
(2014) 02 AHC CK 0258
In the Allahabad High Court
Case No : Writ B No. 8732 of 2014

Ram Kisan and Another

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9B

Citation : (2014) 123 RD 44

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : S.N. Tripathi and I.P. Singh, Advocate for the Appellant; Surendra Pratap Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri S.N. Tripathi for the petitioner and Sri S.P. Singh for the respondents. The writ petition has been filed against the order of Settlement Officer, Consolidation dated 17.1.2013 and Deputy Director of Consolidation dated 13.12.2013 arising out of proceedings u/s 9B of U.P. Consolidation of Holdings Act (hereinafter referred to as the "Act").

2. The dispute relates to the valuation of plot No. 1816 of village Mohanpur, majara Khad Mohan Nagar, tehsil Sayana, distt. Bulandshahar. The land in dispute was the original holding of Ram Kishan and Parmanand S/o Momraj and Shiv Singh S/o Chaman Lal. A perusal of CH Form 23 of the petitioners shows that initially valuation of plot No. 1816 has been determined at the rate of 40 paisa and 30 paisa. In chak allotment proceedings this plot was allotted in the chak of Gaj Raj and others (respondents-3 and 4). In the year 2006, Ram Kishan filed an objection u/s 9B of the Act, to determine the valuation of plot No. 1816 at the rate of 50 paisa. The Consolidation Officer by order dated 19.9.2006 condoned the delay and determined the valuation of plot No. 1816 at the rate of 50 paisa and plot No. 1519 at the rate of 60 paisa. Gaj Raj and Sukhveer filed an appeal from the aforesaid order. In the memorandum of appeal it has been

stated that the petitioners have already filed an objection u/s 9B of the Act for enhancement of valuation of plot No. 1816 which has been dismissed by the order of Consolidation Officer.

3. Gaj Raj and Sukhveer filed an appeal (registered as Appeal No. 845 of 2010) against the order of Consolidation Officer dated 19.9.2006 which has allowed by Settlement Officer, Consolidation by order dated 24.6.2010 and the order of Consolidation Officer dated 19.9.2006 was set aside. The petitioners thereafter filed an application for recall of the aforesaid order. The recall application was allowed by the order dated 13.10.2012 and thereafter the appeal was restored to its original number. In the meantime one Kalyan Dutt filed another appeal i.e. Appeal No. 969 of 2011-12 on 27.9.2012. In the memorandum of appeal filed by Kalyan Dutt it has been stated that the petitioners have filed an objection (registered as Case No. 1079) u/s 9B of the Act for enhancement of valuation of plot No. 1816 which has been dismissed by the order of Consolidation Officer. The appeals of Gaj Raj thereafter decided by a separate order and appeal of Kalyan Dutt was also decided by a separate order dated 17.1.2013. The Settlement Officer, Consolidation found that as the objection of the petitioners for enhancement of valuation of plot No. 1816 has already been dismissed on merit as such second objection in respect of the same relief was not maintainable accordingly the appeals were allowed and order of Consolidation Officer dated 19.9.2006 was set aside. The petitioners filed four revisions, two revisions were filed against the orders passed in the appeals filed by Gaj Raj, one revision has been filed against the order passed in the appeal filed by Kalyan Dutt and another from the order in appeal filed by Murlidhar. All the revisions were consolidated and dismissed by Consolidation Officer by order dated 13.12.2013 on the same ground.

4. The Counsel for the petitioners submits that Gaj Raj in his memorandum of appeal, has not raised any ground that the objection registered as Case No. 1079 has been filed by the petitioners for enhancement of valuation of plot No. 1816, and has been dismissed by Consolidation Officer by order dated 12.2.1999. He submits that oral arguments were raised in this respect without filing any evidence in support of the allegations and illegally accepted by Settlement Officer, Consolidation and same error has been committed by Deputy Director of Consolidation. The petitioners filed a questionnaire as Annexure-8 to the writ petition in which it has been stated that the case is not found to be mentioned in Goswara Register nor record is consigned to the record room.

5. I have considered the arguments of the Counsel for the parties and examined the records. Although in the memorandum of appeal filed by Gaj Raj, the case number has not been mentioned but in the memorandum of appeal filed by Kalyan Dutt i.e. Appeal No. 969 of 2012, case number has been mentioned. Accordingly, Settlement Officer, Consolidation has recorded the findings on its basis. This fact has not been controverted by the petitioners in the memorandum of revision before the Deputy Director of Consolidation as such the fact being not

controverted and Deputy Director of Consolidation has also placed reliance on it. So far as the questionnaire filed along with writ petition is concerned, there appears to be some interpolation in the numbers of the case and no reliance can be placed on it. In any case the factual controversy which has not been raised before the Court below cannot be permitted to be raised before this Court for the first time.

6. A perusal of CH Form 23 of Gaj Raj shows that plot No. 1816 was allotted in the chak of Gaj Raj. In CH Form 23 also valuation has been mentioned at the rate of 40 paisa and 30 paisa. In such circumstances of the case no interference is required by this Court. The writ petition is dismissed.