
(1980) 02 AHC CK 0072

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4502 of 1979

Ramdeo

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 13-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1980) AWC 593 : (1980) RD 324 : (1980) RD 1

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

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; Ram Niwas Singh and Awadhesh Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—In this petition directed against order of Dy. Director Consolidation, in proceedings arising out of allotment of chaks, the question is whether order u/s 48 of the U.P. Consolidation of Holdings Act was passed after affording reasonable opportunity of hearing to parties concerned. The revision was heard earlier, in 1976, but before the order could be pronounced the Deputy Director was transferred. It was again fixed for hearing on 27th July, 1978. The notice of this was served on Petitioner's son who is stated to be minor. There were lengthy arguments by Learned Counsel for parties whether this service was valid and could be taken as sufficient. It is, however, not necessary to decide it as from affidavit and counter-affidavit it is established that Petitioner did appear on this date. The question of service was therefore immaterial as jurisdiction to exercise power u/s 48 is not dependent on service of notice but on affording reasonable opportunity of hearing. The matters did not rest here. The Deputy Director after hearing fixed 31-8-78 for local inspection. The order sheet of this date reads that local inspection has been made and the case is fixed for orders on 1-9-78. On 1-9-78 it was noted that due to heavy work the order could not be passed and the case be fixed for 13-9-78. The case was again adjourned and the

impugned order was passed on 14-9-78. There has again been great deal of argument whether 1-9-78 was the date fixed for judgment. To cut short the matter it may be assumed that it was. The question is did it meet the requirement of law and can it be said that Petitioner was heard. It has been urged by Learned Counsel for opposite parties that Petitioner having been heard on 27-7-78 he was not entitled to hearing again. The argument has no substance. If local inspection would have preceded the hearing on 28-7-78 the Petitioner could have had no grievance. But the order of local inspection, after hearing, indicates that the Revising Authority was not able to decide the revision on material on record. The hearing before local inspection was nullified and Petitioner was entitled to fresh hearing on material obtained after inspection. As this was not done the order is contrary to Section 48.

2. Faced with this difficulty the Learned Counsel for opposite parties raised number of technical arguments. It was argued that petition relates to allotment of chaks therefore this Court should refuse to exercise its extraordinary jurisdiction. The argument is devoid of any substance. It having been found that order was passed without affording reasonable opportunity of hearing the order not only suffered from error of law but it was manifestly unjust.

3. It was then argued that this petition was admitted when Constitution as amended by Forty Second Amendment was in force therefore the Petitioner is not entitled to any relief unless he brings his case within the four corners of amended Constitution. The argument proceeds on misconception as it is admitted that amendment in Article 226 by Forty Second Amendment is not in force to day.

4. The Learned Counsel then argued that Petitioner having submitted to jurisdiction of Dy. Director cannot now challenge it on ground that no hearing was afforded particularly when no such claim was made before him. Reliance was placed on Shahoodul Haque v. Registrar Cooperative Bihar 1974 SC 1896. As regards the Supreme Court decision it relates to hearing of parties before tribunal in service matters. The applicability of principles laid down in these decisions is far fetched. The question is whether Petitioner was heard or not. If he was not heard the Deputy Director committed breach of Section 48 and the order cannot be maintained. It was not for Petitioner to claim opportunity. It was the statutory duty of Deputy Director not to pass the order without hearing parties concerned. It is further doubtful if the date for order could be taken to be date for delivery of judgment. Learned Counsel for Petitioner has filed order sheet of another case of the same officer where the order passed was "parties heard judgment reserved." It is therefore not safe to accept the argument of the Learned Counsel, that although the case was fixed for orders it should be assumed that the Deputy Director Consolidation had fixed the case for delivery of judgment.

5. In the circumstances this writ petition succeeds and is allowed. The order passed by Deputy Director Consolidation is quashed. He is directed to decide the revision afresh after hearing both parties in accordance with law. It shall be open

to Deputy Director Consolidation to decide the case after local inspection. Parties shall bear their own costs.