

(2009) 09 AHC CK 0226

In the Allahabad High Court

Case No : Writ Petition No. 548 (Cons.) of 2009

Radhey Shyam

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 11C, 9A(2)

Citation : (2010) 4 AWC 3468

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri R.J. Trivedi learned Counsel for the petitioner, Sri G. S. Misra. learned standing counsel for opposite parties No. 1 and 2 and Sri R. N. Gupta learned Counsel for opposite party No. 3.

2. By means of present writ petition, the petitioner has challenged the order dated 29.7.2009 passed by Deputy Director Consolidation, Unnao and the order dated 21.2.2006 passed by Settlement Officer Consolidation, Unnao.

3. In brief, the fact of the case is that the controversy involved in the present case relates to Gata No. 643 situated in village Dau, Tehsil Purwa, district Unnao (hereinafter referred as "plot in question"). Initially, in the basic year, the land in question stood recorded in the name of Gaon Sabha. The petitioner objection u/s 9A(2) of the Act claiming that he is continuous possession prior to abolition of zamindari so it has vested with him which was allowed by means of order dated 7.7.1984 by the Consolidation Officer, Aggrieved by the said order, the Gaon Sabha has preferred an appeal u/s 11(1) of the Consolidation Act. The said appeal was allowed by the Settlement Officer Consolidation, Unnao (opposite party No. 2) vide its order dated 21.2.2006.

4. The said order dated 21.2.2006 was challenged by the petitioner by way of

revision before the Deputy Director of Consolidation, Unnao (opposite party No. 1), the same was also dismissed by means of order dated 29.7.2009. The said order dated 21.2.2006 passed by the opposite party No. 2 and 29.7.2009 passed by opposite party No. 1 have been challenged by the petitioner before this Court by means of present writ petition.

5. Sri R. J. Trivedi, learned Counsel for the petitioner has vehemently argued that the land in question was settled with the petitioner prior to zamindari abolition as such the order passed by opposite parties No. 1 and 2 are contrary to the facts and circumstances of the case.

6. I have heard the learned Counsel for the parties and perused the record.

7. From the perusal of the Judgment passed by Settlement Officer Consolidation it is evident that a clear categorical finding has been given that the land in dispute is a banjar land in the basic year and the same is recorded in the name of Gaon Sabha

8. on the one hand and on the other hand the said authority has further held that the petitioner in order to prove that the said land is settled with him, has not filed any documentary evidence but an oral evidence. i.e., the statement of Sri Jiya Lal was given. It is not sufficient in order to prove that the property was settled with him as claimed by the petitioner and on the basis of such finding of fact an appeal filed by Gaon Sabha which was allowed by means of order dated 21.2.2006 by opposite party No. 2. The order of Settlement Officer Consolidation is in consonance of Section 11C of the Act which was totally ignored by the Consolidation Officer which was also confirmed by Deputy Director of Consolidation, Unnao by means of order dated 29.7.2009.

8. It is well-settled proposition of law that if the findings of fact is recorded by the court below on the basis of material on record, the same cannot be set aside by this Court by exercising its judicial power of review under Article 226 of the Constitution of India but the same can be set aside only if they are contrary to the fact and perverse in nature.

9. In the present case, learned Counsel for the petitioner has failed to show the findings of fact which is recorded by opposite party No. 2 in order to passed by them are contrary to record and perverse in nature.

10. The writ petition lacks merits. It is accordingly dismissed.

No order as to costs.