

(1976) 12 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3561 of 1971

Shakoor and others

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 14-12-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1976) 12 AHC CK 0023

Hon'ble Judges : P.N.Bakshi, J

Final Decision : Allowed

Judgement

P. N. Bakshi, J.

In this writ petition objections have been filed under section 20 of the Consolidation of Holdings Act by the petitioner. These objections appear to have been finally decided in second appeal prior to 831963. As a matter of fact it is also clear from the records that a revision from the second appellate order of the Deputy Director of Consolidation was filed before the Joint Director of Consolidation on 2411963 long before 831963. This revision appears to have been filed beyond limitation. The matter was canvassed in the High Court and Mr. Justice R. L. Gulati vide his judgment dated 2531968 remanded the case for decision on the merits to the Joint Director of Consolidation, on the view that the question of limitation had been incorrectly decided. A preliminary objection was taken before the Deputy Director Consolidation, Meerut who was acting as Director of Consolidation under section 48 of the Consolidation of Holdings Act, while disposing of the remanded case before him. The preliminary objection was to the effect that in view of the explanation added to U. P. Act 18 of 1968, the Deputy Director (Consolidation) was not an authority subordinate to him and as such, the revision was not maintainable. This objection prevailed with the Director of Consolidation who dismissed the revision on this preliminary objection vide his order dated 4121970, hence this writ petition.

Learned counsel for the petitioner has submitted that the Director of Consolidation has committed a legal error apparent on the face of the record in not entertaining the revision. He argues that since the revision had been filed on 24.11.1963 long before 8.3.1963 the procedure prescribed prior to the amendment was applicable and the revision was maintainable. Learned counsel for respondents submitted that the explanation added by U.P. Act 18 of 1968 fully applied to the facts of the instant case and as such no revision lay to the Director of Consolidation.

I have heard learned counsel for the parties at considerable length and have also perused the case law which has been placed before me. In the Full Bench decision of this Court *Prem Chandra v. Deputy Director of Consolidation* 1966 A. L. J. 641 (F. B.), a view was taken that if a first appeal or second appeal has been decided before the 8th March 1963 and a second appeal or a revision had been filed before that date then such second appeal or revision would be governed by the unamended Act. It was further decided in that case that if the first or second appeal as the case may be was decided prior to 8.3.1963 but no second appeal or a revision had been filed before that date, then such second appeal or revision would be governed by the amended Act. It was also held therein that if a first appeal or a second appeal was decided on or after 8.3.1963 then a second appeal or revision would also be governed by the unamended Act. In other words, so far as the first category of cases was concerned that is those in which a revision has been filed prior to 8.3.1963 the provisions of unamended Act were applicable, but so far as the second and third category were concerned, the provisions of the amended and unamended Act were differently applied. The correctness of this decision was subsequently considered in a five judges Bench decision of this Court in *Gaurishanker v. Sidh Nath Tewari and another* 1968 A. L. J. page 933. It may be mentioned here that in this full bench case the revision itself was filed before the Deputy Director (Consolidation) after 8.3.1963. The majority decision in the Full Bench case has modified the view expressed in *Dr. Prem Chand's* case with regard to the second and third category of cases. It has been held that there was no justification for drawing a distinction between the cases where second appeals or revisions could be filed before 8.3.1963 and had not been filed prior to that date, and those cases where the second appeals or revisions could not be filed prior to 8.3.1963 and had been filed after that date. In other words both the situations were dealt with at par by the Full Bench case and it was decided therein that in these circumstances the amended Act would be applicable.

But so far as the first category of cases is concerned that is those appeals or revisions which had been filed prior to 8.3.1963 the view expressed in *Prem Chand's* case was not set aside by the larger Full Bench in *Gaurishanker v. Sidh Nath Tewari and another*, (Supra). The net result therefore is that revisions or second appeals which had been filed prior to 8.3.1963 and were pending decision had to be decided according to the unamended Act.

I find from a perusal of the impugned order passed by the Director of Consolidation dated 4121970 that he has relied upon a single Judge decision of this court in Risal Singh v. Consolidation Officer, 1970 R. D. 457 for throwing overboard the objection of the petitioner that the revision was maintainable before him. This Single Judge decision is inapplicable to the facts of the present case. The facts of that case were that the second appeal itself had been decided by the Deputy Director on 1731963. A revision was filed thereafter before the Joint Director Consolidation. He refused to entertain the revision on the ground that the amendment affected under section 48 by adding the explanation vide U. P. Act 18 of 1968 applied and the Deputy Director not being an authority subordinate to the Director of Consolidation, the revision was not maintainable. This was not the case in which the revision itself had been filed prior to 8 31963 and was pending decision. Respondent's counsel had also brought to my notice a decision of the Division Bench of this Court in Ram Niranjana Singh and another v. Ram Awadh Singh and others 1973 R. D. 446. In that case also it was held that under the explanation the Deputy Director of Consolidation was not an authority subordinate to the Director. There can be no quarrel with this proposition which has been laid by the learned single Judge and also by a Division Bench of this Court that the Deputy Director of Consolidation is not an authority subordinate to the Director after the enforcement of the explanation which has been added by U. P. Act 18 of 1968. But the distinguishing feature is that even in this Division Bench case the second appellate order was passed on 2331963 and the revision before the Commissioner was filed thereafter. Thus the facts of the Division Bench case are absolutely distinguishable. As I have mentioned above, the Full Bench decision of five Judges of this Court has partly confirmed the view of the earlier Full Bench of three Judges and has held that where second appeals or revisions have been filed prior to 831963 and are pending decision, they would be governed by the unamended law. I am bound by this Full Bench case.

This writ petition is accordingly allowed and a writ of certiorari is issued quashing the impugned order of the Deputy Director (Consolidation) Meerut dated 4121970. The case is remanded for a decision of the revision by the Director of Consolidation. The provisions of the unamended law shall be applicable. In the circumstances of the case there shall be no orders as to costs.