

(1979) 03 AHC CK 0019
In the Allahabad High Court
Case No : C.M. Writ Petition No. 5488 of 1973

Satrujeet and Others

APPELLANT

Vs

Deputy Director and Others

RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 48(1)

Citation : (1979) AWC 282 : (1979) RD 154

Hon'ble Judges : Satish Chandra, C.J.; Yashoda Nandan, J

Bench : Division Bench

Advocate : S.P. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, C.J. and Yashoda Nandan, J.—Aggrieved against the order of the Settlement Officer (Consolidation) passed in proceedings for allotment of chaks, Ram Nidhi, Respondent No. 2, and others filed a revision u/s 48 of the U.P. Consolidation of Holdings Act. Babu Ram and Dubri, who had been allotted chak No. 33, were impleaded as opposite parties to the revision. But Raja Ram, who had also been allotted chak No. 33 jointly with Dubri and Babu Ram, was not impleaded. Summonses of the revision were, in the normal course, issued to Dubri and Babu Ram alone. It is not disputed that Raja Ram or his heirs were not afforded an opportunity of being heard before the disposal of the revision.

2. It appears that Raja Ram was dead. His heirs filed a writ petition in this Court and urged that the order passed by the Deputy Director changing the allotment of chaks made by the Settlement Officer (Consolidation) was without jurisdiction because Raja Ram had not been afforded an opportunity of being heard. Raja Ram was a necessary party because he had been allotted chak No. 33 along with other persons. Since the revision involved variation of that chak, he was a party concerned within meaning of Section 48 of the Act. In support, reliance was placed upon Sheo Prasad v. Chhoteylal 1966 R.D. 375. The Respondents invited the attention of the learned single Judge to Syed Mohd. Reyaz v. Dy. D.C.

Mathura 1971 R.D. 305 where a slightly different view was taken. In view of this conflict, the learned single Judge referred the writ petition to a Division Bench. That is how the matter has been placed before us.

3. Raja Ram was the holder of a chak along with his brothers Dubri and Baburam. He was a party in proceedings before the Consolidation Officer as well as the Settlement Officer (Consolidation). In revision, he was not impleaded as a party though his other two brothers were impleaded. In fact Raja Ram or his heirs were not heard by the Deputy Director.

4. Section 48(1) of the U.P. Consolidation of Holdings Act provides:

48 Revision and reference-(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.

5. It is evident that the Director can examine the record of any case and satisfy himself as to the regularity of the proceedings, or as to the correctness, legality or propriety of any order passed therein and can make such order in the proceedings as he thinks fit, but only after the parties concerned have been afforded an opportunity of being heard. It is evident that the Director had no jurisdiction to make any order in exercise of the revisional jurisdiction u/s 48 without affording the parties concerned an opportunity of being heard.

6. It is well settled that the parties cannot waive or confer jurisdiction. In other words, the existence of jurisdiction does not depend upon consent of parties, though in some cases the exercise of that jurisdiction may. When affording an opportunity of being heard is a statutory condition precedent to the existence of jurisdiction, it cannot be waived or ignored on the plea that no prejudice has been caused to the person who was not afforded an opportunity of being heard. The question of waiver or prejudice is neither material nor relevant to the legal position that the order which was without jurisdiction was, in law, void.

7. In *Sarvadaman Rai Vs. Dalganjan Rai and Others*, a learned Judge of this Court has held that a necessary party must be afforded an opportunity of hearing. If such party is not heard, the revisional order is without jurisdiction. The learned Judge had referred to a series of decisions of this Court which has taken the same view. In this Court, the consistent view has been to that effect. The only discordant note was sounded by learned single Judge in *Syed Mohd. Reyaz v. Dy. D.C. Mathura* (supra). In that case, a joint chak was allotted to three brothers. In the revision, only one of the brothers was impleaded. It was held that there was nothing to suggest that there was a conflict of interest between the brothers and that the brother, who was impleaded represented his other brothers also in the revision. In our opinion, this decision does not lay

down the law correctly. When three brothers are parties to the proceedings of allotment of chaks right from the beginning, it cannot be assumed that one represented the others. Evidently, there was no finding by the Dy. Director that one represented the other two brothers. This could not be assumed. Further the brothers who were not impleaded were undoubtedly parties concerned within meaning of Section 48. They had to be afforded an opportunity of being heard.

8. In R.K. Singh v. Dy. Director of Consolidation 1974 RD Suppl 262, a Full Bench of this Court held that where the Dy. Director of Consolidation wishes to act suo motu he shall give notice to all the necessary parties irrespective of whether they were or were not impleaded and after giving them a reasonable opportunity of hearing pass such orders as he may think fit. We respectfully accept this proposition. The crucial thing is that the parties concerned should be afforded an opportunity of being heard. Even if a concerned party is not impleaded but is afforded an opportunity of being heard, the order will be within jurisdiction. In the present case Rajaram who was a party concerned was neither Impleaded nor afforded an opportunity of being heard. The revisional order was without jurisdiction and void.

9. In the result, the writ petition succeeds and is allowed. The impugned order of the Deputy Director of Consolidation disposing off the revision is set aside and the matter is sent back to him to decide the revision in accordance with law. The Petitioner will be entitled to costs.