

(1984) 12 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7098 of 1984

Ram Achchaibar and Others

APPELLANT

Vs

The Settlement Officer Consolidation and Others

RESPONDENT

Date of Decision : 03-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 109A, 42(2), 48, 52(2)

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 109A, 109A(1),
109A(2), 109A(3), 55

Citation : (1985) AWC 260 : (1985) RD 194

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

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This petition under Article 226 of the Constitution of India filed by the Petitioners is directed against the order dated 10th February, 1984 passed by the Settlement Officer (Consolidation) and the order dated 18th August, 1983 passed by the Consolidation Officer. These orders were passed consequent upon the order dated 17th January, 1978 passed by the Deputy Director of Consolidation in a revision filed u/s 48 of the U.P. Consolidation of Holdings Act which apparently became final although according to the Petitioners this order has been challenged by filing a writ petition in this Court which is still pending. The order dated 17th January, 1978 passed by the Deputy Director of Consolidation was sought to be given effect to in pursuance of the provisions of Rule 109-A of the U.P. Consolidation of Holdings Rules. The statutory provisions of Rule 109-A of the U.P. Consolidation of Holdings Rules are set out below for the sake of convenience:

109-A.--(1) Orders passed in cases covered by Sub-section (2) of Section 52 shall be given effect to by the consolidation authorities, authorised in this behalf

under Sub-section (2) of Section 42. In case there be no such authority, the Assistant Collector in-charge of the sub-division, the Tahsildar, the Naib Tahsildar, the Supervisor Kanungo, and the Lekhpal of the area to which the case related shall, respectively, perform the functions and discharge the duties of the Settlement Officer, Consolidation, Consolidation Officer, the Assistant Consolidation Officer, the Consolidator, and the Consolidation Lekhpal respectively for the purpose of giving effect to the orders aforesaid.

(2) If for the purpose of giving effect to any order referred to in Sub-rule (1) it becomes necessary to reallocate affected chaks, necessary orders may be passed by the Consolidation Officer, or the Tahsildar, as the case may be, after affording proper opportunity of hearing to the parties concerned.

(3) Any person aggrieved by the order of the Consolidation Officer, or the Tahsildar, as the case any be, may, within 15 days of the order passed under Sub-rule (2), file an appeal before the Settlement Officer, Consolidation, or the Assistant Collector in-charge of the sub-division, as the case may be, who shall decide the appeal after affording reasonable opportunity of being heard to the parties concerned, which shall be final.

(4) In case delivery of possession becomes necessary as a result of orders passed under Sub-rule (2) or Sub-rule (3), as the case may be, the provisions of Rules 55 and 56 shall mutatis mutandis, be followed.

2. The order of the Consolidation Officer purports to have been passed under Rule 109-A(1) of the U.P. Consolidation of Holdings Rules where this order was given effect to: One of the modes of giving effect to the order is that by entering the name of the successful person "in the revenue records, in other words the amal-daramad proceedings. It is this procedure which has been adopted and the name of the successful party has been entered in pursuance of the impugned order of the Consolidation Officer dated 18th August, 1983 (Annexure "2" to the writ petition). Against this order that the appeal was preferred which was dismissed by order dated 19th February, 1984.

3. It has been urged by the learned Counsel for the Petitioners that no notice was given to the Petitioners in the proceedings under Rule 109-A(1) of the U.P. Consolidation of Holdings Rules. The provisions of Rule 109-A(1) as quoted above are quite clear and no notice is contemplated to be given to any party once the order is sought to be given effect to.

4. It was next contended by the learned Counsel for the Petitioner that the appeal has been incorrectly held to be not maintainable. Under Rule 109-A(3) the appeal can be filed only if an order has been passed under Rule 109-A(2) and not in the case the order has been passed under Rule 109-A(1). As the present order was not (?) passed under Rule 109-A(1), hence no appeal could have been filed against that order.

5. The learned Counsel for the Petitioner next urged that this was allocation of

chak proceeding in pursuance of the order of the Deputy Director of Consolidation and just making amaldaramad in the revenue records was not the sufficient remedy available to any party. But it was still open to the Petitioners that in case they seek the effect of the order of the Deputy Director of Consolidation in any other mode than the amaldaramad proceeding they can still approach the Consolidation Officer and for that they can make an application to that effect. Further it may be stated that it is only when the proceedings u/s 109-A of the Rules are initiated for the allocation of the chaks, notice to any party can be given and not in proceedings under Rule 109-A(1) of the rules. Hence there was no question of giving any notice to the Petitioners in the proceeding under Rule 109-A(1) of the Rules.

6. According to the learned Counsel for the Petitioners it is the allocation of chak proceedings which was the only proper mode of giving effect to the order dated 17-1-1978. In my opinion giving effect to the order in the revenue records was also the mode and it is the mode of proceedings under Rule 109-A(1) and hence it was not necessary to give notice in the said proceedings. Provisions of Rule 109-A(1) and Rule 109-A(2) are exclusive to each other. Therefore, separate provision has been made under Rule 109-A(1) and under Rule 109-A(2). Hence the allocation of chak procedure was correctly not adopted by the Consolidation Officer.

7. No other point has been submitted before me and the impugned orders are correct. There is no error much less an error apparent on the face of the record.

8. In view of the discussions made above, there is no force in this writ petition and it is accordingly dismissed in limine.