
(2013) 01 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 24182 of 2012

Ram Narayan

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 4 AWC 4180 : (2013) 119 RD 435

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ashok Kumar Singh, for the Appellant; A.K. Shukla, Ashok Srivastava, G.S. Srivastava, N.K. Srivastava and Sharad Kumar, for the Respondent

Judgement

Ran Vijai Singh, J.—Heard Sri Ashok Kumar Singh, learned counsel for the petitioner, Sri G.S. Srivastava and learned standing counsel appearing for the respondents. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 1.5.2012 passed by the Deputy Director of Consolidation (in short, "D.D.C."), by which the D.D.C. has allowed the revision by quashing the order dated 10.12.2010 passed by the Consolidation Officer (in short, "C.O.").

2. It appears, case No. 88/07-08+201/807 filed u/s 9A(2) of the U.P. Consolidation of Holdings Act, 1953 (in short, "the Act") was decided on 4.10.2008. For recall of this order, an application was filed by the petitioner. The said application was allowed on 10.12.2010 and the case was restored to its original number.

3. Challenging this order, revision has been filed by Mannilal and other respondents. The revisional court has set aside the order dated 10.12.2010 with the direction to hear the restoration application again after providing opportunity of hearing to the parties to restoration application.

4. While assailing this order, Sri Singh contends that the revision was not

maintainable before the D.D.C. as the order dated 10.12.2010 was an interlocutory order.

5. In his submissions, the remedy of revision under sub-section (1) of Section 48 of the Act is given to a tenure holder against any order not being an interlocutory order. Since the order dated 10.12.2010 is an interlocutory order, therefore, the D.D.C. had no power to entertain the revision and set aside the order dated 10.12.2010.

6. Refuting the submissions of learned counsel for the petitioner, Sri Srivastava submits that the order dated 4.10.2008 was passed on merit, therefore, the CO. had no jurisdiction to entertain the restoration application. In his submissions, allowing of restoration application would amount to review of the order dated 4.10.2008. He has further contended that the application was not maintainable on the behest of the petitioner as it was also barred by time, therefore, the D.D.C. has rightly allowed the revision.

7. I have heard learned counsel for the parties and perused the records.

8. Sub-section (1) of Section 48 of the Act provides remedy of revision, which reads as under:

48(1). The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings: or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such. authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, made such order in the case or proceedings as he thinks fit.

9. From the perusal of Section 48(1) of the Act, it transpires that the remedy of revision is available to a tenure holder against any order other than interlocutory orders. The interlocutory order, as would appear from Explanation (2), has been explained as the expression "interlocutory order" in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding. This Court in the case of Lalji Vs. Deputy Director of Consolidation and Others, : Writ B No. 44754 of 2012, decided on 5.9.2012, has held that allowing of restoration application and restoring the case on original number would fall in the ambit of interlocutory order and the revision would not be maintainable.

10. In view of the above, I am of the considered opinion that the D.D.C. had no power under the statute to entertain the revision. The order impugned passed by the D.D.C. is without jurisdiction.

11. So far as the submissions of Sri Srivastava, that the order passed by the CO. is illegal, therefore, the D.D.C. has jurisdiction to entertain the revision, is concerned, it is misconceived as it is well-settled by the number of decisions of

the Apex Court that the jurisdiction can neither be assumed nor. presumed nor conferred nor acquired by acquiescence of the parties.

12. It is also well-settled that order without jurisdiction is a nullity. Reference may be given to M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., and Sarup Singh and Another Vs. Union of India (UOI) and Another, , and a Division Bench of this Court in the case of Committee of Management Jawahar Inter College Bulandshahr Vs. State of U.P. and Others, .

13. In my considered opinion, if the statute provides remedy of revision to a tenure holder against a final order, the interlocutory order even if it is illegal, will not confer the Jurisdiction upon the D.D.C. to entertain the revision.

14. The petitioner's remedy lies somewhere else. The writ petition is dismissed.

15. However, the dismissal of the writ petition will not preclude the petitioner to avail such other remedies as available to him in accordance with law.

16. In the last, Sri Srivastava submitted that a direction may be issued to the Consolidation Officer to decide the case itself on merit within a time bound period. The submission of Sri Srivastava appears to be justified. The matter, being an old one, it is directed that the same may be decided by the learned C.O. within a period of six months from the date of receipt of certified copy of the order of this Court in accordance with law after hearing all concerned, without granting any unnecessary adjournments to the learned counsel for the parties.