

(2006) 05 AHC CK 0110

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 77616 of 2005

Sabha Sunder, Ram Narayan and Surya Narayan

APPELLANT

Vs

Dy. Director of Consolidation, Ramanand, Shiva Nand and
State of U.P.

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3), 52(1), 9A
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Citation : (2006) 4 AWC 3207 : (2006) 2 RD 81

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : M.K. Nigam and T.S. Shukla, for the Appellant; R.K. Chitragupt,
Ganga Prasad, A.C.S.C. and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—This writ petition is directed against the order dated 14.11.2005, passed by Deputy Director of Consolidation, Siddharth Nagar rejecting Reference No. 102 u/s 48(3) of the U.P. Consolidation of Holdings Act dated 4.3.2005 on application of petitioners.

2. On the date of admission of the case, learned Counsel for petitioners, on the basis of instructions received from petitioners, urged that there is no record of Case No. 4315 decided on 3.12.1982 and entry made in the C.H. Form 23 is forged as no such proceeding was ever pending or prosecuted between the parties in Case No. 4315 decided on 3.12.1982, 1133 or 1144 decided on 22.10.1974. Learned Counsel for petitioners referred to finding in the order of Deputy Director of Consolidation that after twenty years of notification u/s 52(1) of the U.P. Consolidation of Holdings Act, proceeding on application of petitioner to expunge entry in revenue record could not be made and correction, if any, could only be made by the Revenue court under Sections 33/39 of the U.P. Land Revenue Act.

3. On 12th January, 2006, this Court on the pleadings of parties, passed following orders:

Issue notice to Opposite party Nos. 2 & 3.

Learned counsel for Opposite party nos.2 & 3 prays for and is granted 3 weeks" time to file counter affidavit. Rejoinder affidavit, if any, may be filed by learned Counsel for petitioners within two weeks. List thereafter.

In the meantime, I direct Dy. Director of Consolidation, Siddharth Nagar to correct the record ignoring the entry made on the basis of record Ignoring the entry made on the basis of reference No. 102 u/s 48(3) of the U.P. Consolidation of Holdings Act and submit report to this Court within a period of one month.

4. Learned Counsel for Opp. Party Nos. 2 and 3 urged that all these records were available in the Record Room of Collectorate, Basti. He filed an affidavit in support of application for recall of the order dated 12.1.2006 alongwith certified copy of order passed by Deputy Director of Consolidation. Learned Counsel for Opp. Party Nos. 2 and 3 further urged that in compliance to the order dated 12.1.2006, passed by this Court, entry made in the names of Opp. Parties were expunged and possession was also handed over to petitioners on 8.2.2006. After receiving certified copy of the order, learned Counsel for petitioners prayed for summoning the original record. This Court by an order dated 10th April, 2006 directed petitioners to deposit Rs. 10,000/- by 17th April, 2006 and a direction was issued to Deputy Director of Consolidation, Siddharth Nagar to take steps to get the relevant records from the concerned Record Room to make available to this Court on 19th May, 2006. On 19th May, 2006, Sri Harendra Singh, Consolidation Officer, Siddharth Nagar authorized by Deputy Director of Consolidation, Siddharth Nagar appeared before the Court alongwith the original record of C.H. Form Nos. 23 and 45 only. He prayed for and granted three days" time to collect relevant records from Collectorate, Basti. Today, he brought the entire record and produced the same before this Court.

5. Heard learned Counsel for petitioner and learned Counsel for Opp. Party Nos. 2 and 3 and perused the records.

6. The original record relating to Case No. 4315 State v. Sabha Sunder is produced before me. The original record contains the order dated 3.12.1982, passed by the Deputy Director of Consolidation. The order makes it clear that Sabha Sunder was personally present. No objection was filed by him. Reference was accepted. Signature of Sabha Sunder is also available on the record. By this order, order dated 22.10.1974, passed in Case Nos. 1134 to 1144 u/s 9-A of the U.P.C.H. Act was given effect to and amendment was made in Chak Nos. 214, 151 and 3 as per Exhibit A-1. From record, it is clear that in order to give effect to order passed on 22.10.1974 in Case Nos. 1134 to 1144 by Consolidation Officer, reference was prepared and the order was incorporated accordingly. Plot No. 837, 1 Bigha 9 Dhur and Plot No. 839 1 Bigh, 4 Biswa, 9 Dhur was excluded from petitioners" Chak and included in the Chak of Rama Nand. Similarly Plot

Nos. 839 (Min Jumla), 1 Biswa 8 Dhur, 839, 1 Bigha, 12 Biswa 2 Dhur, 379, 3 Biswa, 12 Dhur and 409, 1 Biswa 12 Dhur was excluded from petitioners' Chak and allotted in the Chak of Ambika. Sri Harendra Singh, Consolidation Officer, also produced before me the report dated 20th May, 2006 of A.R.K., Collectorate, Basti which makes it clear that file of Case No. 1133 to 1144 u/s 9-A of the U.P. Consolidation of Holdings Act decided on 22.10.1974 was registered in Goswara of Village Rasiyawal Khurd, Tappa Netwar.

7. From the entire materials available on the record as well as from the original record produced by the Consolidation Officer, aforesaid, and other Consolidation Officials before me, it transpires that after getting the record of Case Nos. 1134 to 144 dated 22.10.1974 weeded out, Sabha Sunder moved some application that the entry in the revenue record is forged and initiated proceeding by moving an application to expunge names of Contesting Opp. Parties. From the record, it appears that correct facts and the enquiry reports were not brought to the notice of the Deputy Director of Consolidation also, who rightly held that as notification u/s 52(1) of the U.P. Consolidation of Holdings Act was made about 20 years back, proceedings cannot be reopened and also made observations that any mistake could only be corrected under Sections 33/39 of the U.P. Land Revenue Act. From perusal of the original record produced before me, I am satisfied that C.H. Form 23 was rightly prepared and the order of the Deputy Director of Consolidation was rightly passed in accordance with law as back as on 3.12.1982. Petitioner No. 1-Sabha Sunder was personally present during the proceedings whose signature is also available on record. It appears that in order to mislead Consolidation authorities as well as this Court also, he initiated proceeding after getting original record dated 22.10.1974 weeded out. It further appears that the original record was to be registered in Goswara of Rasiyakhurd, but was got registered in Goswara of Rasiyakalan. There is nothing on record to show that at whose instance all this was done. The original records also make it clear that C.H. Form 23 was rightly prepared on the basis of the order passed by Deputy Director of Consolidation on 3.12.1982.

8. Photostat copies of original record supplied by learned Standing Counsel shall be kept on record.

9. In the facts of the present case and the materials available on record, this Court is of the view that an effort appears to have been made by the petitioners to mislead Consolidation authorities and this Court as well.

10. In view of the discussions made above, writ petition is liable to be dismissed.

11. As in pursuance of interim order dated 12.1.2006, names of Contesting Opp. Parties were expunged from the revenue records/consolidation records, as stated by learned Counsel for Contesting Opp. Parties, and possession was also handed over on 8.2.2006, in view of the findings recorded hereinabove, the Deputy Director of Consolidation, Siddhart Nagar is directed to take appropriate steps forthwith to restore names of Opp. parties in Revenue/Consolidation records and

restitute possession to the contesting Opp. parties within fifteen days from the date of production of a certified copy of this order.

12. Writ petition is dismissed with cost of Rs. 20,000/- (Rupees Twenty thousand only) payable to Opp. Party Nos. 2 and 3 within a period of six months from today, failing which it shall be recovered from petitioners as arrears of land revenue. The amount of Rupees Ten thousand already deposited by petitioners shall be transferred to District Magistrate, Basti to meet out expenses incurred for production of original records.