

(2010) 03 AHC CK 0199

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32892 of 2003

Shri Nath

APPELLANT

Vs

D.D.C., Jaunpur and others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2010) 03 AHC CK 0199

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

Satya Poot Mehrotra, J.—I have heard Km. Vibha Srivastava, learned counsel for the petitioner and learned standing counsel appearing for the respondent Nos. 1, 2 and 3, and Sri Mustaqeem Ahmad, learned counsel for the respondent Nos. 4 and 5, and perused the record.

2. The present writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 9.2.2003 (Annexure6 to the writ petition) passed by the Deputy Director, Consolidation in Revision No. 7816 of 2001 filed by the petitioner Shri Nath, the order dated 30.4.2001 (Annexure3 to the writ petition) passed by the Settlement Officer, Consolidation and the Amendment Chart dated 8.3.2001 (Annexure2 to the writ petition) prepared by the Consolidation Officer.

3. The order dated 8.3.2001, passed by the Consolidation Officer on the basis of which the aforesaid amendment chart was prepared, has been filed as AnnexureCA1 to the counteraffidavit.

4. It appears that against the proposal made by the Assistant Consolidation Officer regarding carving out of chak in respect of the petitioner Shri Nath, the petitioner filed objections before the Consolidation Officer. The Consolidation Officer by the order dated 8.3.2001 (AnnexureCA1 to the counteraffidavit), decided the said objections filed by the petitioner Shri Nath and prepared

Amendment Chart on the basis of the said order.

5. The petitioner Shri Nath was aggrieved by the Amendment Chart prepared by the Consolidation Officer on the basis of the order dated 8.3.2001. Therefore, he filed an appeal before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation by the order dated 30.4.2001 (Annexure3 to the writ petition) dismissed the said appeal filed by the petitioner Shri Nath.

In passing the said order dated 30.4.2001, the Settlement Officer, Consolidation made certain observations regarding valuation of plot No. 148 included in the chak of Bujharat.

6. Against the said order dated 30.4.2001, passed by the Settlement Officer, Consolidation, the petitioner Shri Nath filed a revision being Revision No. 7816 of 2001.

Another revision being Revision No. 7838 of 2001 was also filed by the respondent Nos. 4 and 5 against the said order dated 30.4.2001, passed by the Settlement Officer, Consolidation.

7. It appears that during the pendency of the aforesaid revision before the Deputy Director, Consolidation, the petitioner Shri Nath filed a writ petition before this Court being Civil Misc. Writ Petition No. 37803 of 2002. The said writ petition was disposed of by the order dated 6th September, 2002 (Annexure3 to the rejoinder affidavit), which is reproduced below :

"Heard Km. Vibha Srivastava, learned counsel for the petitioner.

In the facts and circumstances of the case, I direct the respondent No. 1, Deputy Director of Consolidation, Jaunpur to decide the Revision No. 7816 of 2001, filed by the petitioner within a period of three months from the date of filing of a certified copy of this order.

For a period of three months, the parties are directed to maintain status quo.

With the above directions the writ petition is disposed of."

8. By the order dated 9.7.2003 (Annexure6 to the writ petition), the Deputy Director, Consolidation dismissed the aforesaid two revisions, namely, Revision No. 7816 of 2001 filed by the petitioner Shri Nath and Revision No. 7838 of 2001, filed by the respondent Nos. 4 and 5.

Thereafter, the petitioner Shri Nath filed the present writ petition before this Court seeking the reliefs as mentioned above.

9. It is not disputed by Sri Mustaqeem Ahmad, learned counsel for the respondent Nos. 4 and 5 that the said respondents did not file any writ petition against the order dated 9.7.2003, insofar as it dismissed the aforesaid Revision No. 7838 of 2001, filed by the respondent Nos. 4 and 5.

Therefore, the order dated 9.7.2003 insofar as it has dismissed the aforesaid

Revision No. 7838 of 2001, filed by the respondent Nos. 4 and 5, has become final.

10. Coming to the present writ petition, the main submission made by Km. Vibha Srivastava, learned counsel for the petitioner is that the order dated 9.7.2003, passed by the Deputy Director, Consolidation dismissing the aforesaid Revision No. 7816 of 2001, filed by the petitioner Shri Nath was ex pane, and the same was passed on 9.7.2003, without giving any hearing to the petitioner Shri Nath, and that the recital contained in the order dated 9.7.2003, passed by the Deputy Director, Consolidation in regard to giving of hearing to both the sides is not correct.

11. Sri Mustaqeem Ahmad, learned counsel for the respondent Nos. 4 and 5 submits that the recital contained in the order dated 9.7.2003, in regard to giving of hearing to both the sides is correct. In fact the submission proceeds, the order dated 9.7.2003 was passed after giving hearing to all the parties concerned including the petitioner Shri Nath.

12. In order to appreciate the submissions made by the learned counsel for the parties, it is relevant to refer to various documents filed on the record in regard to fixation of date in the aforesaid Revision No. 7816 of 2001, before the Deputy Director, Consolidation.

13. A copy of the order sheet of the case before the Deputy Director, Consolidation has been filed as Annexure5 to the writ petition.

A perusal of the said order sheet shows that by the order dated 13th June, 2003, the case was directed to be putup on 27.6.2003. The correctness of the order is substantiated by the fact that on 13th June, 2003, an application was filed on behalf of the petitioner Shri Nath before, the Deputy Director, Consolidation, photostat copy whereof has been filed as AnnexureCA 2 to the counteraffidavit. On the said application filed on 13th June, 2003, there is an endorsement that the case be putup on 27.6.2003.

14. There is serious dispute between the parties as to what transpired on 27th June, 2003. Km. Vibha Srivastava, learned counsel for the petitioner has placed reliance on a photostat copy of the order sheet of the case before the Deputy Director, Consolidation, appearing at page 26 of the paper book of the writ petition. The said order sheet contains the order passed on 13th June, 2003, whereby 27th June, 2003 was fixed as the date in the case. The said order sheet further shows that thereafter the case was directed to be putup on 11th July, 2003.

15. However, alongwith counteraffidavit filed on behalf of the respondent Nos. 4 and 5, a questionnaire has been filed as Annexure2A to the counteraffidavit. The question asked in the said questionnaire is as under :

@@Hindi@@

The answer to the said question is @@Hindi@@

16. Alongwith rejoinderaffidavit filed on behalf of the petitioner, another questionnaire has been filed as AnnexureRA 2 to the rejoinderaffidavit.

A perusal of the said questionnaire shows that in response to the question as to whether 11th July, 2003 was the date fixed in the aforesaid two revisions, namely, Revision No. 7816 of 2001 and Revision No. 7838 of 2001, the answer given was that 11th July, 2003 was the date fixed in the aforesaid revisions.

17. In paragraph No. 7 of the counteraffidavit filed on behalf of respondent Nos. 4 and 5, it has been denied that 11th July, 2003 was the date fixed in the matter.

In paragraph Nos. 8 and 9 of the counteraffidavit, assertions have been made regarding fixation of the date as 27th June, 2003 in the aforesaid Revision No. 7816 of 2001 filed by the petitioner Shri Nath.

In paragraph No. 10 of the counteraffidavit, it has been asserted that on 27.6.2003, both the aforesaid revisions were heard by the Deputy Director, Consolidation, and the same were decided by a common order dated 9th July, 2003.

In paragraph Nos. 9, 10 and 11 of the rejoinderaffidavit, the assertions made in paragraph Nos. 7, 8, 9 and 10 of the counteraffidavit have been replied to.

18. A perusal of the averments made in the aforesaid paragraphs of the rejoinderaffidavit shows that there is no denial of the fixation of the date as 27.6.2003. However, it is asserted in paragraph No. 11 of the rejoinderaffidavit that on 27.6.2003, the Deputy Director, Consolidation fixed the date as 11.7.2003, and that the case was heard and decided on 9.7.2003 behind the back of the petitioner.

19. From the discussion made above, it is evident that there is no dispute regarding fixation of the date as 27.6.2003. The order sheet appearing at page 26 of the paperbook of the writ petition shows fixation of the date for order as 11th July, 2003. In the questionnaire filed as AnnexureCA 2A to the counteraffidavit, it has been denied that the case was fixed for 11th July, 2003. However, nothing has been brought on record on behalf of respondent Nos. 4 and 5 as to how and when the revision was fixed for 9th July, 2003. No order passed on 27th June, 2003 or subsequent thereto has been brought on record on behalf of respondent Nos. 4 and 5 to show that at any point of time, the date was fixed for 9th July, 2003 in the aforesaid revision.

20. It is further noteworthy that while the questionnaire filed as AnnexureCA 2A to the counteraffidavit denied the fixation of date as 11th July, 2003, the questionnaire filed as AnnexureRA 2 to the rejoinderaffidavit shows that 11th July, 2003 was fixed in the aforesaid two revisions.

21. In view of the above, I am of the opinion that the assertions made on behalf of the petitioner Shri Nath regarding denial of opportunity of hearing to the

petitioner Shri Nath appear to be correct. In the circumstances, I am of the view that it will be in the interest of justice that the order dated 9th July, 2003, passed by the Deputy Director, Consolidation insofar as it has dismissed the aforesaid Revision No. 7816 of 2001 filed by the petitioner Shri Nath be quashed, and the matter be sent back to the Deputy Director, Consolidation for deciding the said revision afresh in accordance with law after giving opportunity of hearing to all the parties concerned including the petitioner Shri Nath.

22. Accordingly, the writ petition is allowed. The order dated 9th July, 2003, passed by the Deputy Director, Consolidation (Annexure 6 to the writ petition) insofar as it has dismissed the aforesaid Revision No. 7816 of 2001 filed by the petitioner Shri Nath is quashed.

23. The matter is sent back to the Deputy Director, Consolidation (respondent No. 1) for deciding the said Revision No. 7816 of 2001 afresh in accordance with law after giving opportunity of hearing to all the parties concerned including the petitioner Shri Nath.

24. The revision will be decided by the Deputy Director, Consolidation expeditiously, preferably within a period of three months of the filing of a certified copy of this order before him.

Till 9th July, 2010 or till the disposal of the revision by the Deputy Director, Consolidation, whichever is earlier, status quo order as operative in the present writ petition will continue to remain operative.