

(1995) 09 AHC CK 0009
In the Allahabad High Court
Case No : C.M.W.P. No. 25882 of 1995

Raj Kishore and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 48(3), 54, 54(1), 54(2)

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 58(2)

Citation : (1995) 09 AHC CK 0009

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Satya Prakash and B.L. Yadav, for the Appellant;

Judgement

S.P. Srivastava, J.—Heard learned Counsel for the Petitioners and the learned standing counsel.

2. The Petitioners feel aggrieved by an order dated 31.8.95 passed by the Deputy Director of Consolidation where under a reference u/s 48(3) of the U.P. Consolidation of Holdings Act made by the Consolidation Officer has been accepted and setting aside the orders of the Consolidation Officer dated 23.6.95 and 31.1.84, the revenue records relating to the plots in dispute has been directed to be corrected, expunging the entries In the names of the Petitioners showing them to be the tenure-holders of the said plots.

3. Learned Counsel for the Petitioner has tried to assail the impugned order on various grounds. However, I am of the view that without going into the merits of various other submissions made by the learned Counsel for the Petitioner, this writ petition can be disposed of on a short ground.

4. The learned Counsel for the Petitioner has urged that the Impugned order had been passed in a hurried manner without affording the Petitioners any reasonable opportunity of being heard in the matter.

5. The facts as they emerge from the material brought on record. In respect whereof there is no dispute, it is obvious that under the order passed by this Court dated 23.8.95 disposing of finally the Civil Misc. Writ Petition No. 21613 of 1995, the Deputy Director of Consolidation was required to pass a final order in the proceeding u/s 48(3) of the U.P. Consolidation of Holdings Act. In question after affording opportunity of hearing to the Petitioners making it clear that the Petitioners will have the opportunity to raise the plea as to the binding efficacy of the judgment and orders previously passed in their favors and further requiring the Deputy Director of Consolidation to examine such pleas in accordance with law. This Court in its aforesaid order had further made it clear that if the orders relied upon by the Petitioners in support of their claim were found to have been obtained fraudulently, the Deputy Director of Consolidation would be well within his jurisdiction to ignore such orders.

6. It appears that subsequent to the order of this Court dated 23.8.95, notices were issued by the consolidation Officer in C.H. form 6-Ka intimating the Petitioners separately that a case has been registered for determination of rights and liabilities in respect of land, the partition of joint holdings and determination of value of plots, trees, wells and other improvements in which the addressee was asked to appear on 31.8.95 before the Deputy Director of Consolidation, Allahabad in the forenoon either in person or through an authorized agent making it clear that in the event of absence, the dispute will be decided in his absence. The report of the process-server in respect of the notices issued by the Consolidation Officer which was submitted on 29.8.95 was to the effect that in the presence of witnesses mentioned in the report the process-server had visited the residences of the addressees who were not found present on the spot and, therefore, one summon was affixed on the door of (heir house. In one of his report, the process-server had reported that he was told that the noticed Raj Kishore had gone out and was not expected to return within 24 hours. In view of this Information, he had affixed the summons on the door of the house.

7. The reference appears to have been taken up by the Deputy Director of Consolidation on 31.8.95. On the basis of the reports submitted by the process-server in regard to the affixation of the summons on the door of the residential houses of the notices, the Deputy Director of Consolidation proceeded to hold the service of notice by affixation to be sufficient and disposed of the reference vide the impugned order to which a reference has been made above.

8. In the circumstances, therefore, it will be apparent that the Consolidation Officer had issued the notice on 28.8.95 to all the Petitioners which had been affixed at the door of the residences of the addressees in their absence, on being informed that the notices had gone out and there was no possibility of their return within 24 hours.

9. The provisions contained in Section 41 of the U.P. Consolidation of Holdings Act provide that unless otherwise expressly provided under the said Act, the provisions of Chapters IX and X of the U.P. Land Revenue Act, 1901 shall apply to

all proceedings including appeal and applications under the Act. The provisions contained in Section 54 of the aforesaid Act provides that the State Government may by notification in the Gazette make rules for the purposes of carrying into effect the provisions of the Act and Section 54(2) of the Act provides that without prejudice to the generality of the power contemplated u/s 54(1) of the Act, Rules may provide for the matters relating to the mode of service of notices or documents under the Act. Although Section 196 of the Land Revenue Act provides that every notice under the said Act provides that every notice under the said Act may be served either by tendering, delivering or sending a copy thereof by post in a cover registered under the Indian Post Offices Act, 1898 to the person on whom it is to be served ; or if such person is a proprietor of land to his agent or by affixation a copy thereof at some places of public resort on or adjacent to the land to which such notice refers, the provisions contained in Rule 58(2) of the Rules framed under the U.P. Consolidation of Holdings Act provide as follows:

"58. (1).....

(2) In delivering a document or affecting the service of any document, notice or summon on any tenure-holder or other person, the Serving Officer may, where the tenure-holder or the person concerned is guardian or legal representative is not present at his residence at the time of delivery of service, or where he cannot be found after using all due and reasonable diligence or where he refuses to take the document, notice or summon, effect delivery or service by affixation of the document, notice or summon on the outer door or at some other conspicuous part of the house in which he ordinarily resides, but if he has no such residence in the unit, by affixing a copy of the document, notice of summon at some place of public resort on or adjacent to the land to which such document refers. In either case, the serving officer shall get the affixations attested by two residents of the unit. The service of certificates of compensation shall not, however, be made by affixation.

It is obvious from a perusal of the aforesaid provision that In case the serving officer finds that the tenure-holder or his legal representative is not present at his residence at the time of delivery of service or, where he cannot be found after using all due and reasonable diligence, the notice or summon may be served by affixation of the notice or summon on the outer door or at some other conspicuous part of the house in which the addressee resides. From the perusal of the aforesaid provision, the conclusion is Inescapable that a duty is cast upon the serving officer to find the addressee after using all due and reasonable diligence in case he is not present at his residence at the time of delivery of the notice. It is only If inspire of using due and reasonable diligence that the addressee cannot be found that the Serving Officer can take recourse to serve the notice by affixation as provided In the aforesaid provision.

10. In the circumstances, I am of the clear opinion that the mere fact that the serving officer went to the residence of the addressee and found him absent is

not sufficient to prove and establish the compliance of the requirement that the addressee could not be found inspire of the use of all due and reasonable diligence. If a Serving Officer goes to the residence of an addressee but does not find him there, tills fact by Itself cannot Justify the officer In resorting to the mode of service, by afflation and he must before effecting such service, exercise due and reasonable diligence in finding the addressee. Further, the mere fact that the Serving Officer does not find the addressee or the party to be served with the notice at the address does not and cannot tantamount to saying that the said person cannot be found. Before it can be said that the addressee cannot be found, it must be shown not only that the Serving Officer went to the place where the addressee resides at a reasonable time when he would be expected to be present but also that if he was not found, proper and reasonable attempts were made to find him either at that address or elsewhere. If after such reasonable attempts, the position still is that the addressee is not found, then and then only II cannot be said that the addressee could not be found.

11. The provisions contained in Rule 58(2) of the Rules framed under the U.P. Consolidation of Holdings Act lay considerable emphasis on the fact that the Serving Officer could take recourse to the mode of service of the notice by affixation where the addressee could not be found after using all due and reasonable diligence. This aspect should not be lost sight of while holding the service of notice by affixation to be sufficient.

12. In the present case what I find is that the notice in question had been issued on 28.8.95. On 29.8.95, the process-server could not meet the addressee or the parties to be served with the notice. He does not appear to have used all due and reasonable diligence to find out the addressee or the parties to be served with the notices. From the report of the process-server, It appears that he could not do so as the time available to him for the purpose was only 24 hours as the case had been fixed for 31.8.95 which was too short for the purpose. The addressee could not be held responsible for creating a situation where under the Serving Officer could not carry out the duty cast upon him under the provlsldhs Indicated hereinabove. Moreover, the notices in question appear to have been Issued by the Consolidation Officer. The content of the notice indicates that some dispute In the proceedings u/s 9A(2) of the U.P. Consolidation of Holdings Act was pending. There Is nothing in the notice to Indicate the nature of the case which was to be decided by the Deputy Director of Consolidation which was posted for hearing on 31.8.95. In any case, the notice did not indicate at all that the Deputy Director of Consolidation had fixed 31.8.95 for the disposal of the matter relating to the consideration of the reference In question wherein the impugned order has been passed.

13. While deciding the reference made u/s 48(3) of the U.P. Consolidation of Holdings Act, the Deputy Director of Consolidation Is required to afford the concerned parties an opportunity of being heard before passing the order in the proceeding. This opportunity of being heard has to be a reasonable opportunity.

14. In the facts and circumstances of the present case, I am of the considered opinion that the Deputy Director of Consolidation has acted in a most hurried manner and the impugned order has been passed without affording the Petitioners a reasonable opportunity of being heard in the matter.

15. Considering the facts and circumstances brought on record, this writ petition succeeds in part. The order passed by the Deputy Director of Consolidation dated 31.8.1995 a certified copy whereof has been filed as Annexure 36 to the writ petition is quashed with the direction to the Deputy Director of Consolidation to decide the reference afresh in accordance with law.

16. The Petitioners are directed to appear before the Deputy Director of Consolidation, Respondent No. 2 on 16.10.95 by which date they must file their objection. The Deputy Director of Consolidation, thereafter shall proceed to hear the reference on merits after affording the parties an opportunity to lead evidence in support of their claims.

There shall be, however, no order as to costs.