

(1970) 03 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2863 of 1968 connected with Civil Miscellaneous Writ No. 3145 of 1968, Civil Miscellaneous Writ No. 3150 of 1968.

Putti and Others

APPELLANT

Vs

Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-03-1970

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 48

Uttar Pradesh Land Revenue Act, 1901 — Section 200, 201

Citation : (1970) 40 AWR 389

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : B. Dixit, for the Appellant; Dhru Narain and S.C. for opp. parties, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Bench admitting these writ petitions considered that the propositions laid down in *Shyam Sunder Narain Bakshi v. Dy. Director of Consolidation and Ors.* 1966 AWR 799 and in *Khyali Ram v. Joint Director of Consolidation, UP Lucknow* 1968 AWR 306 may require reconsideration and referred these cases for decision by a Division Bench. That is how these writ petitions have come before this Bench.

2. The matter arises out of an objection u/s 9(2) of the UP Consolidation of Holdings Act filed by Raghbir Singh and other Respondents. The Consolidation Officer rejected the objection. Aggrieved, Raghbir Singh filed an appeal. The same was allowed on 29-1-1968. The Petitioners then filed revisions u/s 48 of the Act. 21-6-1968 had been fixed for the hearing of the revisions. On that date, Raghbir Singh did not appear. The Dy. Director of Consolidation heard the revisions ex parte and after considering the materials on the record, allowed the revisions. The order of the Settlement Officer (Consolidation) was set aside and

the objection filed by Raghubir Singh was dismissed.

3. On 24-6-1968, Raghubir Singh filed an application for the setting aside of the ex parte order. He supported it by an affidavit as well as by a medical certificate stating that he was ill from 20-6-1968 to 23-6-1968 and for this reason, he could not attend the court on 21-6-1968, the date on which the revisions were fixed for hearing.

4. Man Singh, Petitioner No. 6, appeared before the Dy. Director of Consolidation on the date on which the restoration application was heard. An other Dy. Director of Consolidation (Sri H.M. Mehrotra) after hearing the parties allowed the restoration application. He believed the affidavit and the medical certificate filed by Raghubir Singh. The order allowing the revisions ex-parte was set aside and it was directed that the revisions shall be heard again. Aggrieved by this order dated 10-7-1967, the Petitioners have come to this Court.

5. The first point urged by the learned Counsel for the Petitioners was that the court of revision has no power to set aside an order disposing of the revision ex parte. For this proposition, reliance was placed on Shyam Sunder Narain Bakshi's case (supra). In that case it was held that Section 201 of the UP Land Revenue Act applies to proceedings in the trial court and will not entitle the revisional court to set aside an ex parte order. This matter was considered by one of us (Satish Chandra, J.) in Ram Charan v. Dy. Director of Consolidation 1969 AWR 592. There it was noticed that the learned Judge who decided Bakshi's case had held in another case Chandrika v. Dy. Director of Consolidation 1967 RD 125 that the Dy. Director of Consolidation can set aside an order dismissing a revision ex parte. Further, in Jai Ram v. Deo Charan 1968 RD 351 it was held that Section 201 of the Land Revenue Act applies to revisions as well.

6. Section 41 of the UP Consolidation of Holdings Act makes Ch. IX and X of the UP Land Revenue Act applicable to all proceedings including appeals and applications under the Consolidation of Holdings Act. After a detailed review of the provisions of Ch. IX of the Land Revenue Act, it was held in Ram Charan's case (supra) that Sections 200 and 201 are general provisions whose applicability is not confined to the trial court. They would be applicable to the court of appeal and revision as well. After hearing the learned Counsel, we are satisfied that the decision in Ram Charan's case has laid down the law correctly. In this view, the Dy. Director, Consolidation did have jurisdiction to entertain an application for setting aside the ex parte order disposing of the revision.

7 In Khayali Ram v. Joint Director of Consolidation 1968 AWR 306, one of us R.L. Gulati, J. held that the Evidence Act is not applicable to proceedings under the UP Consolidation of Holdings Act. That question does not arise for consideration in the present case.

8. The next submission raised on behalf of the Petitioner was that the application for restoration could have been entertained and decided by Sri Daulat Ram, who was the presiding officer of the court of the Dy. Director, Consolidation on

21-6-1968 and who had originally disposed of the revision ex parte. Sri H.M. Mehrotra, being another Dy. Director, Consolidation, had no jurisdiction to do so. The learned Counsel did not invite our attention to any decided cases on this point. Section 48, UP Consolidation of Holdings Act, authorises the Dy. Director of Consolidation to pass such orders as he deems fit to dispose of a revision. Sections 200 and 201, UP Land Revenue Act, also apply to proceedings in revision. Section 200 authorises the "court" to dismiss a case for default or to hear and determine it ex parte whenever any party to the proceeding neglects to attend on the date fixed for the hearing of the case. Section 201 provides for re hearing on proof of good cause for non-appearance. The relevant part of this section entitles a party to appear and show good cause for his nonappearance and "satisfy the officer making the order" that there has been a failure of justice. It then entitles "such officer" to revive the case.

9. The appearance of the party in default, as contemplated by Section 201, is obviously to be before the court, which dismissed or determined the case ex-parte u/s 200. On his so appearing, the party has to show good cause for his non-appearance and satisfy the officer making the order that there has been a failure of justice. The phrase "the officer making the order" would undoubtedly refer to the officer who passed the initial order of dismissal or determination ex-parte and such officer has been given the power to revive the case and alter or rescind the order.

10. In our opinion, the phrase "the officer making the order" must be read harmoniously with "the court" which dismisses the case for default or hears and determines it ex-parte u/s 200. u/s 200, it is the court, which makes the order. If the word "officer" used in Section 201 was intended to signify the particular person who was the presiding officer of the court at the relevant time and who had actually passed the initial order and not the presiding officer of the court for the time being, then it would mean that in a case where that officer is dead, or has retired from service, or has left the service, by the time the application for restoration is instituted the application for restoration would become infructuous for no fault of the parties. Section 201 confers a right of re-hearing on a party. Such a right cannot be held to become illusory merely by the happening of an accident over which the party has no control. But, if the term "the officer" used in Section 201 is read as referring to the presiding officer of the court concerned for the time being, no such anomalous position would arise. It is well-settled that provisions in a statute should be construed so as to be in harmony with each other and so as to avoid intractable anomalies. Of the two possible constructions, the one which advances the object and the scheme of the Act as well as the interests of justice, should be preferred. Keeping all these principles in mind, it appears to us that the term "the officer" used in Section 201 is synonymous with the term "the court" used in Section 200 and the phrase "the officer making the order" in Section 201 would mean the presiding officer for the time being of the court which dismissed the case for default or determined it ex-parte u/s 200.

11. In the present case, the revision was filed before the Distt. Dy. Director of Consolidation. He on 27-2-1968 transferred the revisions to the Dy. Director of Consolidation for decision. Thus, the Dy. Director of Consolidation has acquired jurisdiction to dispose of these revisions. The order of transfer did not confer power to dispose of the revisions on any particular Presiding officer but to the court of the Dy. Director of Consolidation. The officer who was for the time being the Dy. Director of Consolidation had the power to hear and decide the revisions. Mr. Daulat Ram happened to be the Dy. Director of Consolidation at the time when the revisions were heard and decided on 21-6-1968. There is no allegation in the writ petition that Sri Daulat Ram was holding the office of the Dy. Director of Consolidation in that circle on the date when the restoration application came up for hearing. Admittedly, Sri H.M. Mehrotra was the Dy. Director of Consolidation concerned on that date. In the circumstances it cannot be held that as a matter of law Sri Mehrotra had no jurisdiction to entertain or dispose of the restoration application.

12. The third point urged by the learned Counsel was that the Petitioners did not get an adequate opportunity to oppose the application for restoration. In the writ petition it has been stated that on 10-7-68 the Petitioner No. 6 came to Etawah and came to know from a common friend that Raghubir Singh had come to the Collectorate in connection with the restoration application. Thereupon, the Petitioner No. 6 rushed to the court of the Dy. Director of Consolidation. Raghubir Singh has filed a counter affidavit. He has denied these allegations in paragraph 18 of the counter affidavit. It has been suggested that the Petitioners had notice of this restoration application much in advance. The order-sheet dated 10-7-1968 shows that three of the Petitioners had refused to accept the notice whereas the other two were served by affixation of the notice, according to the Respondents, the Petitioners had advance notice of the restoration application. In view of contradictory statements of facts on this point, we are unable to hold that the Petitioners have established that they came to know of the pendency of the restoration application on 10-7-1968. In this view the contention that the Petitioners were not afforded reasonable opportunity of opposing the restoration application falls to the ground. The Petitioners had ample time and opportunity at their disposal to oppose the restoration application.

13. In the result these petitions fail and are accordingly dismissed with costs. Petition dismissed.