

(1982) 07 AHC CK 0004
In the Allahabad High Court
Case No : Civil Misc. Writ No. 9283 of 1980

Sakalraj and Another

APPELLANT

Vs

The Assistant Director, Consolidation and Others

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A

Citation : (1982) AWC 630

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

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; Fauzdar Rai and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Misra, J.—Heard the learned Counsel for the Petitioners and perused the impugned order dated 20th August 1980 passed by the Assistant Director, Consolidation.

2. Briefly stated the facts of the case are that the objection filed by opposite party No. 3 u/s 9A of C. H. Act was dismissed in default on 20th February, 1980. The restoration application was moved by her within limitation. This application was allowed and the case was restored by the Consolidation Officer by order dated 14th March, 1980. Against this order the Petitioner filed revision u/s 48 of C. H. Act which was heard and dismissed by the Assistant Settlement Officer, Consolidation, the opposite party No. 1. Both these orders have been challenged by the Petitioners in this writ petition.

3. Learned Counsel for the Petitioners argued that since no notice was given to the Petitioner by the Consolidation Officer of the restoration application and as such he had acted illegally and without jurisdiction in restoring the case without giving any opportunity of hearing to the Petitioner and without recording a finding on the question of sufficient cause.

4. So far as giving notice to the Petitioner of the restoration application is concerned, I find that the objection was dismissed in default of both the parties and as such the case could be restored on an application moved by the objector even without issuing notice to the opposite party, who was also not present on the date when the objection was dismissed in default of both parties. With regard to restoring the case in the absence of sufficient cause being shown, it may be observed that the application for restoration was filed within time by the opposite party No. 3. Thus no lack of bonafides or inaction can be imputed on the part of opposite party No. 3. There had been litigation prior to consolidation operation which ultimately abated in appeal. In this view of the matter it cannot be said that the opposite party No. 3 had deliberately committed default in not attending the case. In these circumstances I do not find that the Consolidation Officer acted illegally and with material irregularity in the exercise of jurisdiction in restoring the case. The revisional court has noticed the said facts and has confirmed the order passed by the Consolidation Officer. In my opinion, these impugned orders do not suffer from any error of fact, law or jurisdiction so as to call for any interference by this Court in exercise of powers under Article 226 of the Constitution. In the matter of restoration of case liberal view is to be taken in the absence of lack of bonafides or deliberate default on the part of the objector in not attending the case when it was called for hearing.

5. The writ petition being devoid of merit is accordingly dismissed. I, however, direct the parties to bear their own costs. The stay order dated 24-10-80 is hereby vacated.