

(2002) 10 AHC CK 0045

In the Allahabad High Court

Case No : C.M.W.P. No. 8683 of 1982 with W.P. No. 10620 of 1980

Ramraj

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 52
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 109A

Citation : (2003) 2 AWC 1634

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : M.D. Mishra, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.

In both these petitions common questions of law and fact are involved and parties are also the same. They were, therefore, heard together and are being disposed of by this common judgment. Writ Petition No. 8683 of 1982 shall be the leading case.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 8.7.1982 passed by the respondent No. 1 allowing the revision filed by the respondent No. 3, u/s 48 of the U.P. Consolidation of Holdings Act (for short "the Act").

3. The relevant facts of the case giving rise to the present petitioner, in brief, are that in the basic year, khata No. 137 of village Shivasara, district Basti was recorded in the name of petitioner. Respondent No. 3 filed an objection claiming co-tenancy rights in the said khata. Objection filed by the respondent No. 3 was contested and opposed by the petitioner who pleaded that respondent No. 3 had no share in the said khata. Parties in support of their case produced evidence.

The Consolidation Officer, after hearing the parties and perusing the material on record, dismissed the objection filed by the respondent No. 3 on 31.7.1976. The order passed by the Consolidation Officer became final as the validity of the same was not challenged by the respondent No. 3 by filing appeal or revision. In lieu of khata No. 137, the petitioner was allotted chak No. 112.

4. In the same village, there were khata Nos. 46, 71, 103 and 134 which were recorded Jointly in the names of the petitioner and the respondent No. 3 as well as in the name of one Mahadeo. The petitioner as he was a preferential heir on the basis of the following pedigree, claimed the share of Mahadeo as his whereabouts were not known for more than seven years and he was, in the law, presumed to have died civil death. The pedigree of the family is given below :

Laxman /
_____ / / / Ram
Khelawan Ram Niranjana Ram Jas / / / Mahadeo Jamuna Ram Raj / (Petitioner)
Abhai Narain (Respondent NO. 3)

5. The petitioner on the basis of the abovenoted pedigree, as stated above, applied for mutation of his name in place of Mahadeo. The application of the petitioner was contested by the respondent No. 3 who claimed right to the land of Mahadeo. The factum of death of Mahadeo was, however, not challenged. The parties produced evidence. The Consolidation Officer dismissed the objection filed by the petitioner as well as of the respondent No. 3. Challenging the validity of the said order, two appeals were filed, one by the petitioner and the other by the respondent No. 3. The said appeals were decided in terms of the compromise by the Settlement Officer, Consolidation on 11.11.1976. Under the said compromise, it was conceded that khata No. 137 belonged to the petitioner exclusively. After the aforesaid order was passed, it is pleaded that the respondent No. 3 colluded with the officials of the department and also added khata No. 137 in the compromise behind the back of the petitioner. It was on 28.5.1977 that the village where the land in dispute is situated, was denotified u/s 52 of the Act. It has also been pleaded that after doing the forgery and interpolation in the compromise, the respondent No. 3 made an application before the Consolidation Officer for giving effect to the order dated 11.11.1976. The Consolidation Officer, it is stated, without giving any notice to the petitioner, directed to give effect to the said order on 31.7.1979. As soon as the petitioner came to know about the said order, he filed an application on 15.9.1979 stating that fraud was committed by the respondent No. 3 upon the Court and upon him by committing interpolation in the compromise, referred to above. The petitioner also filed an appeal against the order of the Consolidation Officer before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation directed not to give effect to the parutana amaldaramad. The respondent No. 3 filed an objection before the Settlement Officer, Consolidation contending that the village where the land in dispute was situated, was denotified, therefore, the Settlement Officer, Consolidation had no jurisdiction to proceed with the matter. On the

question of jurisdiction, a preliminary issue was framed, which was decided by the Settlement Officer, Consolidation in favour of the petitioner and it was held that he had the jurisdiction to decide the case on merits in exercise of powers under Rule 109A read with Section 52 of the Act, by order dated 15.8.1980. Challenging the validity of the said order, the respondent No. 3 filed a revision before the Deputy Director of Consolidation. The Deputy Director of Consolidation allowed the said revision by order dated 18.9.1980. It may be stated that in the meanwhile, the petitioner filed Civil Misc. Writ Petition No. 10620 of 1980, referred to above, challenging the validity of the orders dated 31.7.1979 and 18.9.1980, referred to above, which was admitted and interim order was also granted in favour of the petitioner, which is connected with this petition.

6. The petitioner also filed an appeal against the order of the Consolidation Officer dated 31.7.1979, before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation, after hearing the parties, recorded clear and categorical finding to the effect that fraud was committed by the respondent No. 3 upon the Court, allowed the appeal and remanded the case to the Consolidation Officer for decision afresh, by his order dated 19.11.1981. Challenging the validity of the said order, the respondent No. 3 filed a revision before the Deputy Director of Consolidation, which was allowed on 8.7.1982. Hence, the present petition.

7. On this petition, notices were issued to the contesting respondents by this Court. On receipt of the notices, the contesting respondent No. 3 filed a counter-affidavit denying the facts stated in the writ petition. The petitioner has also filed a rejoinder-affidavit controverting and denying the facts stated in the counter-affidavit and reiterating and reasserting the facts stated in the writ petition.

8. Learned counsel for the petitioner vehemently urged that since the matter arose out of the proceedings under Rule 109A read with Section 52 of the Act, all questions arising out of the said proceedings shall be considered by the authorities dealing with the application under the said rule and section. It is not necessary to file separate suit for the said purpose. The contesting respondent wanted the authorities concerned to give effect to the forged and fictitious orders and obtained orders from the Consolidation Officer in his favour after the village was denotified u/s 52 of the Act. The moment petitioner came to know about the said fact, he filed an application stating that the compromise which was entered into between the parties, was forged by the respondent in collusion with the authorities of the department. The said question could be properly investigated by the authorities concerned. The Settlement Officer, Consolidation was, thus, right to decide the question of jurisdiction in favour of the petitioner.

9. Section 52 of the Act and Rule 109A read as under (only relevant quoted) :

"52. Close of consolidation operations.--(1) As soon as may be, after fresh maps and records have been prepared under subsection (1) of Section 27, the State Government shall issue a notification in the Official Gazette that the consolidation

operations have been closed in the unit and the village or villages forming a part of the unit shall then cease to be under consolidation operations :

Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix distribute and recover the cost of operations under this Act.

(1A) The notification issued under Sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.

(2) Notwithstanding anything contained in Sub-section (1), any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases or proceedings pending under this Act on the date of issue of the notification under Subsection (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."

"109A. Section 52(2).--(1) Orders passed in cases covered by Sub-section (2) of Section 52 shall be given effect to by the consolidation authorities, authorised in this behalf under Sub-section (2) of Section 42. In case there be no such authority, the Assistant Collector, incharge of the sub-division, the Tahsildar, the Naib-Tahsildar, the Supervisor, Kanungo and the Lekhpal of the area to which the case relates shall, respectively, perform the functions and discharge the duties of the Settlement Officer, Consolidation, Consolidation Officer, the Assistant Consolidation Officer, the Consolidator and the Consolidation Lekhpal respectively for the purpose of giving effect to the orders aforesaid.

(2) If for the purpose of giving effect to any order referred to in Sub-rule (1) it becomes necessary to reallocate affected chaks, necessary orders may be passed by the Consolidation Officer, or the Tahsildar, as the case may be, after affording proper opportunity of hearing to the parties concerned.

(3) Any person aggrieved by the order of the Consolidation Officer, or the Tahsildar, as the case may be, may, within 15 days of the order passed under Sub-rule (2), file an appeal before the Settlement Officer, Consolidation, or the Assistant Collector incharge of the sub-division, as the case may be, who shall decide the appeal after affording reasonable opportunity of being heard to the parties concerned, which shall be final.

(4) In case delivery of possession becomes necessary as a result of orders passed under Sub-rule (2) or Sub-rule (3), as the case may be, the provisions of Rules 55 and 56 shall, mutatis mutandis be followed."

10. In the present case, the respondent No. 3 claimed that the compromise relied upon by him was entered into between the parties before the village was denotified u/s 52 of the Act, was not given effect to in the revenue papers and prayed for giving effect to the said compromise before the Consolidation Officer under Rule 109A. The Consolidation Officer without giving any notice to the

petitioner directed to give effect to the said compromise vide his order dated 31.7.1979. As soon as the petitioner came to know about the said order, he filed an application on 15.9.1979 stating that fraud and forgery was committed by the respondent No. 3 upon the Court and upon him. The order passed by the Consolidation Officer to give effect to the forged compromise was, therefore, liable to be recalled. Simultaneously, the petitioner also filed an appeal against the ex parte order of the Consolidation Officer before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation, after going through the material on record, directed not to give effect to the parwana amaidaramad. The respondent No. 3 before the Settlement Officer, Consolidation, contended he had no jurisdiction to decide the appeal. On the objection raised by the respondent No. 3, a preliminary issue was framed regarding jurisdiction of the Settlement Officer, Consolidation, which was decided in favour of the petitioner on 15.8.1980. Against the said order, the respondent No. 3 filed a revision which was allowed by the Deputy Director of Consolidation by order dated 18.9.1980 against which Writ Petition No. 10620 of 1980, connected with this petition, challenging the orders dated 31.7.1979 and 18.9.1980, has been filed in which on 28.11.1980, the following interim order was granted by this Court :

"Issue notice.

Until further orders of this Court, the operation of the order dated 18.9.1980 passed by the Joint Director of Consolidation, Basti, shall remain stayed."

11. In the appeal filed by the petitioner against the order passed by the Consolidation Officer on the preliminary issue, i.e., the question of jurisdiction, the Settlement Officer, Consolidation, after hearing the parties recorded clear and categorical finding to the effect that fraud was committed by the respondent No. 3 upon the Court, allowed the appeal and remanded the case to the Consolidation Officer for decision afresh, by his order dated 19.11.1981. Challenging the validity of the said order, the respondent No. 3 filed a revision before the Deputy Director of Consolidation, which was allowed on 8.7.1982, hence the petitioner filed Writ Petition No. 8683 of 1982.

12. It is evident from the facts stated above that the proceedings under Rule 109A started after denotification of the village and that the compromise was entered into between the parties before the village was denotified, therefore, in view of the provisions of Section 52 of the Act and Rule 109A, referred to above, the authorities mentioned in Rule 109A will have the jurisdiction to decide all questions which arose in those proceedings. The view taken to the contrary by the Deputy Director of Consolidation is manifestly erroneous and illegal. It is contrary to the provisions of Rule 109A. Further, the fraud and forgery committed was not only against the petitioner but also upon the Court. The Court, therefore, had the jurisdiction to deal with the matter and decide the same. The scope of Rule 109A is quite wide. For the cases covered by the said Rule, the denotification u/s 52 of the Act is of no consequence as by the order passed in the said proceedings, the consolidation authorities, if they are present in the

district, shall be giving effect to the orders passed by the competent consolidation authorities and for that purpose, the consolidation operations shall be deemed not to have been closed as provided under Sub-section (2) of Section 52 of the Act. In view of the aforesaid discussion, both these petitions deserve to be allowed.

13. The abovenoted writ petitions succeed and are allowed. The orders dated 31.7.1979, 18.9.1980 and 8.7.1982 are quashed. The case is remanded to the Deputy Director of Consolidation for decision afresh in the light of the observations made above.

14. A copy of this order may be placed on the record of connected writ petition.