

(2003) 05 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 16660 of 2003

Ram Lalit

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A

Citation : (2003) 4 AWC 2761 : (2003) 95 RD 85

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; S.N. Singh and R.P. Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Shri Shankatha Rai learned counsel appearing for the petitioner and Shri S. N. Singh, learned counsel appearing for respondent No. 3.

2. By this writ petition, the petitioner has prayed for quashing of the order dated 28.2.2003 passed by Deputy Director of Consolidation and the order dated 8.4.2002, passed by Assistant Settlement Officer, Consolidation, Basti.

3. Facts of the case briefly stated are : Ram Bachan father of the petitioner died on 10.5.2001. Petitioner filed an application for mutation of his name in place of Ram Bachan, deceased on the basis of registered Will dated 3.3.2000. Petitioner

filed an application before Assistant Consolidation Officer for mutation of his name in place of deceased father. The Assistant Consolidation Officer passed an order on 20.6.2001 on the basis of compromise mutating the name of petitioner on the basis of Will on Chak Nos. 184 and 213. The respondent No. 3 claiming wife of Ram Bhawan another son of Ram Bachan filed an appeal against the order dated 20.6.2001 passed by Assistant Consolidation Officer. The case of respondent No. 3 in the appeal was that Ram Bachan had two sons petitioner and Ram Bhawan and she is widow of Ram Bhawan. It was stated that Ram Bhawan died during life time of Ram Bachan and she is entitled for half share and is in possession. The Will executed in favour of the petitioner was disputed. An objection was filed in the appeal taking various pleas including the plea that petitioner is not wife of Ram Bhawan, however, it was not denied that Ram Bhawan was also son of Ram Bachan who died earlier. In the appeal, no objection was taken by the respondent regarding maintainability of the appeal. The appeal was allowed by Assistant Settlement Officer of Consolidation and the order dated 20.6.2001 of Assistant Consolidation Officer was set aside. The case was remitted to the Consolidation Officer for deciding the case after taking evidence on merit. Against the said order dated 8.4.2002, petitioner filed a revision before the Deputy Director of Consolidation which has been dismissed on 20.2.2003. The Deputy Director of Consolidation in his order has held that the compromise entered before Assistant Consolidation Officer is not in accordance with Rule 25 (A) of the U. P. Consolidation of Holdings Rules, 1954, He further observed that respondent No. 2 who claims to be wife of Ram Bhawan is entitled for opportunity and since the Settlement Officer of Consolidation has remitted the case for hearing on merits where parties will have opportunity to place their case, no interference is required. Against the above two orders, present writ petition has been filed.

4. Shri Shankatha Rai, counsel for the petitioner submitted that appeal filed by respondent No. 2 before the Settlement Officer of Consolidation against the order dated 20.6.2001 of Assistant Consolidation Officer was not maintainable, since respondent No. 2 was not party to the proceeding. It is contended that the order of Settlement Officer of Consolidation being without jurisdiction, the Deputy Director of Consolidation also committed error in rejecting the revision. Reliance has been placed by counsel for the petitioner on two judgments of this Court, namely, Smt. Sukhjinder Jeet Kaur and Others Vs. Deputy Director of Consolidation and Others, and the judgment in Bala Prasad v. Deputy Director of Consolidation and Ors. 2003 (94) RD 405.

5. The counsel for the petitioner further contended that there was delay in filing the appeal and there was no ground for condonation of delay.

6. The counsel for the respondent replying the contention of the counsel for the petitioner submitted that appeal filed by respondent No. 2 before Settlement Officer of Consolidation was fully maintainable. Reliance has been placed by counsel for the respondent on -two judgments of this Court, i.e., Ram Pal Singh

v. Deputy Director of Consolidation, Meerut and Ors. 1989 AWC 58 and Brahmadeo and Ors. v. Deputy Director of Consolidation and Ors. 1986 AWC 323. The counsel for the respondent further contended that petitioner never raised any objection regarding maintainability of the appeal before the Assistant Settlement Officer of Consolidation. It is further contended that petitioner did not make any submission before the Deputy Director of Consolidation that appeal before Assistant Settlement Officer of Consolidation was not maintainable. The submission is that petitioner for the first time cannot be permitted to take the plea regarding maintainability of the appeal. The counsel for the respondent lastly contended that substantial Justice has been done between the parties and this is not a fit case for interference under Article 226.

7. I have considered the submissions of counsels for both the parties and have perused the record. The first submissions of the counsel for the petitioner is regarding non-maintainability of the appeal of respondent No. 2. Copy of the objection filed by the petitioner in the appeal has been annexed as Annexure-8 to the writ petition which runs into 17 paragraphs. No specific plea has been taken that appeal is not maintainable since respondent No. 2 was not party to the proceeding except only taking a general ground. The judgment of Settlement Officer of Consolidation also indicate that no submission was raised on behalf of the petitioner before Assistant Settlement Officer of Consolidation regarding maintainability of the appeal. The petitioner also has not raised any submissions regarding maintainability of the appeal before the Deputy Director of Consolidation. Petitioner for the first time in this writ petition is raising the said question.

8. In view, of the fact that petitioner had at no stage objected to the maintainability of the appeal on the ground that respondents not being party to the proceeding cannot file an appeal, it is not necessary for purposes of this case to decide this question.

9. Even if an appeal is not maintainable u/s 11 against any order of Assistant Consolidation Officer, the Deputy Director of Consolidation has wide power u/s 48 of the U. P. Consolidation of Holdings Act to examine the correctness, legality or propriety of the order passed by any subordinate authority. Petitioner having not raised the said objection, did not ask the court below to decide the issue. Even if the claim of the petitioner that appeal was not maintainable was eventually accepted, the respondent was not denied of her right to invoke the Jurisdiction of Deputy Director of Consolidation. Furthermore, the Deputy Director of Consolidation in the impugned order has taken the view that there was non-compliance of Rule 25A in passing the order by Assistant Consolidation Officer. This Court in Hari Lal v. Deputy Director of Consolidation and Ors. 1982 ALJ 223, has held that compliance of Rule 25A is mandatory. The Deputy Director of Consolidation, who was exercising his jurisdiction u/s 48 (1) of the U. P. Consolidation of Holdings Act on revision filed by the petitioner, has taken a definite view that compromise was illegal, since there was no compliance of Rule

25A.

10. In view of the aforesaid finding recorded by Deputy Director of Consolidation, the order of Assistant Consolidation Officer was declared illegal. The order of Assistant Consolidation Officer being declared illegal by Deputy Director of Consolidation, no exception can be taken to the order of Deputy Director of Consolidation upholding the remand made before Consolidation Officer for deciding the case on merits.

11. Respondent No. 2 is claiming to be widow of petitioner's brother. It is not denied that Ram Bachan father of the petitioner had two sons, namely, petitioner and Ram Bhawan. Although petitioner does not admit that respondent No. 2 is wife of Ram Bhawan but that question need consideration after taking evidence. Matter has only been remitted where petitioner will get full opportunity to lead his evidence.

12. The second submission of the counsel for the petitioner that Settlement Officer of Consolidation committed error in condoning the delay in filing the appeal also requires to be considered. Admittedly, the order of Assistant Settlement Officer of Consolidation was passed on compromise to which respondent No. 2 was neither party nor was issued notice. The said compromise order was passed on 20.6.2001. The appeal was filed by respondent No. 3 on 3.11.2001. The respondent No. 3 has also stated in the affidavit that neither any proclamation was issued nor there is service of any proclamation. The Settlement Officer of Consolidation in his order has specifically granted the benefit of Section 5 of Limitation Act accepting the explanation given by respondent No. 3 in her affidavit. The delay in filing the appeal was properly explained and no error was committed by the Settlement Officer of Consolidation in granting the benefit of Section 5 of Limitation Act which warrants interference by this Court under Article 226 of the Constitution. The submission of the counsel for the petitioner that Settlement Officer of Consolidation erroneously granted the benefit of Section 5 of Limitation Act cannot be accepted. In view of the facts and circumstances of the present case, short delay was satisfactorily explained.

13. There is one more reason for not exercising discretionary jurisdiction in the facts of the present case. The order of Assistant Consolidation Officer having been passed in breach of Rule 25A, is illegal. The finding has also been recorded to that effect by Deputy Director of Consolidation. By quashing the order of Assistant Settlement Officer of Consolidation and the Deputy Director of Consolidation impugned in the writ petition the illegal order passed by Assistant Consolidation Officer will be restored. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, Apex Court has held that discretionary jurisdiction by this Court under Article 226 will not be exercised the effect of which is to restore an illegal order. Following was laid in paragraph 17 of the judgment :

"17. The result of the discussion may be stated thus : The Primary Health Centre

was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The panchayat samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed ; the former, because it was made without giving notice to the panchayat samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order-It would have given the Health Centre to a village contrary to the valid resolutions passed by the panchayat samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

14. In view of what has been said above, this is not a fit case for interference under Article 226 of the Constitution of India.

15. The writ petition is rejected summarily.