
(2001) 05 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 17104 of 1988

Ram Chandra

APPELLANT

Vs

Dy. Director of Consolidation, Ghaziabad and others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 4(1), 4(2)

Citation : (2001) 3 AWC 1799 : (2001) 92 RD 538

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : V.S. Chaudhary, V.K. Singh and P.R. Maurya, for the Appellant;
R.B.D. Misra, Ram Bhawan, R.C. Singh and M.C. Singh and S.C., for the
Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner. None appeared on behalf of the respondents. However, learned standing counsel is present.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 22.6.1988 passed by the Deputy Director of Consolidation and order dated 13.10.1987 passed by the Settlement Officer. Consolidation.

3. The relevant facts of the case giving rise to the present petition, in brief, are that the petitioner purchased the land in dispute through registered sale deed dated 11.6.1981 and thereafter applied for mutation of his name in the revenue papers. The application filed by the petitioner was allowed by the Consolidation Officer by judgment and order dated 16.10.1985. The validity of the said order was challenged by the contesting respondent before the Settlement Officer. Consolidation. The Settlement Officer, Consolidation reversed the findings recorded by the Consolidation Officer and allowed the appeal by its Judgment

and order dated 13.10.1987. It was held that the village where the land in dispute was situated was notified u/s 4 of the U. P. Consolidation of Holdings Act, therefore, no sale deed could be executed without obtaining permission from the Settlement Officer, Consolidation. In the present case, according to the findings recorded by the Settlement Officer, Consolidation, the notification under sub-section (1) of Section 4 of the Act was issued before the sale deed dated 11.6.1981 was executed, therefore, the sale deed was invalid. Challenging the validity of the order passed by the Settlement Officer, Consolidation, the petitioner filed a revision before the Deputy Director of Consolidation. The Deputy Director of Consolidation has also affirmed the findings recorded by the Settlement Officer, Consolidation and dismissed the revision by its Judgment and order dated 22.6.1988. Hence, the present petition.

4. In the writ petition notices were issued. On behalf of the respondents, counter-affidavits have been filed controverting the facts stated in the writ petition. Learned counsel for the petitioner vehemently urged that the authorities below have committed error, which is apparent on the face of the record in holding that the village where the land in dispute was situated was notified and there was valid notification u/s 4 of the Act, therefore, the sale deed in question was invalid. According to him, there was no notification as required under subsection (2) of the Section 4 of the Act, which provides as under :

4. Declaration and notification regarding consolidation.--(1)

(2) (a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under sub-section (1) or in any other area, it may issue a notification to this effect.

(b) Every such notification shall be published in the Gazette and In a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such manner as may be considered appropriate.

5. A reading of the aforesaid provisions shows that they are mandatory in nature. In the instant case, it has not been shown from the material on the record that notification issued under sub-section (2) of Section 4 of the Act was published in each unit in the said area, therefore, the notification issued under sub-section (1) of Section 4 of the Act was ineffective and cannot invalidate the sale deed in question as well as other sale deeds executed during the publication in official gazette as well as publication in each unit in the said area.

6. Consequently, the sale deed could be executed without obtaining permission from the Settlement Officer, Consolidation. The sale deed executed in favour of the petitioner was, therefore, valid. The view taken to the contrary by the authorities below is manifestly erroneous and illegal. In support of the submission, learned counsel placed reliance on the case of Raj Singh v. Deputy Director of Consolidation. Saharanpur and others, 1997 RD 348. It may be noted that the relevant facts as stated in paragraph Nos. 3 and 4 of the writ petition have not been controverted specifically in the counter-affidavits. The contesting

respondents have deliberately given evasive reply which amounts admission of the facts stated in paragraph Nos. 3 and 4 of the writ petition.

7. In view of these facts, it is proved that on 11.6.1981 no notification as provided under subsection (2) of Section 4 of the Act was made, therefore, prior permission of the Settlement Officer, Consolidation was not required In execution of the sale deed. The sale deed executed in favour of the petitioner was valid. The views taken to the contrary by the authorities below, i.e., the Deputy Director of Consolidation and the Settlement Officer. Consolidation are manifestly erroneous and illegal. This petition, therefore, succeeds and is allowed. The judgments and orders dated 13.10.1987 and 22.6.1988 passed by respondent Nos. 2 and 1 respectively are hereby quashed.