
(2013) 07 AHC CK 0281
In the Allahabad High Court
Case No : Writ-B No. 33524 of 2014

Sanjay Tyagi

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 124 RD 608

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J.—Heard Shri Ashok Kumar Singh and Shri Rakesh Pandey, learned Counsel for the petitioner and Shri V.K. Singh, who filed caveat on behalf of respondent Nos. 2 and 4. Notices are not being issued to the respondent Nos. 3 and 5 in the writ petition in view of the order proposed to be passed. However, it will be open to the said respondents to prefer a recall application in case, they feel aggrieved by this order.

2. The dispute in the writ petition pertains to Khata No. 225 which was recorded in the name of Ramanandi. Respondent Nos. 2 and 3, are the sons of Ramanandi while the respondent Nos. 4 and 5 are the sons of Jai Chandra a predeceased son of Ramanandi and, therefore, the grand-sons of Ramanandi.

3. It appears from the record that Ramanandi died in 1984 whereupon her husband Attar Singh is said to have been mutated over the land in question by an order passed by the Assistant Consolidation Officer on the basis of a Will said to have been executed in his favour by Ramanandi. Consequent to his mutation, Attar Singh sold the property in dispute in favour of Lilawati who is also said to have been mutated over the same. The petitioners are sons of the Lilawati.

4. The order of the Assistant Consolidation Officer passed on the basis of a compromise between the Attar Singh and members of the Consolidation Committee on 6.2.1984 was challenged by means of an appeal by the contesting

respondents on 21.6.2013. The Settlement Officer, Consolidation by his order dated 2.12.2013 dismissed the appeal as barred by time. The consequential revision No. 7 filed by the contesting respondents was allowed by the Deputy Director of Consolidation by the impugned order dated 29.5.2014. The Deputy Director of Consolidation by this order has not only set aside the order passed by the Assistant Consolidation Officer on 6.2.1984, he has also decided the matter on merits and had directed that the contesting respondents be recorded over the land in dispute being the sons and heirs of the Ramanandi.

5. Learned Counsel for the petitioner has submitted that since the appeal had been dismissed as barred by time, the scope of the revision was limited to the question as to whether or not the order was justified and as to whether the delay in filing the appeal was liable to be condoned and in deciding the matter on merits of the rival claims, the Deputy Director of Consolidation has exceeded his jurisdiction.

6. In rebuttal Shri V.K. Singh has submitted that in view of the Explanation 3 of section 48, the Deputy Director of Consolidation is the last Court of fact and it is well within his jurisdiction to appreciate the evidence on record and record findings both on facts and law as are justified by the evidence on record. He, therefore, submits that the order impugned has been passed in exercise of the powers conferred by such explanation and calls for no interference.

7. Upon a consideration of the rival submissions and upon a perusal of the record it emerges that the order passed by the Assistant Consolidation Officer was so passed on the basis of an alleged compromise. The objector, Attar Singh and only the members of the Consolidation Committee were signatories to this compromise. This order of the Assistant Officer was not on merits and the appeal filed by the contesting respondents after a lapse of almost 29 years was dismissed as time barred. It, therefore, emerges that even the Settlement Officer, Consolidation did not consider the rival claims on merits.

8. At this stage, it would be relevant to refer to the Explanation 3 of section 48 which has been relied upon by the learned Counsel for the respondents. The provision is quoted below.

"5. [Explanation (3)--The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence]"

9. A perusal of this explanation 3 reveals that it empowers the Deputy Director of Consolidation to examine any finding whether on fact or law recorded by the subordinate Courts and to record his own and contradictory finding after appreciation of any oral and/or documentary evidence that may be available on record.

10. From the facts which has been noticed above, it is clear that none of the first

two consolidation authorities recorded any finding on the merits of the rival claims and in such circumstances, in my considered opinion, the Deputy Director of Consolidation could not appreciate the evidence and record its own findings. The power conferred upon him is only to re-appreciate the evidence and record findings that may be contradictory to one that has been recorded by the subordinate authorities. In the instant case since the subordinate authorities never recorded any finding, it cannot be said that the Deputy Director of Consolidation has recorded a different finding on appreciation of the evidence. Even otherwise it is not clear as to what evidence was available on record. The order of the Assistant Consolidation Officer having passed on the basis of compromise, there was no occasion for any evidence having been adduced on record. The Appellate Court dismissed the appeal as barred by time. It is therefore, clear that even before the Appellate Court there was no occasion to adduce any evidence nor there was any necessity for the same.

11. In view of the discussion above, the order passed by the Deputy Director of Consolidation cannot be sustained and is liable to be set aside.

12. Accordingly, I allow the writ petition and set aside the order passed by the Deputy Director of Consolidation on 29.5.2014 and remand the matter to the Settlement Officer, Consolidation, Ghaziabad to afford opportunity of adducing evidence to the parties and thereafter hear them on merits and decide the appeal as expeditiously as possible preferably within four months from the date of production of certified copy of this order before him. Needless to say the Settlement Officer, Consolidation shall decide the appeal on its merits without being influenced by any observation that may have been made by the Settlement Officer, Consolidation as also the Deputy Director Consolidation. He may also ensure that no unnecessary adjournment is granted to the parties. Accordingly and subject to the aforesaid directions, this writ petition is allowed.