
(2015) 04 AHC CK 0265
In the Allahabad High Court
Case No : Consolidation No. 614 of 2007

Sarveshwar

APPELLANT

Vs

Deputy Director, Consolidation, Unnao and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 129 RD 412

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : V.K. Pandey, for the Appellant; Govind Saran Nigam, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Matter is taken on the revised cause list. None present on behalf of O.P. Nos. 2 and 3.

2. Heard Sri V.K. Pandey, learned Counsel for petitioner, learned State Counsel as well as Sri G.S. Nigam on behalf of O.P. No. 4/Rukmani and perused the record.

3. Facts in brief of the present case as submitted by learned Counsel for petitioner are that initially the land which has been recorded as Gata No. 1684 is belongs to one Sri Sobh Nath as bhoomidhar during the consolidation proceeding an area 1-8-3 hectare of the land is disputed land under consolidation proceedings. And at the stage of Assistant Consolidation Officer the petitioner has been given first chak including Gata No. 247/0-1-0, 248/0-5-0, 251/0-0-4, 252/1-17-8, 254/0-0-16 and 322/0-5-18 and second chak at Gata No. 1684 area 2 Bigha.

4. Aggrieved by the orders passed by Consolidation Officer/Assistant Consolidation Officer, thereafter O.P. 2 & 3 filed appeals before the Settlement Officer Consolidation, however, in the said matter he was not arrayed as party on one hand and on the other hand a prayer has been made that they may be given whole chak at Gata No. 1684, Settlement Officer Consolidation dismissed the

appeal by order dated 27.06.2006.

5. Aggrieved by the said order, four revisions have been filed, namely Revision No. 405 (Sunder v. Ram Swaroop and others), Revision No. 407 (Rajpal v. Anil Kumar and others), Revision No. 460 (Rajesh Kumar v. Rukmini and others) and Revision No. 761 (Gaya v. Rukmini and others) under section 48 of the Consolidation Act, decided by means of order dated 31.7.2009, relevant portion quoted as under:--

6. Aggrieved by order dated 31.7.2009 passed by Dy. Director of Consolidation in Revision No. 761 (Gaya v. Rukmini and others), present writ petition has been filed.

7. Learned Counsel for the petitioner while challenging the impugned order submits that in Revision No. 761 (Gaya v. Rukmini and others), the petitioner was not impleaded as party and without providing any opportunity whatsoever the impugned order has been passed behind the back of the petitioner, as initially the petitioner has been given chak at Gata No. 1684 by Assistant Consolidation Officer at the time of start of the consolidation proceeding, however, the Dy. Director of Consolidation without providing any opportunity of hearing whatsoever to the petitioner, by means of an ex-parte order has reverted the said position, hence the impugned order is arbitrary as well in violation of principles of natural justice, liable to be set aside.

8. Sri G.S. Nigam, learned Counsel for O.P. No. 4/Smt. Rukmini has submitted that the pedigree as given by the petitioner in the writ petition is not correct, it is incorrect on the part of the petitioner to state that Shobh Nath the exclusive tenure holder of plot No. 1684. In fact, all the three sons of Chandra Shekhar had share to the extent of 1/3rd in plot No. 1684. In this regard, reliance has been placed by him on the document as contained as Annexure No. CA-1 and CA-2 of the counter-affidavit i.e. C.H. 23.

9. Learned Counsel for O.P. No. 4 further submits that out of the total area of plot No. 1684/2, 1 Bigha, 8 Biswa, 3 Bisawansi with valuation of 30 paise, the petitioner was allegedly allotted 2 bigha land with 20 paise valuation at the level of Assistant Consolidation Officer However, this entry was found to be incorrect, as such the O.P. No. 1, ex-eluded an area of 1 Bigha, 12 Biswa and 02 Biswansi out of total area of 2 Bigha from plot No. 1684 and in lieu thereof allotted an area of 5 Biswa 5 Biswansi with valuation of 30 paise out of plot No. 1300 and an area of 19 Biswa 11 biswansi with valuation of 30 paise out of plot No. 1298 total 1 Bigha, 4 Biswa and 16 Biswansi with the clear endorsement that the entries are doubled in the record. The similar mistake was found in the entry against Vijay Kumar, hence an area of 19 Biswa 6 Biswansi had been expunged out plot No. 1684 and in lieu thereof was granted an area of 9 Biswa 15 Biswansi of plot No. 1279 as is clear from Sanshodhit Talika attached with the order of O.P. No. 1.

10. Accordingly, learned Counsel for O.P. No. 4 submits that out of the excluded area of plot No. 1684, the O.P. No. 1 has not allotted any portion to the O.P. No.

4 nor the chak of the O.P. No. 4 has been affected by the said order nor the petitioner has ever raised any grievance against the O.P. No. 4 either before the Consolidation Officer or Settlement Officer (Consolidation) or O.P. No. 1, as such the impleadment of the O.P. No. 4 as O.P. No. 4 in the instant writ petition is nothing but a device to create harassment to her. Plot No. 1684 has a total area of 13 Bigha 10 Biswansi out of which 3 Bigha 17 Biswa 14 Biswansi has doubly been allotted, as such, when the mistake was detected, Dy. Director of Consolidation rectified the same and already compensated the petitioner by way of providing land of other plots of the similar valuation, so the grievance as made by petitioner is totally incorrect and wrong, hence writ petition is liable to be dismissed.

11. I have heard learned Counsel for parties who are present and perused the record.

12. From the perusal of the record, which is Jot Chakbandi Patra-5 prepare as per Rule 25 (Kha) of the Consolidation Rule initially Sob Nath S/o. Chandra Shekahr was the recorded bhoomidhar of the land having Chak No. 1684, thereafter from the perusal of the Khatauni, filed by the petitioner (Annexure No. 3-A) at the time of starting of the consolidation proceeding, and at the stage of the Assistant Consolidation Officer the petitioner has been allotted the land of 2 Bigha in Chak No. 1684. And from the perusal of the appeal filed by Gaya Prasad aggrieved by the order dated 24.7.2006 passed by Settlement Officer Consolidation in appeal No. 266 under section 21(2) of the Act, the petitioner was not impleaded as party.

13. Even before the Dy. Director of Consolidation, the petitioner was not impleaded as party in the revision and the order dated 24.7.2006 has been passed without providing opportunity of hearing to the petitioner, thus, the same is in violation of principles of natural justice because it is well settled that denial of natural justice in a modern society is not acceptable. India has a progressive society and a modern constitution. Natural justice is a parameter of all the modern constitution of the world.

14. It is difficult to define natural justice. I find that Black J has most aptly described it as "Natural justice understandably meant no more than justice without the adjective" (Green v. Blake) (1948) IR 242. Justice Krishna Iyer in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , has traced its root in Kautilya's Arthashastra in following terms,

"Indeed, from the legendary days of Adam -- and of Kautilya's Arthashastra -- the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In the case of Bhagwan Shukla Vs. Union of India and others, , where in paragraph No. 3 (relevant portion) held as under:--

"The appellant has obviously been visited with civil consequence but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being hears. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequence should be passed without putting the employee concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant."

15. In the case of Union of India (UOI) Vs. Sandur Manganese and Iron Ores Ltd. and Others, . Hon"ble the Supreme Court in paragraph No. 3 held as under:--

"The principles of natural justice embody the right to every person to represent his interest to the Court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given a chance to represent his/its case is unacceptable under the principles of natural justice."

16. Keeping in view the said facts as well as from the perusal of the impugned order/material on record, the position which emerged out that prior to passing of the impugned orders by Dy. Director of Consolidation no opportunity has been given to the petitioner, so the same is liable to be set aside. For the foregoing reasons, the writ petition is allowed, the impugned order dated 31.7.2009 is set aside so far it relates to Revision No. 761 (Gaya v. Rukmini and others) and the matter is remanded back to the O.P. No. 1 to decide afresh after giving opportunity to the parties concerned.