

(2011) 03 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 4516 of 2007

Shyam Lai (D) through L.Rs.

APPELLANT

Vs

D.D.C. and Another

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Citation : (2011) 4 AWC 3343

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Sanjay Kumar Pandey, for the Appellant; Tripathi B.G. Bhai and Kuldeep Kr. Srivastava, C.S.Cs., for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Learned Counsel for the Petitioner and Sri Tripathi B.G. Bhai for the Respondent No. 2.

2. This is a dispute arising out of allotment proceedings. A decision on merits was taken by the Deputy Director of Consolidation after the decision of the Settlement Officer, Consolidation. Learned Counsel places on record a certified copy of the order sheet dated 20.1.2006 and 6.2.2006 which indicates that the order dated 6.2.2006 had been passed after hearing the counsel for both the parties on 20.1.2006.

3. It appears that a restoration application was filed by the Respondent No. 2 on 6.3.2006 contending that the order was ex parte and even otherwise the order dated 6.2.2006 works injustice against him. Accordingly a fresh order was passed on 19.12.2006 impugned herein.

4. I have perused the records.

5. The contention raised by the Learned Counsel for the Petitioner is that under the garb of the recall the impugned order dated 19.12.2006 has been passed reviewing the earlier order dated 6.2.2006. Learned Counsel contends that this

power is not possessed by the Deputy Director of Consolidation unless it could have been shown that the order was ex parte or was a result of any fraud or misrepresentation.

6. Learned Counsel for the Petitioner contends that the matter can still be relegated to ascertain as to whether a recall was permissible or not.

7. Having perused the records as well as order sheet and the order dated 6.2.2006 it is evident that the order dated 6.2.2006 had been passed after hearing parties on merits. The impugned order dated 19.12.2006 nowhere records that the earlier order had been passed without hearing the Respondent No. 2. In such a situation the contention raised by the Learned Counsel for the Petitioner is correct that the impugned order dated 19.12.2006 amounts to a review of the order without any ingredients available for the same.

8. Accordingly the impugned order dated 19.12.2006 was without jurisdiction. It is hereby quashed without prejudice to the rights of the Respondent No. 5 to contest the order dated 6.2.2006 in appropriate proceedings.

The writ petition is allowed. No order as to costs.