

(2016) 09 UK CK 0019

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2503 of 2016.

**Shyam Singh and Others - Petitioners @HASH Deputy Director,
Consolidation/Additional Collector, District Haridwar and Others**

Date of Decision : 07-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2016) 133 RD 388

Hon'ble Judges : V.K. Bist, J.

Bench : Single Bench

Advocate : Mr. Rajendra Dobhal, Senior Advocate, assisted by Mr. Ravi Babulkar, Advocate, for the Petitioners; Mr. R.C. Arya, Standing Counsel, for the State of Uttarakhand/Respondent No. 1; Mr. Siddhartha Singh, Advocate, for the Respondent Nos. 2 to 4

Final Decision : Disposed Off

Judgement

V.K. Bist, J. - By means of this writ petition, the petitioners have challenged the order dated 22.07.2016 passed by the Deputy Director, Consolidation, Haridwar/respondent no. 1 under Section 48 of the U.P. Consolidation of Holding Act, 1953.

2. It is the case of the petitioner that Late Smt. Hiro Devi, widow of Late Tara Chand, was recorded bhumidhar with transferable rights in Khata Khatauni No. 185 and 168 (now after consolidation consolidated and renumbered into 424 and 366 respectively). The petitioners are the sons of the real brother of Late Tara Chand and there are three daughters of Late Hiro Devi, namely, Murti Devi, Vimla Devi and Kamla Devi. Late Hiro Devi, after the death of her husband Late Tara Chand, lived with the petitioners and their father all her life and even the petitioners with their father themselves arranged and conducted the marriage of the three daughters of Late Hiro Devi.

3. During the life time of Late Hiro Devi, the petitioners made all the efforts, as per their status, to look after her, as after the marriage of her daughters, there was nobody to look after Hiro Devi, therefore, she remained with the petitioners

on their care and affection. Subsequently, before the death of her on 14.05.1990, Late Hiro Devi made a Will dated 16.04.1990, being happy with the love, affection and service of the petitioners towards her during her life. She bequeathed all her movable and immovable properties vested in her to the petitioners. Petitioners, who were looking after the property of Late Hiro Devi and having possession of the said property, made an application to the Naib Tehsildar, Roorkee under Sections 34 & 35 of L.R. Act for mutation of their names. The said proceeding was registered as Suit No. 445/90. Mutation order was passed on 06.07.1990 in favour of the petitioners. Thereafter, respondent no. 2 made an application before the Naib Tehsildar that the Will dated 16.04.1990 is a valid Will and even respondent no. 2, at that relevant time, did not challenge the same. After the death of one daughter, namely, Smt. Kamla Devi of Late Hiro Devi, her sons (respondent nos. 4 and 5) filed a restoration application before the Naib Tehsildar, Roorkee and the Naib Tehsildar, Roorkee restored the mutation proceedings vide order dated 26.12.1990. Against the said order, petitioners filed a revision and the A.D.M., Haridwar stayed the said order passed by the Naib Tehsildar, Roorkee. Subsequently, the notification under Section 4(2) of the U.P. Consolidation of Holdings Act, 1953 was issued for the area, in which the property in question was situated and the mutation proceedings were transferred to the Assistant Consolidation Officer, Roorkee, Haridwar. Petitioners and the respondents, thereafter, filed the objections under Section 9-A of the Act before the Assistant Consolidation Officer. Thereafter, the said proceedings were transferred to the Consolidation Officer Roorkee, West for disposal by the competent authority under Rule 65 of the U.P. Consolidation of Holdings Rules, 1953.

4. The Consolidation Officer, Roorkee, West passed an order on 24.10.2003, directing the names of the petitioners to be recorded in Khata Khatuani No. 185 and 168 (now 424 and 366 respectively), deleting the name of Lat Smt. Hiro Devi widow of Late Tara Chand. Against the said order, the respondents filed an appeal under Section 11(2) of the U.P. Consolidation of Holding Act, 1953 before the Assistant Settlement Officer, Roorkee, Haridwar. The Assistant Settlement Officer, Roorkee, Haridwar, vide order dated 08.05.2009, decided the appeal and confirmed the order dated 24.10.2003 passed by the Consolidation Officer, Roorkee, West. Aggrieved by the order dated 08.05.2009 passed by the Assistant Settlement Officer, Roorkee, Haridwar, respondents preferred a revision under Section 48(1) of the Act, 1953 before the respondent no. 1. According to the petitioner, the respondent no. 1 decided the revision filed by the respondents nos. 2 to 5 totally exceeding his jurisdiction under Section 48 and partially allowed the revision vide order dated 22.07.2016, quashing the order dated 08.05.2009 passed by the Assistant Settlement Officer, Roorkee, Haridwar and directed the Appellate Court to decide the appeal afresh within two months, in the light of the facts pointed out by the revisional court in its order. Hence, this writ petition.

5. The main argument by learned Senior Counsel appearing for the petitioner is

that though the Deputy Director, Consolidation has remanded the matter back to Settlement Officer, Consolidation; but, he has nothing to decide, inasmuch as, the Deputy Director, Consolidation has decided the matter on its merit and the Settlement Officer is bound by the decision made by the Deputy Director, Consolidation.

6. On the other hand, Mr. Siddhartha Singh, learned counsel appearing for the respondent nos. 2 to 5 would submit that, in fact, no such observation is there, which is bounding on the Settlement Officer. He submitted that in the order, the Deputy Director, Consolidation has nowhere said that the Settlement Officer will be influenced by the observation made by him in the order.

7. The learned counsel for the parties agreed that the case may be heard by the Settlement Officer; but, they requested that it may be observed in the judgment that the Settlement Officer may not be influenced by the observation made by the Deputy Director Consolidation in his judgment.

8. Consequently, the writ petition is disposed of by directing the Settlement Officer to decide the appeal on its own merit; but, without being influenced by the observation made by the Deputy Director, Consolidation in his judgment. It is also made clear that the Settlement Officer will give proper opportunity of hearing to all the parties.

9. Learned Senior Counsel for the petitioner would submit that case is listed before the Settlement Officer on 09.09.2016 and he may be given liberty to move an application seeking adjournment before the Settlement Officer, Consolidation. Such liberty is granted. In case, such application is filed before the Settlement Officer, Consolidation, he shall adjourn the case only for 10 days.

10. The Settlement Officer, Consolidation is also directed to decide the matter as early as possible without granting undue adjournment. In case during pendency of appeal, an application seeking interim relief is moved before the Settlement Officer, Consolidation, the Settlement Officer, Consolidation shall decide the same on its merit within a period of 10 days from the date of filing of such application.

11. Let a certified copy of this judgment be issued within 24 hours.