

(2025) 01 AHC CK 1672
In the Allahabad High Court
Case No : Writ Petition C No. - 47925 of 2014

Rajeshwari Devi

APPELLANT

Vs

Dy. Director Of Consolidation Shahjahanpur And 3 Others

RESPONDENT

Date of Decision : 22-01-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 482
Food Safety and Standards Act, 2006 — Section 3(1)(n), 3(1)(o), 3(1)(y), 26, 26(2),
26(2)(i), 26(4), 27, 31, 42(4), 59(i), 80
Prevention of Food Adulteration Act, 1954 — Section 14, 19

Citation : (2025) 01 AHC CK 1672

Hon'ble Judges : Arun Kumar Singh Deshwal, J

Bench : Single Bench

Advocate : Kabeer Tiwari

Final Decision : Allowed

Judgement

Chandra Kumar Rai,J.

1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Narayan Dutt Shukla, learned counsel for the petitioner, Sri H.N. Singh, learned Senior Counsel assisted by Sri V.P. Shukla, learned counsel for the contesting respondent no. 4 and Sri Hasan Abbas, learned Standing Counsel for the State in Writ B No.47925 of 2014.

Heard Sri H.N. Singh, learned Senior Counsel assisted by Sri R.K. Pandey, learned counsel for the petitioner, Sri R.C. Singh, learned Senior Counsel assisted by Sri Narayan Dutt Shukla, learned counsel for the contesting respondent no. 5 and Sri Hasan Abbas, learned Standing Counsel for the State in Writ B No.8596 of 2015.

2. Since Common issues are involved in both the writ petitions hence both the writ petitions are clubbed and heard together and writ petition No.47925 of 2014 shall be treated as a leading petition.

3. Brief facts of the case are that Village-Bhedpur Pergana-Jamaur, Tehsil-Sadar, District-Shahjahanpur came under operation of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as "the U.P.C.H. Act"). Statement of principles prepared under Section 8 (A) of the U.P. C.H. Act was published in the year 2004. According to respondent No.4 (Lata Devi) an objection under Section 20 of the U.P.C.H. Act was filed in the year 2005, which was registered as case No.9/299 in which several dates were fixed till 2007, but after 2007, file of aforesaid case was misplaced accordingly respondent No.4 filed second objection on 24.11.2008. Consolidation Officer vide order dated 27.05.2009 declared plot No.454/525 as C.H.18 (out side Consolidation operation) but no order was passed in respect to the plot No.455. According to respondent No.4 (Lata Devi) she purchased plot No.455 area 0.543 hectare and 454/525 area 0.049 total area 0.592 hectare from Smt. Vibbo Devi and others. Aforesaid plot No.455 and 454/525 were situated to the adjacent of N.H.24 Bareilly-Shahjahanpur road. According to respondent No.4 (Lata Devi) her name was mutated in the revenue record on the basis of sale deed executed in her favour in respect to aforementioned plots. Respondent no.4 (Lata Devi) is chak holder No.274. The plot No.454/425 was proposed in the chak of the petitioner (Rajeshwari Devi), accordingly respondent No.4 (Lata Devi) has filed her chak objection in the year 2005, but petitioner (Rajeshwari Devi) denying the fact of filing chak objection in the year 2005. According to petitioner (Rajeshwari Devi) upon publication of notification, no objection was filed by respondent no.4 (Lata Devi) under Section-9(B) of U.P. C.H. Act, as such in view of the provisions contained under Section 11 (A) of U.P.C.H. Act, the claim of respondent no.4 (Lata Devi) is barred . Petitioner (Rajeshwari Devi) is chak holder No.277. According to petitioner (Rajeshwari Devi) provisional consolidation Scheme prepared by Assistant Consolidation Officer was confirmed by Settlement Officer Consolidation and chak holders of the village in question were put into possession over their respective chaks. The final records under Section 27 of the U.P.C.H. Act were prepared and the village was denotified under Section 52 of U.P.C.H. Act on 27.06.2007. According to petitioner (Rejeshwari Devi) no objection was registered and fought between the parties under Section 9 (B) of 20 of U.P.C.H. Act as such no claim can be raised after denotification of the village in question on 27.06.2007. Against the order dated 27.05.2009 petitioner (Rajeshwari Devi) filed two separate appeals one against the order dated 27.05.2009 under Section 21 (2) of U.P.C.H. Act and another against the order dated 24.06.2009 passed under Rule 109-A of the U.P.Consolidation of Holdings Rules, 1954 (hereinafter referred to as "the U.P.C.H. Rules"). The aforementioned appeals were registered as appeal No.3/113 and 27. The Settlement Officer of Consolidation vide order dated 04.07.2011 dismissed the appeal No.3/113, but appeal No.27 was allowed setting side the order dated 24.06.2009. Against the order of Settlement Officer of Consolidation dated 04.07.2011 passed in Appeal No.3/113. Petitioner (Rajeshwari Devi) filed a revision under Section 48 of U.P.C.H. Act before Deputy Director of Consolidation which was registered as revision No. 83 of 2011. Against the order of Settlement officer of Consolidation dated 04.07.2011 passed

in appeal No.27, petitioner (Rajeshwari Devi) filed revision under Section 48 of U .P.C.H. Act which was registered as revision No.86. Respondent No. 4 (Lata Devi) had also filed two revisions against the order of Settlement Officer of Consolidation dated 04.07.2011, which was registered as revision No.42 and 18 under Section 48 of U.P.C.H Act. All the aforementioned four revisions were consolidated and heard together. The Deputy Director of Consolidation vide order dated 08.08.2014 decided all four revisions by which revision No.42 filed by respondent No.4(Lata Devi) was allowed and remaining revisions were dismissed, hence Writ B No.47925 of 2014 has been filed on behalf of the petitioner (Rajeshwari Devi) for following relief:

"(i) issue a writ, order or direction in the nature of certiorari calling for record and quash the orders dated 08.08.2014 (Annexure No) passed by Respondent No.1 order dated 04.07.2011 (Annexure no.11) passe by Respondent No.2 in appeal No.27, order dated 04.07.2011 (Annexure No.10) passed by Respondent No.2 appeal No.3/313 and order of Consolidation Officer dated 27.05.2009 (Annexure no.7)."

4. On behalf of respondent No.4 (Lata Devi) and one Ram Kishore Writ B No.8596 of 2015 has been filed for the following relief:.

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 04.07.2011 passed by the respondent no.3 in appeal No.27 (Smt. Rajeswari Vs.Smt. Lata Devi) under Rule 109 of C.H. Act and order dated 08.08.2014 passed by the respondent No.2 in revision No.18 (Smt. Lata Devi Vs. Smt. Rajeshwari) Annexure Nos.13 & 17) to the writ petition) only.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent No.1 to take necessary action against the persons who have committed forgery/manipulation in the revenue record, as per report of consolidation commissioner (Annexure No.8) to the writ petition)."

5. This Court entertained the Writ B No.47925 of 2014 vide order dated 19.09.2014/25.09.2014 and restrained the parties from changing the nature of property in question.

6. This Court entertained the Writ B No.8596 of 2015 vide order dated 12. 02.2015 and connected the same with Writ B No.47925 of 2014 as well as restrained the parties from changing the nature of property in dispute or creating any third party interest.

7. In pursuance of the aforementioned orders, the parties have exchanged their affidavits.

8. Mr. R.C. Singh, learned Senior counsel appearing in Writ B No.47925 of 2014 submitted that entire proceeding consequent to the application/ objection dated 24.11.2008 are illegal as village in question was denotified under Section 52 of U.P.C.H. Act on 27. 06.2007. He further submitted that no objection under Section 9-B of the U.P.C.H. Act was filed by the Lata Devi as such in the

proceeding under section 20 of U.P.C.H. Act objection regarding valuation cannot be entertained in view of provisions contained under Section 11 (A) of U.P.C.H. Act. He further submitted that report of Consolidator dated 20.12.2008 fully demonstrate that no case under Section 20 of U.P.C.H. Act was registered in the matter. He further submitted that limitation of filing the objection under Section 20 of U.P.C.H. Act is 15 days and the publication under Section 20 was made on 24.03.2005, as such the objection under Section 20 cannot be entertained unless there is prayer for condonation of delay. He further submitted that every case is registered in Misil band (C.H. Form-6) when the case is forwarded to the consolidation officer, but in the instant matter there is no proof that case was registered in Misil band, as such the entire proceeding is barred by Section 11 (A) of the U.P.C.H. Act. He submitted that provisional Consolidation Scheme was confirmed and parties were put into possession as well as final record under Section 27 of U.P.C.H. Act was prepared accordingly as such the impugned orders passed by the Consolidation authorities cannot be sustained in the eye of law. He further submitted that impugned orders are liable to be set aside and the writ petition is liable to be allowed.

9. On the other hand, Mr. H.N. Singh, learned Senior Counsel appearing for respondent no.4 (Lata Devi) submitted that on the basis of the registered sale deed dated 28.08.2004 executed in favour of respondent No.4 (Lata Devi) in respect to the plot in question (455 and 454/525) respondent no.4 (Lata Devi) was recorded in the revenue records. He further submitted that aforementioned plots are adjacent to the national highway (N.H. 24) and having commercial value. He submitted that plot No.454/525 was proposed in the chak of the petitioner (Rajeshwari Devi) accordingly, respondent No.4 (Lata Devi) filed one objection in June, 2005 much before denotification of the village in question. He submitted that first objection filed by petitioner was misplaced accordingly second objection was filed, which was entertained and allowed in respect to plot no.454/525. He further submitted that during consolidation proceeding a manipulation has been done and plot No.514/532 area 0.057 hectare was mentioned in the map without any basis as there was no existence of plot no.514/532. He further submitted that petitioner purchased plot No.514 area 0.057 hectare from Verpal, Sonpal sons of Dulare, Jauhari, Shiv Ram, Newaram sons of Munna Lal by means of registered sale deed on 26.10.1998 as well as another sale deed appears to have been executed by Smt. Kalawati on 17.01.2014 in favour of petitioner. He submitted that respondent No.4 (Lata Devi) filed objection/ complaint before authorities for initiating enquiry in the matter in which it has been found that 16 members had committed forgery and large number of irregularities have been committed by the authorities. He submitted that Consolidation Officer vide order dated 27.05.2009 rightly declared plot No.454/525 outside the consolidation, but no order was passed in respect to the plot no.455, accordingly, appeal and revisions were filed. He submitted that in revision No.42, Deputy Director of Consolidation has rightly declared that plot No.455 outside the Consolidation. He submitted that Lata Devi & another have

challenged the revisional order passed in the revision No.18 by way of Writ B No.8596 of 2015. He submitted that petitioner's revision no.18 should also be allowed and Writ B No.8596 of 2015 should also be accordingly allowed. In support of his arguments, he placed reliance upon the judgments passed by Hon'ble Apex Court:-

1. (2003) 8 Supreme Court Cases 319 [Civil Appeal No.8216 of 2003 with Civil Appeal No.8217 of 2003 (Ram Chandrra Singh vs. Savitri Devi and others)]

2. (2000) 3 Supreme Court Cases 581 [Civil Appeal No.2087 of 2000 (United India Insurance Co.Ltd. vs. Rajendra Singh and others)] with [Civil Appeal No.2088 of 2000 (United India Insurance Co.Ltd. Vs. Sanjay Singh and others)]

10. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

11. There is no dispute about the fact that village in question was brought under the Consolidation and notification under Section 20 of U.P. C.H. Act was published on 24.03.2003, notification under Section 20 of U.P.C.H. Act was published on 27.03.2003, notification under Section 52 of U.P.C.H. Act published on 27.06.2007. There is also no dispute about the fact that Consolidation Officer vide order dated 26.02.2009 granted benefit of Section 5 of Limitation Act in the proceeding under Section 21 of U.P.C.H Act and vide order dated 27. 05.2009 declared plot No.454/525 area 0.049 hectare as C.H. 18. There is also no dispute about the fact that in revision No.42 filed by respondent no.4 (Lata Devi) plot No.455 was also declared C.H.18.

12. In order to appreciate the controversy involved in the matter, perusal of the report of the consolidator dated 18.12.2008 will be relevant for perusal, which is as under:-

13. The perusal of the aforementioned report of Consolidator dated 18. 12.2008 as well as pleadings set up by both the parties in their writ petition fully demonstrate that village Bhedpur, Pargana-Jamaur, Tehsil-Sadar, Shahjahanpur came under Consolidation operation by way of notification under Section 4 of U.P.C.H. Act issued on 09.05.1997, publication under Section-9 of U.P.C.H.Act was made on 18.12.1998, publication under Section 20 of U.P.C.H. Act was made on 24.03.2005, publication under Section 52 of U.P.C.H. Act was made on 26.06.2001. Perusal of the report of consolidator also demonstrates that chak objection was filed along with prayer for condonation of delay. The Consolidation Officer while deciding the chak objection filed by respondent No.4 (Lata Devi) has considered the fact that plot No.454/525 is situated adjacent to the N.H.24 (Bareilly-Saharanpur road) as such in view of the provisions contained under the Consolidation Manual the road side plots are to be declared C.H.18. The record as well as the pleading set up in the instant petitions as well as in Writ B No.363 of 2022 fully demonstrate that earlier objection filed by the petitioner was recorded in the Misil band register also. The certified copy of the same is produced before the Court at the time of argument and true copy of the same is

annexed as annexure No.C-A.2 to the counter affidavit filed in Writ B No.363 of 2022. The relevant extract of the same will be relevant for perusal which is as under:

14. It is material to mention that plot N.454/525, 455 are situated adjacent to N.H. 24 and objection was filed on behalf of respondent no.4 (Lata Devi) along with prayer for condonation of delay before denotification of the village as such there is no illegality in the order passed by the Consolidation authorities for declaring the plot No.454/525 area 0.049 hectare as well as plot No.455 area 0.543 hectare as C.H. 18. The entry in Misil Band also demonstrate that objection was filed by Lata Devi before denotification of the village. The Deputy Director of Consolidation while deciding the every revisions has rightly considered the claim of the parties and dismissed the revisions filed by respective parties except revision NO.48 filed by Lata Devi.

15. This Court in the case reported in 1985 RD 71 Paras Nath Singh versus Deputy Director of Consolidation and others has held that an order which is illegal cannot be quashed or set aside in Writ jurisdiction if quashing of it results in bringing on record another illegal order. Paragraph No.21 of the judgment rendered in Paras Nath Singh (Supra) will be relevant for perusal which is as under:-

"21. It is, no doubt, correct to say that any order passed without jurisdiction is a nullity and deserves to be quashed. But if as a result of quashing that order another wrong and illegal order would be restored, this Court would refuse to interfere with the impugned order which appears to be quite proper equitable and just order. As mentioned above, the power under Article 226 of the Constitution is devised to advance justice and not to thwart it. To me it appears to be well settled that an order which is illegal cannot be quashed or set aside in writ jurisdiction if quashing of it results in bringing on record another illegal order."

16. Considering the entire facts and circumstances of the case, there is no scope of interference by this Court in exercise of jurisdiction under Article 226 of the constitution of India against the impugned orders passed by Consolidation authorities.

17. The Writ Petition No.47925 of 2014 filed by Rajeshwari Devi is dismissed and the Writ Petition No.8596 of 2015 filed by Smt.Lata Devi is disposed of in view of the order dated 29.08.2024 passed by Deputy Director of Consolidation in reference proceeding under Section 48 (3) of U.P.C.H. Act.

18. No order as to costs.