
(2012) 02 AHC CK 0391
In the Allahabad High Court
Case No : C.M.W.P. No. 6000 of 2012

Santosh Kumar

APPELLANT

Vs

D.D.C., Farrukhabad Camp, Kannauj and others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 6 AWC 6461

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Manoj Kumar Srivastava and R.K. Pandey, for the Appellant;
Rajendra Prasad, J.N. Singh, Arimardan Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri R.K. Pandey alongwith Sri Manoj Kumar Srivastava, learned counsel for the petitioner, Sri Rajendra Prasad Singh and Sri Arimardan Singh for contesting respondent Nos. 4 to 11 and the learned standing counsel for respondent Nos. 1 and 2. This is a peculiar case where the allegation against the Deputy Director of Consolidation is that he has stepped out of the crease of his jurisdiction and has flogged the ball of justice outside the boundaries defined in law. The submission is that the Deputy Director of Consolidation has definitely passed this order for extraneous considerations when he was about to retire on 31.12.2011.

2. An order came to be passed by the Consolidation Officer in favour of the petitioner on 23.8.1966. The respondents filed a heavily time barred appeal against the said order after 44 years on 16.2.2010. The delay was not condoned and the appeal remained pending when it came to be dismissed in default on 7.10.2010. The respondents on the very next day filed a restoration application without intimation to the petitioner and the said restoration was allowed on the same day.

3. The contention of Sri Pandey is that the petitioner had no notice or knowledge

of the alleged proceeding of restoration and the appeal, after being restored, was fixed for hearing on 21.4.2011. On that date, the appeal came to be fixed for delivery of orders on 29.4.2011. At this stage. the petitioner, on coming to know of these ex parte proceedings, filed a revision where the date was fixed for 30.12.2011.

4. It is thereafter that the story takes the peculiar turn giving rise to the present petition. The respondents moved an application for preponing the date of revision on the ground that the respondent in the revision had to proceed for his medical treatment. The Deputy Director of Consolidation preponed the date for 28.12.2011 and by the impugned order dated 28.12.2011 has not only dismissed the revision filed by the petitioners but has also allowed the appeal on merits filed by the respondents.

5. Sri Pandey submits that this strange procedure clearly smacks of mala fides and is an order without jurisdiction.

6. Learned counsel for the respondents submits that they do not propose to file any counter-affidavit at this stage and the matter be disposed of finally on the basis of material already on record.

7. On a perusal of the documents on record and the order-sheet, it is more than transparent that the Deputy Director of Consolidation has committed a serious error and also as what can be termed as judicial impropriety by preponing the date immediately before retirement on the application moved by the respondents who are also respondents in the revision. Not only this, even assuming for the sake of argument that the Deputy Director of Consolidation could have proceeded to decide the matter, at the best if there was anything adverse against the petitioner, their revision could have been dismissed and nothing beyond that. The Deputy Director of Consolidation has accommodated a double benefit to the respondents by virtually allowing the pending appeal on merits as well. The order is, therefore, absolutely unsustainable being against the settled canons of law inasmuch as, justice should not only be done, but should also seem to have been done. The writ petition is allowed and the order dated 28.12.2011 is quashed. The Deputy Director of Consolidation shall now decide the revision afresh within 2 months from the date of production of a certified copy of this order before him.