittedly, the petitioner has filed an application under Rule 109-A in the year 2004 i.e. after 17 years. The notification u/s 52 of the Act has been made applicable in the village in the year 1986. In such circumstances the factum relating to the order dated 23.11.1987 was under challenge and in case

there is no such order the case will fall within the scope of section 42A of the Act and the appeal filed in this respect by the State of U.P. was maintainable.

7. So far as the arguments raised by the Counsel for the petitioner that the appeal was time barred and he ought to have been heard, in this respect it may be mentioned here that there is no provision under the Act or Rules which is *pari materia* with the Order XLI, Rule 3A C.P.C. The Full Bench of this Court in *Bijai Narain Singh and Others Vs. State of Uttar Pradesh*, has held that the provision of C.P.C. are not applied to the proceeding under the Act as such it cannot be said that in view of Order XLI, Rule 3A C.P.C. the appeal could not be registered without condoning the delay. The petitioner states that he was not given opportunity to file any objection in respect of condonation of delay. He may file an objection before the Settlement Officer, Consolidation in respect of the condonation of delay who will decide the same in accordance with law.

8. The Counsel for the petitioner lastly submits that the appeal may be directed to be decided finally after hearing the petitioner. The petitioner may put appearance before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation will decide the appeal expeditiously, preferably within a period of three months thereafter. With the aforesaid observations the writ petition is disposed of.