
(1966) 11 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 485 of 1966

Samharoo

APPELLANT

Vs

The State of UP and Others

RESPONDENT

Date of Decision : 07-11-1966

Acts Referred:

Limitation Act, 1908 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11, 9(1)

Citation : (1967) 37 AWR 220

Hon'ble Judges : W. Broome, J; Jagdish Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—This special appeal is directed against the judgment of G.C. Mathur, J. dated 29-4-1966, dismissing Writ Petition No. 1934 of 1963, filed by the Petitioner Samharoo.

2. The Respondents 5 to 7 had filed objections u/s 9(1) of the Consolidation of Holdings Act (hereinafter called the Act). The objections were filed beyond time. The aforesaid Respondents therefore made an application u/s 5 of the Limitation Act for condoning the delay. The Consolidation Officer condoned the delay by his order dated 29-9-1962. Against the order condoning the delay the Petitioner appealed u/s 11(1) of the Act. This appeal was allowed by the Settlement Officer (Consolidation) and the order of the Consolidation Officer condoning the delay was set aside. Thereupon the Respondents 5 to 7 filed a second appeal u/s 11(2) of the Act. The Deputy Director of Consolidation, holding that no appeal lay against the order of the Consolidation Officer, allowed the second appeal and restored the order of the Consolidation Officer. The Petitioner then made an application u/s 48 of the Act to the Director of Consolidation to revise the order of the Deputy Director of Consolidation. That revision application was dismissed by the Director of Consolidation. Thereafter the writ petition giving rise to this special appeal was filed in this Court.

3. The only submission that was made before G.C. Mathur, J. was that the view of the Deputy Director of Consolidation and of the Director of Consolidation that no appeal lay against the order of the Consolidation Officer allowing the application u/s 5 of the Indian Limitation Act is incorrect. The learned single Judge rejected the submission made on behalf of the Petitioner-Appellant and dismissed the writ petition.

Sec. 11 of the Act reads:

11 (1) Any person aggrieved by the order of the Assistant Consolidation Officer u/s 9 or the Consolidation Officer u/s 10, as the case may be, may, within twenty one days of the date of the order, file an appeal before the Settlement Officer (Consolidation) who shall, after affording opportunity for hearing to the parties concerned, give his decision thereon, which shall, except as otherwise provided in Sub-section (2), be final and not questioned in any court of law.

The only question that calls for consideration is whether an order allowing an application u/s 5 of the Limitation Act would be an order u/s 9 or Section 10 of the Act.

Section 10 of the Act reads:

10. The annual register shall be revised on the basis of the orders passed under Sub-section (1) and Sub-section (2) of Section 9-A. It shall thereafter be prepared in the form prescribed and published in the unit.

(2) Where any entry in the annual register, published under Sub-section (1), is modified in pursuance of an order passed under this Act or under any other law, a reference to the order along with an extract of its operative portion shall be noted against the said entry.

4. The order referred to in this section is the order modifying or refusing to modify an entry, in other words an order on the merits of the controversy between the parties and not an interlocutory order. The order passed in respect of an application u/s 5 of the Indian Limitation Act cannot be an order u/s 10 of the Act.

Sec. 9 reads:

9. Issue of extracts from records and statements and publication of records mentioned in Sections 8 and 8-A and the issue of notices for inviting objections--

(1) Upon the preparation of the records and the statements mentioned in S 8, 8-A, the Assistant Consolidation Officer shall--

(a) Correct the clerical mistakes, if any and send, or cause to be sent, to the tenure-holders concerned and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed showing--

(i) their rights in and liabilities in relation to the land;

- (ii) mistakes and disputes discovered u/s in respect thereof;
 - (iii) specific shares of individual tenure-holders in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation;
 - (iv) valuation of the plots; and
 - (v) valuation of trees, wells and other improvements for calculating compensation therefor and its apportionment amongst owners, if there be more owners than one;
- (b) publish in the unit the current khasra and the current annual register, the khasra chakbandi, the Statement of Principles prepared u/s 8-A and any other records that may be prescribed to show, interalia, the particulars referred to in Clause (a).

(2) Any person to whom a notice Under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication Under Sub-section (1), as the case may be, file, before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or if the Statement of Principles, or the need for partition.

It is clear from a perusal of Section 9(2) of the Act that the objections contemplated by that provision are in respect of either the correctness or the nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or in respect of the need for partition and not in respect of any other matter, including whether an application u/s 5 of the Limitation Act should or should not be allowed. Consequently when Section 11 of the Act spoke of an order u/s 9 of the Act, it contemplated an order passed in respect of the objections mentioned in that section and referred to above by us.

5. The proceedings started on an application u/s 5 of the Indian Limitation Act are separate proceedings from those u/s 9 or Section 10 of the Act. It is only after an application u/s 5 of the Limitation Act is allowed that an objection can be entertained. In other words the proceedings started on an application u/s 5 of the Indian Limitation Act have to precede those relating to the objections. It is true that the application u/s 5 is made for entertaining a time-barred objection, but that does not mean that that is an application made u/s 9 or 10 of the Act or that an order passed on it is an order passed u/s 9 or 10 of the Act. That is an application only for permission to invoke the provisions of Sections 9 and 10 of the Act. It is a proceeding which is fully concluded before the actual proceedings u/s 9 or 10 are started. There is no reference to an order passed in respect of an application made u/s 5 of the Indian Limitation Act either in Section 9 or Section 10 or Section 11 of the Act. Under these circumstances, we are satisfied that the view taken by the learned single Judge is correct and does not require any interference.

6. The appeal has no merits and is accordingly rejected.