
(1984) 11 AHC CK 0076
In the Allahabad High Court
Case No : Writ Petition No. 878 of 1983

Ram Saran

APPELLANT

Vs

Assistant Director (Consolidation) and Others

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 11(1), 12, 48, 9A

Citation : (1985) AWC 224

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : B.K. Singh, for the Appellant; Ram Narain Misra and Jagdish Singh, for the Respondent

Final Decision : Allowed

Judgement

K.N. Misra, J.—This writ petition is directed against the impugned judgment and order Dt/-6-1-1983 (Annexure No. 3) passed by the Assistant Director of Consolidation dismissing the revisions filed by the Petitioner u/s 48 of the U.P. Consolidation of Holdings Act (for short the Act). Briefly stated the facts of the case are that one Bhagwati son of Ram Dutt was tenure holder of the land of Khata No. 846. He died on 25-1-1982. Opposite party No. 4. Smt. Mantoora filed an application u/s 12 of the Act for mutation of her name in place of deceased tenure holder Bhagwati. The Assistant Consolidation Officer passed mutation order in her favour vide order dated 17-3-1982 (Annexure No. 1). It appears that the Petitioner filed a mutation application u/s 12 before the Assistant Consolidation Officer on 19-3-1982 claiming mutation on the basis of an alleged will said to have been executed by the deceased tenure-holder in his favour. The Assistant Consolidation Officer submitted his report dated 15-5-1982 to the Consolidation Officer in which he had mentioned that mutation case with regard to land or said khata has already been decided by him vide order dated 17-3-1982 in favour of opposite party No. 4. The Consolidation Officer on the basis of said report rejected the mutation application of the Petitioner vide order

dated 17-9-1982 (Annexure No. 2). He held that since already mutation order has been passed in proceedings u/s 12 of the Act by the Assistant Consolidation Officer, and, as such, the Petitioner's application for mutation is not maintainable. The Petitioner thereupon preferred two revisions; one, against the order dated 17-3-1982 and the other against the order dated 17-9-1982. Both these revisions were dismissed by the Assistant Director of Consolidation vide order dated 6-1-1983. He has dismissed the revisions on the ground that the Petitioner's revisions are not maintainable as the Petitioner has not filed appeals against the aforesaid impugned orders passed by the Assistant Consolidation Officer and Consolidation Officer respectively. Aggrieved by this order, this Petitioner has filed this writ petition.

2. Learned Counsel for the Petitioner Sri B.K. Singh urged that the Petitioner could challenge the aforesaid orders in the revision u/s 48 of this Act even without filing appeal against these orders. In reply learned Counsel for the opposite parties Sri Jagdisb Singh supported the order passed by the Assistant Director of Consolidation and urged that without availing the remedy of filing appeal, no revision could be filed by the Petitioner straight away. Although arguments on other points involved in the case were also urged by the learned Counsel for the parties, but since the Assistant Director of Consolidation has dismissed the revisions solely on the aforesaid ground, and, at such I do not want to refer to these arguments and express any opinion on these points urged by the learned Counsel for the parties.

3. Having heard learned Counsel for the parties at some length on the aforesaid question as to whether the revisions filed by the Petitioner were maintainable or not, I find much substance in the argument of the learned Counsel for the Petitioner.

4. So far the revision against order dated 17-1-1982 is concerned I find that since the Petitioner was not a party to those proceedings, and, as such, he could not file appeal u/s 11(1) of the Act although he was aggrieved by that order of mutation passed in favour of opposite party No. 4. Similar question cropped up for consideration before me in Writ Petition No. 660 of 1978, Basalat v. Deputy Director of Consolidation decided on December 21, 1982 wherein I had held that a person who was not made party during the pendency of the case before the Consolidation Officer cannot, as of right, file an appeal. In Sub-clause (1) of Section 11 it is provided that any party to the proceedings u/s 9-A, aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer, under that section may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of hearing to the parties concerned, give his decision thereon. It is, therefore, clear that a person who is not a party to the proceedings u/s 9-A cannot file an appeal as of a right, although he may if aggrieved by the order prefer an appeal with leave of the Court, as held in tessellates case (supra). However, when a thing which cannot be done as of a right its non-compliance would not operate as a bar

to taking recourse to other available legal remedy. Thus, when an appeal cannot be filed as of a right u/s 11 of the Act by an aggrieved person who is not a party to the proceedings, I find it difficult to accept that the non-filing of an appeal would operate as a bar to invoking the revisional jurisdiction by the person aggrieved by the order passed by the Assistant Consolidation Officer or the Consolidation Officer u/s 9-A of the Act. In my opinion the revision filed by the aggrieved person straight away without filing an appeal against the impugned order would be maintainable and it cannot be rejected being non-maintainable. The revisional jurisdiction of the Director of Consolidation u/s 48 of the Act is apparently very wide and it can be invoked without any let or hindrance by any person aggrieved by the order although he may not be party to the case. Section 48 contains no such clause nor it can be so construed as to be applicable only against the orders passed by the appellate authority under the Act. In my opinion the revisional jurisdiction u/s 48 of the Act can be exercised by the Director of Consolidation against any order passed by any subordinate consolidation authority in any case or proceedings under the Act, except an interlocutory order.

5. In this view of the matter I find that if a person is aggrieved by an order passed by the Assistant Consolidation Officer or Consolidation Officer in proceedings u/s 9-A, he can very well approach the Deputy Director of Consolidation invoking revisional jurisdiction u/s 48 of the Act even without filing an appeal against that order. The revisional powers u/s 48 are wide enough and the Director of Consolidation can entertain a revision filed by a person aggrieved by an order passed by any subordinate consolidation authority u/s 48, 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 passed by any such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of hearing, make such order in the case or proceedings as he thinks fit.

6. Thus, in my opinion, a person, even if he is not a party in the proceedings but is aggrieved by an order passed u/s 9-A of the Act can invoke the revisional jurisdiction of the Deputy Director of Consolidation even without filing an appeal against that order. The Deputy Director of Consolidation, after summoning the record and giving opportunity of hearing to the parties would pass such order as may be deemed fit and proper on the facts and circumstances of the case. In this view of the matter I find that the revision filed by the Petitioner against the impugned order dated 17-3-1982 passed by the Assistant Consolidation Officer was maintainable and the Deputy Director of Consolidation erred in rejecting the revision as not maintainable on the erroneous ground that the Petitioner has not filed appeal against that order.

7. So far as the revision against order dated 17-9-1982 is concerned I am of the

opinion that the Petitioner could file revision against the order passed by the Consolidation Officer although he could also challenge that order by filing an appeal against that order. No doubt appeal is a remedy available to an aggrieved party, but non-filing of appeal would not operate as a bar to the exercise of jurisdiction u/s 48 of the Act, which is vested in the Director of Consolidation to correct any error in the impugned order. The revisional jurisdiction conferred u/s 48 of the Act is not confined to the order passed by the appellate court. The Director of Consolidation; Deputy Director of Consolidation can approach any order passed by any subordinate authority in order to consider its correctness, legality or propriety and pass such orders as it may deem fit and proper in the circumstances of the case. Prior to amendment made in Section 48 by the U.P. Act No. VIII of 1963, the revisional jurisdiction was confined to orders passed by the subordinate appellate authority as is evident by the un-amended Section 48, which reads as follows;

48. Revision--The Director of Consolidation may call for the record of any case decided or proceeding taken, where he is of the opinion that a Deputy Director, Consolidation has--

- (i) exercised jurisdiction not vested in him in law, or
- (ii) failed to exercise jurisdiction vested in him, or
- (iii) acted in the exercise of his jurisdiction illegally or with substantial irregularity;

and as a result of which substantial injustice appear to have been caused to a tenure holder, and he may, after affording reasonable opportunity of hearing to the parties concerned, pass such orders in the case or proceedings as he thinks fit.

8. It is, thus, evident that revisional jurisdiction u/s 48 under the aforesaid unaltered section could be exercised only against the order passed by the Deputy Director of Consolidation, who exercised second appellate jurisdiction under the amended Act. Thus, the revisional jurisdiction u/s 48, prior to its amendment in 1963 by Act No. VIII of 1963 could only be exercised against the appellate orders. And so revision could not be filed under the old Section 48 without exhausting the remedy of approaching the appellate court.

9. After amendment made by Act No. VIII of 1963 the revisional powers are very much wide and the Deputy Director of Consolidation can consider, in exercise of revisional jurisdiction u/s 48 of the Act, the correctness, legality and propriety of any order passed by any subordinate authority. This power can be exercised suo motu by the Deputy Director of Consolidation or on an application u/s 48 moved by the aggrieved party or by any aggrieved person.

10. It, therefore, appears to me that the revision filed by the Petitioner could not be thrown out merely on the ground that he had not filed an appeal against the impugned order dated 17-9-1982 passed by the Consolidation Officer. Similar

question cropped up for consideration before me in Ram Ajore v. Deputy Director of Consolidation 1982 ALJ 1160 wherein it was held that a revision can be filed by the aggrieved party u/s 48 of the Act without preferring an appeal before the Settlement Officer, Consolidation against that order--See also Hira Lal v. Deputy Director of Consolidation Allahabad 1982 ALJ 223. Similar view was taken by K.P. Singh J. in Smt. Taluka Devi v. Assn. Director of Consolidation, Azamgarh 1981 RD 120. In another decision Ram Das and Another Vs. D.D.C. and Others, , R.M. Sahai, J. also took similar view.

11. It is, thus, well settled that revisional jurisdiction can be invoked by the aggrieved party even without filing an appeal, and, as such, the Deputy Director of Consolidation, in my opinion committed grave error of jurisdiction in dismissing the revisions filed by the Petitioner on the aforesaid erroneous ground.

12. In the result the writ petition succeeds and is hereby allowed, The impugned order dated 6-1-1983 passed by the Deputy Director of Consolidation is hereby quashed and the Deputy Director of Consolidation is directed to restore both the revisions filed by the Petitioner and to decide it on merits after giving opportunity of hearing to both the parties.

13. No order as to costs.