
(2013) 11 AHC CK 0028
In the Allahabad High Court
Case No : Writ B. No. 61447 of 2013

Satyadev (Deceased) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 121 RD 648

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : G.S. Mishra and Siddharth Verma, for the Appellant; R.P.S. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Siddharth Verma, Counsel for the petitioners and Sri Manoj Yadav, holding brief of Sri R.P.S. Yadav, Counsel for the respondents. The writ petition has been filed against the orders of the Settlement Office, Consolidation date 21.2.2006 and the Deputy Director of Consolidation dated 8.6.2006 and 5.8.2013 passed in proceeding u/s 9-B of U.P. Consolidation of Holdings Act, 1953(hereinafter referred to as "the Act").

2. Admittedly plot No. 227/1 is the original holding of Satyadev as well as respondent Nos. 4 and 5, who are brothers. It is also admitted that plot No. 227/1 situates by the side of the road and is a land of commercial value. Initially, the valuation of plot No. 227/1, 0.661 hectare was determined. Ramdev, respondent No. 4 filed an objection (registered as Case No. 284/1181) u/s 9-B of the Act and claimed that since the land situates on the road side and had commercial value, accordingly, in case valuation is determined, the original tenure holder will suffer irreparable loss. Initially the Consolidation Officer by order dated 31.10.2000 allowed the objection and left plot No. 227/1 as chak out. Thereafter Satyadev, the petitioner, filed a recall application which has been allowed by the Consolidation Officer by order dated 7.11.2005. The Consolidation Officer held that when the valuation of plot No. 227/1 is determined the partition

of all the co-sharers will be effected by giving their share in their chaks. Accordingly, the earlier order dated 31.10.2000 was recalled.

3. Ramdev and Shyamdev, respondent Nos. 4 and 5 filed an appeal (registered as Appeal No. 3) from the aforesaid order which has been heard by the Settlement Officer, Consolidation, Mau who by order dated 21.2.2003 found that during spot inspection plot No. 227/1 was found by the road side while the abadi of the parties were situated in plot Nos. 27/2 and 227/3 and these plots were already out of consolidation area. Since plot No. 227/1 is on roadside, accordingly, being the land of commercial value he according to the circular of the Consolidation Commissioner, U.P. Lucknow left the entire area of plot No. 227/1 as chak out. The petitioner filed a revision (registered as Revision No. 634/694) from the aforesaid order, which has been dismissed by the Deputy Director of Consolidation by order dated 8.6.2006. The petitioner thereafter filed a recall application, which has been dismissed by order dated 5.8.2013.

4. The Counsel for the petitioner submits that section 9(2) of the Act contemplates for filing of an objection before the Assistant Consolidation Officer within 21 days of the receipt of the notice. In this case no objection has been filed before the Assistant Consolidation Officer. He further submits that the procedure for disposal of objection u/s 9-B of the Act provides that the Assistant Consolidation Officer after consulting the members of the Consolidation Committee shall submit a report to the Consolidation Officer for disposal of the objection u/s 9-B of the Act. However, in this case no objection was filed and the valuation of the plot in dispute was determined, accordingly, the Consolidation Officer has no jurisdiction to entertain objection directly.

5. I have considered the arguments of the Counsel for the petitioner and examined the record. By virtue of power u/s 44-A of the Act superior authority has been given jurisdiction to exercise power of the inferior authority. In such circumstances the Consolidation Officer has not committed any illegality in entertaining objection u/s 9-B of the Act. The matter was heard and the delay was condoned and by order dated 31.10.2000 the Consolidation Officer has left plot No. 227/1, area 0.661 hectares as chak out but subsequently he has recalled his order by the impugned order dated 7.11.2005 only on the ground that if valuation is determined then the parties will get their shares otherwise the plot will remain disputed being a joint plot. Here it may be mentioned that even if plot is out of consolidation area then also in exercise of powers u/s 9-C of the Act the Consolidation Officer was competent to partition the plot on the spot among three brothers. Thus, the observation of the Consolidation Officer in this respect was wholly uncalled for. The Settlement Officer, Consolidation found that the land being the road side land accordingly, in view of the circular of the Consolidation Commissioner, U.P. he has left the land as out of consolidation area. The order of the Settlement Officer, Consolidation does not suffer from any illegality. However, in case the petitioner wants partition of the land he may move an application u/s 9-C of the Act, if the village is still under consolidation

operation. In case any application is filed then it shall be disposed of in accordance with law.

With the aforesaid observation the writ petition is dismissed.