

(1993) 10 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21282 of 1995

Shafiq and Others

APPELLANT

Vs

Deputy Director, Consolidation and Others

RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:

Constitution of India, 1950 — Article 137, 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1994) 1 AWC 351 : (1994) RD 59

Hon'ble Judges : S.R.Singh, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—This writ petition is directed against the judgment and order dated 7-7-1993 whereby the Deputy Director of Consolidation, Ballia has recalled his earlier order dated 18-6 1993 on an application moved on behalf of the Respondent Surya Deo.

2. Learned counsel for the Petitioner urged that the order dated 18-6-1993 was passed by the Deputy Director of Consolidation on merits after affording opportunity of hearing to the parties and, therefore, urged the learned counsel, it was not liable to be reviewed or recalled in absence of any express statutory power of review. Learned counsel for the Respondent refuted the submissions made by the learned counsel for the Petitioner and urged that the order dated 18-6-1993 was passed without affording opportunity of hearing to Respondent No. 2 and that it was based upon erroneous assumption of certain facts which did not exist as also upon ignorance of correct state of facts relevant to exercise of revisional power u/s 48 of the U.P. Consolidation of Holdings Act.

3. The first question to be considered is whether the Deputy Director of Consolidation has the power to review/recall an order passed by him u/s 48 of

the U.P. Consolidation of Holdings Act and if so on what grounds.

4. In *Qadam Singh v. Ganga Saran*, 1960 AU 838 a Division Bench of this Court held as under:

Section 48 certainly confers upon a Deputy Director of Consolidation the powers to pass such orders as he thinks proper but having passed such orders it does not expressly, nor, by implication confer upon him the power to set aside his earlier order and pass another order in its place.

5. In *Kalika Prasad Vs. Additional Commissioner, Agra Division and Others*, , it has been held:

From the examination of these authorities, it is clear that the power to review can only be exercised if it has been expressly conferred by the Statute. There is no inherent powers given to the Courts to reconsider their orders once passed unless the power of review is granted expressly under the provisions of the Statute.

6. In *Debi Prasad and Others Vs. Khelawan and Others*, , it was held that as a general rule no Court or Judge has power to rehear, review, alter or vary any judgment or order after it has been rendered or drawn up respectively.

7. In *Laxman Purshottam Pimpuktar v. State of Bombay* AIR 1964 SC 437, it was observed as below:

When an authority exercises its revisional powers, it necessarily acts in a judicial or quasi-judicial capacity. Therefore, the Government Order of October, 1946, must be deemed to be a judicial or a quasi-judicial order. Such an order cannot be set aside or revised or modified just as an administrative order can be.....and in the absence of any express provision empowering it to review the order we are clear that the subsequent order made by the Government (sic) jurisdiction.

8. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, , K. S. Hegde, J. speaking for the Supreme Court observed as under:

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

9. It may be observed that although the Supreme Court held in *P. N. Thakershi* case (supra) that the power to review is not an inherent power but it maintains that such a power may be inferred/gathered by necessary implication.

10. Rigours and inhibitions against review of an order as laid down in the afore-stated cases have since been diluted to a great extent in a recent decision of the Supreme Court in *S. Nagaraj v. State of Karnataka*, JT 1993 (5) SC 27, his Lordship R. M Sahai, J. speaking for the majority has laid down the law as under:

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone.....Even the law bends before justice.....if the Court

finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as a valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court....Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.

11. Earlier decisions to the extent they run counter to the aforesaid dictum of law have to be ignored as no longer lying down good law.

12. In *Smt. Lachmana alias Hubrafa v. Deputy Director of Consolidation, U.P., Lucknow*, 1966 RD 419 the question arose as to whether the Deputy Director of Consolidation could recall his earlier order or substitute it by another order under his inherent power. Jagdish Sahai, J., who spoke for the Bench, observed as under:

It is, however, settled that every Court or Tribunal has inherent jurisdiction apart from statutory jurisdiction to correct any " error committed by itself. This power is based on a legal maxim which is to the effect that no party shall suffer because of the fault of the Court or Tribunal.

13. Relying on the Division Bench decision in *Smt. Lachmana's case* (supra) K. N. Srivastava, J. held in *Gaon Sabha Nibi v. D.D.C. Lucknow* camp at Mirzapur 1969 RD 135 as under:

The main point which emerges from these decisions is that even if the Tribunal or Court had not been provided under statute with the power to review its judgment they can do so under inherent power provided the act of the Tribunal or Court is not likely to cause injustice to some one else.

14. The Division Bench decision in *Smt. Lachmana's case* (supra) and that of the Single Judge in *Gaon Sabha Nibi*, (supra) are fortified by the pronouncement of the Supreme Court in *S. Nagaraj's case* (Supra). The Supreme Court decision in *S. Nagaraj* (supra) leaves no manner of doubt that the Deputy Director of Consolidation does have the power to review/recall or modify an order on limited ground/grounds that the order was passed on mistake of law or fact, fraud or mis-representation or on the ground that the order sought to be reviewed if allowed to stand would result in perpetration of injustice. Although the pronouncement of the Supreme Court in *S. Nagaraj's case* (supra) has been made in the context of (the power of the Court under Article 137 of the constitution read with order 47 of the Rule-1 of the CPC but, in my opinion, the principle of law enunciated there-in is of universal application being based on salutary principles of justice and equity. The very object of creation and existence of Court or Tribunal is to secure the ends of justice if necessary by

rectifying its own mistake. All that is required is that the exercise of power of review/recall must be bonafide one and it must also conform the principle of natural justice and it must not be a rehearing like an appeal in disguise. Having regard to the nature, scope and ambit of writ jurisdiction under Article 226 of the Constitution and the delay that takes place in final disposal of writ petitions resulting in huge arrears of cases and work load, a limited power of review has to be read, as of necessity and expediency, in section 48 of the U P. Consolidation of Holdings Act. Accordingly the submission made by the learned counsel for the Petitioner that the Deputy Director of Consolidation had no power to review or recall his order cannot be countenanced.

15. The question, however, that arises for consideration in this case is whether the Deputy Director of Consolidation was justified, in the facts and circumstance of the case, to allow the review application. A perusal of the order dated 7-7-93 would indicate that the Deputy Director of Consolidation has not recorded requisite finding in justification of the exercise of the limited power of review impliedly conferred in him for the purposes of advancing the cause of justice. In my opinion, for the sustenance of an order reviewing or recalling an earlier order passed on merits, the Deputy Director of Consolidation has to record a categorical finding that the order sought to be reviewed is vitiated due to some mistake or error apparent on the face of record which occurred due to the reason of ignorance or erroneous assumption of fact or law, that it was passed due to reason of fraud played on or misrepresentation made to the Court, and/or that it was passed without comprehending and considering the rival contentions/claims of the parties and the failure to do so has resulted into miscarriage of justice etc. The earlier order dated 18-6-93 though passed on merits after affording opportunity of hearing to the parties concerned yet it could be reviewed/recalled on the ground or grounds aforesaid. Since no finding has been recorded on existence of one or more of the grounds aforesaid, therefore, the impugned order dated 7-7-93 as it stands cannot be sustained.

16. Accordingly, the writ petition succeeds and is allowed. The impugned order dated 7-7-1993 is quashed. The Deputy Director of Consolidation shall re-admit the review application to its number and decide it afresh in accordance with law and in the light of the observations made in the body of this judgment.