
(1970) 01 AHC CK 0008
In the Allahabad High Court

Case No : Sp. A. No. 1131 of 1969 connected with Sp. A. No. 1144 of 1969

Rakesh Kumar

APPELLANT

Vs

Ramesh Chandra and Other

RESPONDENT

Date of Decision : 02-01-1970

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1970) 40 AWR 55

Hon'ble Judges : V.G. Oak, C.J.;Gangeshwar Prasad, J

Bench : Division Bench

Advocate : R.M. Sahai, for the Appellant;

Final Decision : Dismissed

Judgement

V.G. Oak, C.J.—These two connected special appeals arise out of proceedings under the UP Consolidation of Holdings Act (here after referred to as the Act). Ramesh Chandra filed two objections u/s 12 of the Act with respect to holdings in two different villages. There was delay in filing the objections. The delay was condoned by the Consolidation Officer u/s 5 of the Limitation Act. When the matter went before the Settlement Officer (C) in appeal, he held that it was not possible to entertain the objections u/s 12 of the Act at that stage in view of the fact that the consolidation scheme had been confirmed u/s 23 of the Act. This view was upheld in revision by the Deputy Director (C). These decisions of the Deputy Director (C) and the Settlement Officer (C) were challenged by Ramesh Chandra by filing two writ petitions in this Court. The two writ petitions have been allowed by a single Judge of this Court. It has been ordered that the Deputy Director (C) should rehear the revisions on merits. Against this decision of the single Judge dated 17-7-1969, the present special appeals have been filed by Rakesh Kumar, opposite party.

2. The main contention of Mr. R.M. Sahai, appearing for the Appellant, is that the objections u/s 12 of the Act could not be entertained in view of the fact that the consolidation scheme had been confirmed u/s 23 of the Act. Reliance was placed

upon the decision of a Division Bench of this Court in *Smt. Natho v. Board of Revenue UP 1966 RD (HC) 170*. It was held in that case that once proceedings upto the stage of Section 22 of the Act have been completed and the statement of proposals u/s 23 have been confirmed the statement of proposals becomes final and the effect of finality is that all adjudications already made upto that date became final. No power at all is conferred at a later stage to declare or adjudicate upon the rights of tenure-holders.

3. However, a different view was taken by a Full Bench of this Court in *Sita v. State of UP 1967 AWR 731*. It was explained by the Full Bench that if the statement of proposals is prepared on the basis of particulars contained in statement of tenure holder or village records which particulars are still to be corrected in accordance with the appellate or revisional order, then once the appellate order is passed and it becomes final or a revisional order is passed which is at variance with particulars in respect of a tenure holder either Altered in the statement of tenure holders or entered in the statement of proposals, would clearly be a clerical or an error apparent on the face of the record in documents prepared under the provisions of the Act and both of them can be corrected and brought in accordance with the final decision in the appeal or revision. The further proceedings in consolidation would be in accordance with the correct statements. This can be done even though the statement of proposals achieves confirmation u/s 23(2) of the Act. The power Under Sub-section (2) of Section 38 can be exercised at any time before the notification u/s 52 is issued.

4. Mr. R.M. Sahai tried to distinguish the present case from *Sita's* case on the ground that in *Sita's* case an objection u/s 11 of the Act was pending at the time of confirmation u/s 23 of the Act, while in the present case the objection was filed long after confirmation u/s 23 of the Act. It is pointed out that in the present case the scheme was confirmed in the year 1961, whereas the objection was filed by Ramesh Chandra as late as August 1963.

5. There was no doubt delay in the filing of the objections Under Sections 11 and 12 of the Act. But the Consolidation Officer concluded that there was sufficient explanation for the delay. He decided to condone the delay. The delay having been condoned, the position was practically the same as if the objections had been filed within time. If the objections were filed within time, it had to be disposed of in accordance with law inspite of the confirmation of the scheme u/s 23 of the Act. So, the decision of the Full Bench in *Sita v. State of UP (supra)* is applicable to the present case also.

6. In one case the opposite parties relied upon a notification issued u/s 52 of the Act. But it has been provided in Sub-section (2) of Section 52 of the Act that in cases or proceedings pending under the Act on the date of issue of notification Under Sub-section (1) of Section 52, orders shall be given effect to by the authorities notwithstanding the issue of the notification u/s 52 of the Act. The Deputy Director (C) was therefore wrong in summarily dismissing one revision on the ground of issue of notification u/s 52 of the Act. The learned single Judge

was right in taking the view that the Deputy Director (C) ought to decide the two revisions of merits.

7. Each of the two special appeals is therefore dismissed.