

(1985) 02 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4624 of 1981

Radha Kishan

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 9A(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 200, 201, 203, 53B
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 9A(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 200, 201, 203, 53B
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 9A(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 200, 201, 203, 53B

Citation : (1985) AWC 357 : (1985) RD 331

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : R.P. Srivastava and G.S. Srivastava, for the Appellant; V.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This petition under Article 226 of the Constitution of India is directed against the order dated 6th December, 1960 passed by the Deputy Director of Consolidation, Jhansi and the order dated 19th September, 1980 passed by the Consolidation Officer allowing the restoration application filed by

Respondent Nos. 3 and 4 holding the restoration application within time and that sufficient cause was made out for recalling the order dated 25th September, 1979 passed in the proceedings u/s 9-A(2) of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act),

2. The facts of the case are in a very narrow compass. Before the Consolidation Officer the case was proceeded and an order was passed on 18th September, 1979 for proceeding ex-parte whereas the actual ex-parte final order against Respondent Nos. 3 and 4 was passed on 25-9-1979 and on 6th October, 1979, the 12th day from 25-9-1979 Respondent Nos. 3 and 4 filed an application purporting to be u/s 201 of U.P. Land Revenue Act for setting aside the ex-parte order.

3. The Petitioner raised an objection that the application was time-barred as the order to proceed ex-parte was passed on 13th September, 1979. Hence in view of Section 201 of the U.P. Land Revenue Act the restoration application should have been filed within fifteen days and that was not done. Thus the restoration application was time-barred and no sufficient cause was made out for conviction of the delay and the same deserved to be dismissed.

4. The Consolidation Officer treated the order 25-9-79 to be an ex-parte order against Respondent Nos. 3 and 4 and the restoration application was filed on 6th October, 1979 within fifteen days, hence the restoration application was allowed and the case was restored. The Petitioner's revision before the Deputy Director of Consolidation was dismissed on 6th December, 1980. It is against these orders that the present writ petition has been filed.

5. Sri R.P. Srivastava, appearing for the Petitioner, has urged that the restoration application was time-barred as the order to proceed ex-parte was passed on 13th September, 1979 and the restoration application was not filed within fifteen days, hence the restoration application should have been dismissed and the Respondent Nos. 1 and 2 committed manifest error of law on the face of the record of the case.

6. On behalf of Respondent Nos. 3 and 4, however, it has been urged that u/s 201 of the U.P. Land Revenue Act the restoration application was within time and that the same has been correctly allowed and that there was no error apparent on the face of the record.

7. I have heard the learned Counsel for the parties. Section 41 of the Act provides that the provisions of Chapters 9 and 10 of the U.P. Land Revenue Act shall apply to all proceedings including the appeal. The facts of the case are not disputed that in the proceedings before the Consolidation Officer on 13th September, 1979 an order was passed that the case may proceed ex-parte against Respondent Nos. 3 and 4 whereas on 25-9-79 the case was decided against Respondent Nos. 3 and 4. The restoration application was filed on 6th October, 1979 which was within fifteen days. In order to ascertain the controversy it is necessary to set out the statutory provisions of Sections 200

and 201 of the U.P. Land Revenue Act.

200. Hearing in absence of party:

Whenever any party to such proceeding neglects to attend on the day specified in the summons, or any day to which the case may have been postponed, the court may dismiss the case for default or may hear and determine it ex-parte.

201. No appeal from orders passed ex-parte or by default:

No appeal shall lie from an order passed u/s 200 ex-parte or by default.

Re-hearing on proof of good cause for non-appearance:

But in all such cases, if the party against whom judgment has been given appears either in person or by Agent (if a Plaintiff within fifteen days from the date of such order, and if a Defendant, within fifteen days after such order has been communicated to him, or after any processes for enforcing the judgment has been executed or at any earlier period), and shows good cause for its non-appearance, and satisfies the officer making (he order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, review the case and alter or rescind the order according to the justice of the case.

Order not to be altered without summons to adverse party:

Provided that no such order shall be reversed or altered without previously summoning the party in whose favour judgment has been given to appear and he be heard in support of it.

8. From the aforesaid statutory provisions it is apparent that u/s 200 of the U.P. Land Revenue Act the provision is that the Court may dismiss the case either in default or may hear and determine it ex-parte and there is no provision u/s 200 or 201 that the Court may pass an order to proceed ex-parte as is the provisions under Order 9 Rule 7 and Order 17 Rule 2 of the Code of Civil Procedure. But the provisions of the CPC are not applicable to the provisions of the Act as Section 41 makes only Chapter 9 and Chapter 10 of the U.P. Land Revenue Act to be applicable and Section 53-B makes the provisions of Section 5 of the Limitation Act applicable to the proceedings under the Act. Hence no order could have been passed by the Consolidation Officer to proceed ex-parte against Respondent Nos. 3 and 4 and even if it was passed it was actually not a judgment against Respondent Nos. 4 and 5 as u/s 201 of the U.P. Land Revenue Act the provisions are that if a party against whom judgment has been given appears in person or by agent, if the Plaintiff within fifteen days from the date of such order and if a Defendant within fifteen days after such order has been communicated to him. In the instant case no judgment was given against Respondent Nos. 3 and 4 on 13th September, 1979. Rather judgment was given on 25th September, 1979. The "judgment" means "statement given by the Judge and the grounds of the decree or order."

9. The word "judgment" according to Chamber's Twentieth Century Dictionary, means as follows:

act of judging, the comparing ideas to elicit truth, faculty by which this is done, the reason : opinion framed.

10. According to the Webster's New International Dictionary the word "judgment" means as follows:

the pronouncing of an opinion or decision of a formal or authoritative nature, also the opinion of decision, censure, criticism.

11. Further according to Shorter Oxford English Dictionary the word "judgment" means as under;

action of trying a cause in a court of justice, trial....

12. The word judgment according to Stroud's Judicial Dictionary, IVth Ed. Denotes:

sentence of law pronounced by a Court upon the matter contained in the record; and the decision must be one obtained in that action.

13. According to Wharton's Law Lexicon, the word "judgment" means as under:

judicial determination, decision of a Court. Judgment is also used to denote the reasons given by the Court for its decision.

14. According to Law Lexicon of British India, the word "judgment" means as follows:

the sentence of law or decision pronounced by a Court upon the matter contained in the record. All judgment is a final determination of the rights of the parties in an action.

15. In this way it is clear that on 13-9-79 just the order was passed to proceed ex-parte, hence nothing was done finally to compare the facts of either party so as to elicit truth and accordingly no judgment was given against Respondent Nos. 3 and 4. Section 201 of the U.P. Land Revenue Act provides that any party against whom judgment has been given may appear by a person or by agent, if a Plaintiff within fifteen days from the date of such order and if the Defendant within fifteen days after such order had been communicated lit the instant case Respondent Nos. 3 and 4 were Defendants and the Petitioner was in the capacity of the Plaintiff. There is no evidence or an allegation as on which date the order was communicated to the Respondent Nos. 3 and 4.

16. u/s 201 of the U.P. Land Revenue Act the provisions are that if a party against whom judgment is given appears, if a Plaintiff within fifteen days from the date of such an order and if a Defendant within fifteen days from such date when the order has been communicated to him. The meaning of the clause "from the date of such order" has to be ascertained.

17. In *Raja Hartsh Chandra Rai Singh v. The Deputy Land Acquisition Officer* AIR 1961 SC 1200 where the question arose in connection with Section 18 of the Land Acquisition Act the Supreme Court has held that where the rights of a person are affected by any order and the limitation is prescribed for the enforcement of the remedy by the person against whom the said order by reference to the making of the order must mean either actual or constructive communication of the said order to the party concerned. This view of the Supreme Court was followed by a latter decision in *State of Punjab v. Mst. Qatsar Jahan Begum* AIR 1963 SC 1605 wherein it has been held that if the rights of a person are affected by an order and the limitation is prescribed for the enforcement of the remedy, the said order must, have been either actually or constructively communicated to the party concerned. In the instant case there was no evidence nor even bald allegation in the petition as to on which date the said order was communicated to Respondent Nos. 3 and 4 as there was no provision in the Act to make an order to proceed ex-parte and the provisions of the CPC do not apply to the Act, hence the Consolidation officer has got only alternatives either to dismiss the case in default in case the objector (Plaintiff) is absent on a date fixed or to give a final judgment on the basis of the evidence and there can be third order just to proceed ex-parte for which there was no provision under the Act.

18. Even u/s 203 of U.P. Land Revenue Act in case a party neglects to attend the date specified in the summons or on any date it means that the case must have been postponed. The court may dismiss it in default or may hear and determine ex-parte. The important word is "to determine ex-parte". Hence the meaning of the word "determine" has to be ascertained. According to Chambers 20th Century Dictionary the word "determine" means as under:

to put an end, to come to a decision, to come to an end.

19. According to Shorter Oxford Dictionary the word "determine" means as under;

to put an end, to come to an end, to expire, to settle or decide, to come to a judicial decision, to conclude from reasoning, to ascertain definitely.

20. According to Webster's Third New International Dictionary the word "determine" means as under:

to put or set an end, to bring to a close, to determine terminate, to fix conclusively or authoritatively variously, to settle a question or controversy about, to decide by authoritative or judicial sentence as a court heard and determined the case.

21. The word "determine" according to Law Lexicon of British India denotes as follows;

to limit...to bring to an end...to ascertain definitely, to bring to a conclusion, to settle by judicial sentence, "to decide".

It is accordingly clear that unless the case is finally decided, it cannot be said that the Consolidation Officer has determined the case or the controversy involved therein. It is thus clear that the Consolidation Officer has passed the judgment only on 25-9-79 and from that date within fifteen days restoration application was filed. Hence it was well within time.

22. The learned Counsel for the Petitioner has, however urged that no sufficient ground was made out for allowing the restoration application. But the Consolidation Officer has allowed the restoration application holding that the sufficient cause was made out and the same order has been confirmed in revision by the ueputy Director of Consolidation. Whether any particular set of circumstances of sufficient cause has been made out or not to allow the restoration application is for the Court or authority before which the restoration application is pending to take a final decision in the matter and the finding about the sufficient cause is a finding of fact and it cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

23. In view of the discussions made above, I am of the view that there are no merits in the contentions raised by the learned Counsel for the Petitioner. No other point has been pressed before me.

24. For the discussions made above the writ petition lacks merits and the same is accordingly dismissed. But in the circumstances of the case, there shall be no order as to costs.

25. As the matter has already been held up and could not be decided by the Consolidation Officer on merits, I consider it necessary to direct the Consolidation Officer to proceed to decide the case on merits expeditiously.