

(1977) 11 AHC CK 0040
In the Allahabad High Court
Case No : Writ No. 8987 of 1971

Ram Pal Singh

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 17-11-1977

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 8, 9, 9A
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A

Citation : (1978) AWC 58

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Mani Chandra Singh, for the Appellant; N.S. Singhal and S.B. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—In this Writ Petition the question that arises for consideration is whether the Deputy Director Consolidation was justified in setting aside the order passed by the Settlement Officer Consolidation in exercise of his power u/s 48 of the U.P. Consolidation of Holdings Act even though justice has been done between the parties.

2. The dispute is in regard to land owned by two brothers who died before consolidation started. The Petitioners claim as sister's son and the Respondents as sisters. The dispute before Assistant Consolidation Officer was decided u/s 9 of the U.P. Consolidation of Holdings Act by reconciliation on an objection filed by Respondents. Against the conciliation orders dated 11-3-70 and 23-2-1970 the Petitioner filed four appeals on 7-11-1970 and 9-11-1970 accompanied by application and affidavits u/s 5 of the Limitation Act. The delay in filing the appeals was condoned. It was further found that orders were against Rule 25-A. As the Petitioner claimed on basis of will cases were sent back with a direction to decide them afresh after giving opportunity to lead evidence. In revision the

finding that conciliation was contrary to Rule 25-A was not set aside, nor the finding that the Petitioner had no knowledge of Assistant Consolidation Officer's order was touched. But the revision was allowed on the ground that the Petitioner failed to explain the delay in non-filing of an objection u/s 8 of the Act.

3. Section 9 and 9-A confer right on a person to whom notice is sent or any person interested to file objection disputing the correctness of the entries in the records. After objections are filed or if no objection is filed the Assistant Consolidation Officer is empowered to settle disputes by conciliation. The procedure of conciliation is detailed in Rule 25-A. The objective of conciliation is to minimise litigation. The detailed procedure and presence of members of consolidation committee is to ensure correctness and fairness. The conciliation having been recorded in absence of members of consolidation committee was bad in law.

4. An interested person may file objection or contest the objection of the other side. The mere non-filing of objection does not debar a person from contesting the claim advanced by the other side. The Petitioner was a person interested as he claimed on basis of a will executed by the recorded tenant. He could contest the objection filed by other side. An appeal filed by such a person was maintainable. The view taken by the Deputy Director that the Petitioner was required to explain delay in not filing the objection within time does not appear to be correct. Moreover this was not the scope of revision. The revision was directed against an order passed by Settlement Officer Consolidation condoning the delay in filing the appeal.

5. Section 48 of the U.P. Consolidation of Holdings Act, although, is a power of revision yet it is couched in widest possible terms empowering the Deputy Director of Consolidation to interfere both on questions of fact and law. There is hardly any difference between the right of appeal or revision but the difference lies with regard to mode in which power is exercised. The remedy to approach a tribunal or a court in revision is not a right of a litigant nor is it a favour shown to him it is a duty conferred on highest tribunal or court to exercise powers for furtherance of justice and undoing the wrong and injustice. The legality, propriety etc. has to be seen keeping in view the supreme purpose for which the provision is incorporated in the statute. The power in revision should not be exercised to restore an order which is illegal and unjust. On the facts found the order passed by Assistant Consolidation Officer was not only unjust but illegal. By setting aside the order of Settlement Officer Consolidation the Deputy Director Consolidation perpetrated the illegality. The order cannot be upheld.

6. The result is that the petition succeeds and is allowed. The order passed by the Deputy Director Consolidation is quashed. The parties shall however bear their own costs.