
(1991) 02 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4612 of 1991

Rambali

APPELLANT

Vs

Assistant Director of Consolidation and Another

RESPONDENT

Date of Decision : 08-02-1991

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 52, 52(1), 52(2), 52(3)

Citation : (1991) 1 AWC 758

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant;

Final Decision : Dismissed

Judgement

Palok Basu, J.—This writ petition has been filed by Rambali against the order of the Deputy Director of Consolidation dated 14-12-1990. By the impugned order the Deputy Director has directed that benefit of Section 5 of the Indian Limitation Act should be made available to the Respondent Bagedu and his objection may be treated as contest of title/ownership relating to the property which is converted into chak Nos. 18, 19 and 22 during the consolidation operations and then the his between the Respondent and the Petitioner may be decided in accordance with law by the Consolidation Officer at the relevant stage.

2. The relevant facts are: A revision was filed by Bagedu before the Deputy Director of Consolidation u/s 48 of the Consolidation of Holdings Act (hereinafter referred to as the Act) alleging therein that it was only on a prohibition put by the Petitioner in the Respondent's reaching the field that he smelt some foul play relating to the property rights as a result of which the Respondent got the records inspected which revealed that C.H. Form No. 23 purported then to have an order allegedly passed in the year 1972 recording the name of the predecessor of the Petitioner in the said three chaks Nos. 18, 19 and 22, it

further transpired that from the enquiry no records or file could be traced as the justify the giving birth to the said order of mutation (Amaldarmad) in favour of the Petitioner. Consequently he filed the revision along with the prayer that the delay in filing the revision may be condoned as all proceedings, if any, have gone on illegally with the result that a genuine dispute has arisen relating to the rights of the Respondent. In order to support the allegations made in the revision the Respondent had filed enquiry reports from the office of the Consolidation Officer and also relevant authorities indicating that neither there was any file nor any order which may justify the existence of the mutation order (Amaldarmad) as indicated above. The Deputy Director of Consolidation issued notice on the revision and after hearing the Petitioner and the Respondents directed that in view of the allegations made by the Respondent benefit of Section 5 of the Indian Limitation Act must be extended to him. It may be noted here that the Respondent had claimed himself to be an illiterate villager.

3. By the impugned order dated 14-12-1990 the Deputy Director of Consolidation has detected the matter to be remanded to the court of the Consolidation Officer so that the dispute about rights and ownership as raised by Bagedu as against Ram Bali, the Petitioner, may be decided on merits in accordance with Jaw, without paying any heed whatsoever to the alleged order dated 4-3-1972 which was more than obviously a forgery and a fraud.

4. Sri S.D. Pathak, learned Counsel for the Petitioner cited three authorities but mainly relied upon the decision of a Division Bench of this Court Hari Ram v. Deputy Director of Azatngarh 1989 RD 981. On the strength of the said decision it was sought to be made out that no revision lay before the Deputy Director of Consolidation and, therefore, the writ petition should be admitted. The argument is that once a notification u/s 52 of the Act has been made and published, all proceedings come to an end. It is, therefore, argued that the said order dated 4-3-1972 having become final by virtue of notification u/s 52 dated 25th December, 1976, the Deputy Director of Consolidation possessed no justification to reopen the matter.

5. The argument advanced on the facts of the present case, though attractive lacks substance. Firstly, the Deputy Director of Consolidation is in charge of all proceedings that come within his territorial jurisdiction relating to the consolidation of village. Overall power has been conferred by the said section as may be readily seen by the section itself which is quoted hereunder:

48. Revision and reference (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 interlocutory order) passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.

6. Under the Rules, 30 days is the limitation fixed for filing a revision. It is well settled that the limitation begins from the date of knowledge of an order. The Deputy Director of Consolidation has in the instant case accepted the plea of the Respondent after hearing the Petitioner and giving him an opportunity that there was sufficient reason to hold that the Respondent had no knowledge and for that matter could not have any knowledge of an order which was ab initio non-existent. The finding of the Deputy Director of Consolidation that the alleged order dated 4-3-1972 was a forged one and was brought about fraudulently must be accepted as correct in view of the sound reasoning found in the impugned order. Consequently it follows that the Deputy Director of Consolidation is empowered to judge the correctness or even the propriety of an order or proceeding coming up from proceedings before any of the authorities working under him. Consequently it would be an injustice had he, after recording a finding that the so-called order dated 4-3-1972 was fraudulent one not granted relief to the Respondent. It must be said to the credit of the Deputy Director of Consolidation that he has remanded the matter to the court of the Consolidation Officer for deciding the matter on merits and, therefore, no one should have a grievance as to the existence of his rights and if so, he must vindicate his rights or merits before the Consolidation Officer.

7. Coming to the rulings it may be noted that there is no reference to Sub-section (2) or Sub-section (3) of Section 52 of the Act in the aforesaid decision in the case of Hari Ram (supra). For a ready reference it may be mentioned that Sub-section (2) of Section 52 was brought about by an amendment which says that notwithstanding anything contained in Sub-section (2) any order passed by the court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India or in cases of proceedings pending under this Act on the date of issue of notification under Sub-section (1) shall be given effect to by such authorities as may be prescribed and the consolidation operations shall, for that purpose, be deemed to have not been closed. On the facts of the present case it must be held that the matter agitated by the Respondents would be deemed to be pending because it was through a fraudulent and forged order that his alleged rights were being thwarted by the Petitioner. Consequently, it should be held that the power of the Deputy Director of Consolidation existed in entertaining the revision and in deciding it on merits after hearing the parties to the said revision who might have been affected thereby.

8. In view of the aforesaid discussion the argument of Sri S.D. Pathak must fail and this writ petition is dismissed summarily.