
(2012) 03 AHC CK 0099

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12463 of 2012

Ram Naresh

APPELLANT

Vs

D.D.C. and others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 115 RD 838

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : B.P. Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Sanjay Misra, J.—As prayed by Sri A.K. Srivastava, learned Counsel for the respondent No. 3 in this writ petition and learned Counsel for the petitioner in Writ Petition No. 10350 of 2012, connect this writ petition along with Writ Petition No. 10350 of 2012, (Tej Pal Singh v. D.D.C. and others). Sri A.K. Srivastava, learned Counsel for the petitioner in Writ Petition No. 10350 of 2012 has submitted that writ petition No. 10350 of 2012 also arises against the very same impugned order dated 10.2.2012, as is involved in this Writ Petition No. 12463 of 2012, therefore, both the writ petitions may be decided together.

2. Heard Sri B.P. Yadav, learned Counsel for the petitioner in this writ petition, learned Standing Counsel for the respondent Nos. 1 and 2, Sri A.K. Srivastava, learned Counsel for the respondent No. 3 and Sri M.P.S. Gaur, learned Counsel for the respondent Nos. 4 and 5. Since all the parties are represented in both the writ petitions, both these writ petitions have been considered on merits today itself and are being decided finally.

3. By means of this writ petition, the petitioner seeks to challenge the order dated 10.2.2012 passed by respondent No. 1, the Deputy Director Consolidation, Badaun whereby recall application filed by the respondent No. 5, Sukhbir, has been allowed and the ex-parte order dated 27.5.2005 passed by the Deputy

Director Consolidation in the same Revision No. 377 of 2005, has been set aside and the revision has been restored to its original number.

4. According to Sri Yadav, learned Counsel for the petitioner, the Settlement Officer Consolidation had passed an order dated 22.1.2005, where against the Revision No. 377 of 2005 was filed before the Deputy Director Consolidation, Badaun which was decided by an order dated 27.5.2005 and against the order dated 27.5.2005 passed by the Deputy Director of Consolidation, Writ Petition No. 46383 of 2005 (Ram Naresh v. D.D.C. and others) was filed by the petitioner, wherein by the order dated 24.11.2009, as corrected by the order dated 5.2.2010, the order dated 22.1.2005 of the Settlement Officer Consolidation was quashed and the matter was remanded to the Settlement Officer Consolidation to decide the same again.

5. Sri Yadav submits that the Settlement Officer Consolidation, upon remand from this Court has decided the appeal by his order dated 11.8.2010 where against, the petitioner or the respondents have not filed any revision or writ petition and as such, the order dated 11.10.2008 of the Settlement Officer Consolidation, has attained finality.

6. According to Sri Yadav, when the Revision No. 377 of 2005 was itself filed against the order dated 22.1.2005 of the Settlement Officer Consolidation and the order dated 22.1.2005 of the Settlement Officer Consolidation has been set aside by the High Court in writ petition No. 46383 of 2005, then the revision No. 377 of 2005 filed against that order became infructuous on 24.11.2009 and could not have been restored by the impugned order dated 18.2.2012. According to him, the impugned order whereby the Revision No. 377 of 2005 has been restored, requires to be set aside.

Sri A.K. Srivastava, learned Counsel for the respondent No. 3, admits the facts as stated by Sri Yadav, learned Counsel for the petitioner.

7. Sri M.P.S. Gaur, learned Counsel for the respondent Nos. 4 and 5 has submitted that he was not made party in the Revision No. 377 of 2005 and the petitioner as also the respondent No. 3 have colluded and got the order passed from the Settlement Officer Consolidation, hence, the impugned order cannot be held to be illegal or without jurisdiction.

8. Having considered the submissions of all learned Counsel for the parties and perused the record, the order dated 24.11.2009 passed in writ petition 46383 of 2005 (Ram Naresh v. D.D.C. and others) as corrected on 5.2.2010 clearly indicates that the order dated 22.1.2005 of the Settlement Officer Consolidation was set aside by the High Court and the matter was remanded back to Settlement Officer Consolidation to decide the appeal again. Under such circumstances when the revision No. 377 of 2005 was filed against the very same order dated 22.1.2005 of Settlement Officer Consolidation, there was nothing left for the Revisional Court to decide since the order impugned in the revision, had already been set aside by the Writ Court, as such, the revision for

all practical purposes was infructuous and there was no order in existence which could be adjudged in the revision.

9. It appears that the respondent No. 5, without disclosing the aforesaid facts, since he was not a party in the proceedings, had filed Writ Petition No. 61547 of 2010 (Sukhbeer Singh v. D.D.C. and others) from the order of Deputy Director Consolidation and this Court vide order dated 07.10.2010 gave liberty to Sukhbeer Singh to -file recall application against the order of Deputy Director Consolidation and, as such, the writ petition was dismissed. It is in pursuance of this order dated 7.10.2010 of the writ Court that the respondent No. 5 Sukhbeer Singh filed the recall application in Revision No. 377 of 2005, wherein the impugned order has been passed.

10. When the revision has been restored by the impugned order and there was no impugned order left to be adjudicated in Revision No. 377 of 2005, since it was filed against the order dated 22.1.2005 of the Settlement Officer Consolidation and the order dated 22.1.2005 of the Settlement Officer Consolidation was no more in existence having been set aside in Writ Petition No. 46383 of 2005 (Ram Naresh v. Deputy Director Consolidation and others), as such, the restoration of the revision on a recall application made by respondent No. 5, Sukhbeer Singh was no more maintainable and did not leave any issue in the revision No. 377 of 2005, which could be decided therein and, therefore, the impugned order dated 10.2.2012 passed in Revision No. 377 of 2005 on the recall application of respondent No. 5, Sukhbeer Singh, cannot be sustained, primarily for the reason that there was no impugned order that required adjudication in revision No. 377 of 2005.

11. In view of above, both the writ petitions are allowed and the order impugned dated 10.2.2012 passed by the Deputy Director Consolidation, is set aside. No order is passed as to costs.