

(2011) 03 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15122 of 2011

Punvasi

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Limitation Act, 1963 — Section 11, 11A, 5, 8A, 9B
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Citation : (2011) 4 ADJ 420 : (2011) 4 AWC 3542 : (2011) 112 RD 664

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Shivadhar Singh was the recorded tenure holder of plot No. 253/2 of Village Bankipur Pargana Nizamabad Tahsil Sadar district Azamgarh. After consolidation operations set in it is alleged by the Petitioner who belongs to Washerman (Dhobi) community, a part of the said area of the holding of Shivdhar Singh namely an area 0.553 kari was placed out side the consolidation operation and the balance of the area of the said plot was reserved for "Dhobi Abadi" . An objection was filed by Shivadhar Singh u/s 9 of the Consolidation of Holdings Act. The area which was allegedly reserved for Dhobi Abadi was valued and an equivalent area was allotted to Shivadhar Singh.

2. Learned Counsel for the Petitioner submits that a fresh objection was filed u/s 9 substituting the heirs of Shivadhar Singh by Respondent Nos. 4 and 5, son and his widow respectively on 13.10.2009 alleging that the said land should be included in the holding of the objectors as they had their Abadi site and houses as well as cattle troughs over the same. The Consolidation Officer Respondent No. 3 passed orders on 15.12.2009 placing the balance area out of consolidation operations. The said objection was allowed after accepting the application for condoning the delay u/s 5 of the Limitation Act.

3. Learned Counsel for the Petitioner contends that he is the beneficiary of the

area which was reserved as "Dhobi Abadi" and the order dated 15.12.2009 was passed without giving any opportunity, as such the Petitioner who was an aggrieved person filed a restoration application. The said restoration was allowed on 29.12.2009.

4. The Respondent No. 4 preferred a revision against the said order dated 29.12.2009. During the pendency of the said revision the Respondent No. 4 also filed an appeal against the recall order which according to the learned Counsel was not maintainable. In effect he had availed of two remedies which were misdirected.

5. During the pendency of the appeal, the Settlement Officer Consolidation called for a report which was submitted by the Assistant Consolidation Officer. On receipt of the said report the Respondent No. 4 got his appeal dismissed on 11.8.2010.

6. It appears that a revision was filed against the order dated 4.4.1988 passed in appeal No. 22 by the Settlement Officer Consolidation which was the basis of recording the plot in question as Dhobi Abadi. This is evident from CH Form No. 21 which has been filed as Annexure 1 to the writ petition. This revision was time barred against which the Petitioner filed an objection. The objection was rejected and the revision has been ultimately allowed with a direction to the Consolidation Officer to decide the dispute in accordance with law.

7. Learned Counsel for the Petitioner contends that the revision was highly barred by time and even otherwise once the land has been reserved for "Dhobi Abadi" and the Petitioner had been allocated land in lieu of his holding then there was no occasion for the Consolidation Officer to have allowed the revision and sent the matter for decision afresh. It is urged that the order dated 4.4.1988 having become final the same was not required to be interfered with.

8. Learned Counsel for the Respondent Nos. 4 and 5 has urged that there is no provision under the U.P. Consolidation of Holdings Act for reserving any site for any particular community as held in the present case. There can be a reservation under the Consolidation Scheme for general Abadi or for Abadi for the Scheduled Caste in general but there can be no reservation for one particular community of Scheduled Caste. Even otherwise once the holding of the contesting Respondents and the same had been kept out for consolidation operations then, if any reservation was to be made in respect of the area, the Land Management Committee and the Consolidation authorities should have been called upon to examine the claim relating to such reservation and it is only upon knowledge to the tenure holder that the Consolidation Scheme should have been amended. The proceedings adopted by the Settlement Officer Consolidation to entertain an appeal and then to pass an order on 4.4.1988 for reserving it as " Dhobi Abadi "was patently without jurisdiction.

9. The Deputy Director of Consolidation after having noted the submissions of either side came to the conclusion that the original holding of the Respondent

was reserved for "Dhobi Abadi" which could not have been done in favour of any particular community and any appeal filed u/s 11 was obviously not maintainable. The statement of principles is prepared u/s 8-A quoted below:

8-A. Preparation of Statement of Principles.-(1) The Assistant Consolidation Officer shall, in consultation with the Consolidation Committee, prepare, in respect of each unit under consolidation operations, a statement in the prescribed form (hereinafter called the Statement of Principles) setting forth the principles to be followed in carrying out the consolidation operations in the unit.

10. Nothing has been brought on record to indicate the any such statement was prepared according to the procedure prescribed therein. There is no willingness to allot abadi which has to be expressed in consultation with the Consolidation Committee. In the absence thereof any order u/s 11 of the Act would tantamount to act in violation of the procedure prescribed. The conclusion of the Deputy Director of Consolidation is therefore well founded. If no objection is filed against the statement the principles then the bar of Section 11-A would operate. The order dated 4.4.1988 passed by the appellate authority was an order coram non-judice.

11. The procedure to dispose of an objection against the statement of principles has to be dealt with under the provisions of Section 9-B quoted here below:

9-B. Disposal of objections on the Statement of Principles.-(1) Where objections have been filed against the Statement of Principles u/s 9, the Assistant Consolidation Officer shall, after affording opportunity of being heard to the parties concerned and after taking into consideration the views of the Consolidation Committee, submit his report to the Consolidation Officer, who shall dispose of the objections in the manner prescribed.

(2) Where no objections have been filed against the Statement of Principles within the time provided therefore u/s 9, the Consolidation Officer shall, with a view to examining its correctness, make local inspection of the unit, after giving due notice to the Consolidation Committee, and may thereafter make such modifications or alterations in the Statement of Principles as he may consider necessary.

(3) Any person aggrieved by an order of the Consolidation Officer under Sub-section (1), or Sub-section (2) may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, whose decision, except as otherwise provided by or under this Act, shall be final.

(4) The Consolidation Officer and the Settlement officer, Consolidation shall, before deciding an objection or an appeal, make local inspection of the unit after giving due notice to the parties concerned and the Consolidation Committee.

12. The said procedure has not been followed in the present case. An appeal u/s 11 is not contemplated at all and therefore the order dated 4.4.1988 was in valid. This issue will also have to be examined which has not been done in the

present case

13. The present Gram Pradhan has also filed an affidavit before the Deputy Director of Consolidation that the Gaon Sabha has no objection if some other place for Abadi is allotted. In view of this position that emerged before the Deputy Director of Consolidation the revision was allowed and the order dated 4.4.1988 as well as the order dated 29.12.2009 was set aside.

14. In the opinion of the Court the finding recorded is clearly that the original holding of the Respondent Nos. 4 and 5 was sought to be disturbed through proceedings u/s 11 for reserving land that was not maintainable in law. The Deputy Director of Consolidation therefore in the opinion of the Court was justified in setting aside the order dated 4.4.1988 as well as the order dated 29.12.2009 for an appropriate decision by the Consolidation Officer.

15. The writ petition lacks merit and it is hereby dismissed.