

(1999) 10 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 26881 of 1999

Sitaram alias Baba

APPELLANT

Vs

Deputy Director Consolidation Varanasi and others

RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2000) 1 AWC 177 : (2000) 91 RD 37

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : R.P. Dubey, for the Appellant; J.P. Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 22.4.1999 passed by the Deputy Director of Consolidation, respondent No. 1, whereby he recalled the order dated 26.9.1998.

2. The dispute relates regarding the allotment of chak and its formation. The parties raised objection in regard to the allotment of chak. The Settlement Officer, Consolidation passed an order on 8.11.1996 whereby he made certain amendments in the chak. The Appeal No. 3841 filed by Mangaru, respondent No. 3. was dismissed but his Appeal No. 187/1547 was partly allowed. The petitioner filed revisions against the order of the Settlement Officer, Consolidation. Respondent No. 3 also filed revision against the orders passed by the Settlement Officer, Consolidation, dismissing his appeal. The Deputy Director of Consolidation allowed the revision filed by the petitioner and dismissed the revision filed by respondent No. 3 by his order dated 26.9.1998. He directed to make certain amendments in the chaks of the parties.

3. Respondent No. 3 filed an application to recall the said order on 28.9.1998 immediately after two days of the order passed by respondent No. 1 on

26.9.1998. The petitioner raised an objection against such application. The Deputy Director of Consolidation vide impugned order dated 22.4.1999 has recalled the order dated 26.9.1998 with further direction that the plot in dispute shall be Inspected in presence of the parties and thereafter the revision will be heard again on merits. This order has been challenged in the present writ petition.

4. I have heard Sri R. P. Dubey, learned counsel for the petitioner and Sri J. P. Sharma learned counsel for the respondents.

5. Learned counsel for the petitioner urged that the Deputy Director of Consolidation has passed the order on 26.9.1998 after hearing the learned counsel for the parties and such an order cannot be reviewed by him under law. He has placed reliance on Full Bench decision of this Court in Smt. Shivraji (Decd.) through L.Rs. and Others Vs. Dy. Director of Consolidation and Others, wherein it was held that any order delivered and signed by a Judicial or quasi-judicial authority attains finality subject to appeal or revision as provided under the Act. If the authority is not vested specifically with power of review under Statute, It cannot reopen the proceedings by review. The Court, however, upheld the power of the Deputy Director of Consolidation to correct mistake, arithmetical error, manifest error in his order in exercise of his inherent power. It was observed as follows :

"The consolidation authorities, particularly the Deputy Director of Consolidation, is not vested with any power of review of his orders and, therefore, cannot reopen any proceeding and cannot review or revise his earlier order. However, as a Judicial or quasi judicial authority he has the power to correct any clerical mis take/arithmetical error, manifest error in his order In exercise of his Inherent power as a Tribunal."

6. The above legal position is not disputed. It has, however, to be examined as to whether it is a fit case for interference under Article 226 of the Constitution of India. The Deputy Director of Consolidation has observed in his impugned order that the counsel for the petitioner submitted an argument that the Deputy Director of Consolidation had passed the order on 26.9.1998 after hearing the learned counsel for the parties and also making the inspection on the spot. This statement of the counsel for the petitioner was examined. It was found that there was no inspection memo on the record. In the writ petition, it has not been stated that the statement made by counsel for the petitioner was not correct. Counsel for the petitioner having made a categorical statement that the plots in question were inspected in presence of the parties but as there was no reference of the inspection in the order dated 26.9.1998 nor there was any memo of inspection, the Deputy Director of Consolidation directed that the order dated 26.9.1998 be recalled and after the spot inspection, the case may be heard on merits. In *Ram Shankar Upadhyaya v. Deputy Director of Consolidation* 1982 ACJ 449, it has been held that in case the spot inspection is made, the memo of inspection should be kept on record and if the finding is based on facts noticed

on local inspection and retained in mind, such order cannot be sustained. Similar view was expressed in *Pyare Ahmad v. Deputy Director of Consolidation, Sultanpur*. 1985 RD 210. The question was regarding allotment of certain plots of the parties.

7. It is settled law that even if an order passed by an authority is without Jurisdiction but the said order appears to be just and equitable, the Court will not Interfere with such order under Article 226 of the Constitution of India. The High Court under Article 226 of the Constitution issues writ where an authority acts without jurisdiction or in excess of it or In violation of the principles of natural Justice or refuses to exercise jurisdiction vested in him or there is an error apparent on the face of the record but even if any of the grounds exist to quash the order, still the High Court will not interfere with such order if the substantial justice has been done as held in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, wherein it was observed as under :

"Such writs as are referred to in Article 226 are obviously Intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omissions, error, or excess has resulted in manifest injustice."

8. In *A.M. Allison Vs. B.L. Sen*, , an objection was raised that the Deputy Collector had no Jurisdiction to determine the question. The Supreme Court refused to entertain this objection on the ground that the order was challenged in writ petition under Article 226 of the Constitution. It was observed :

"Proceedings by way of certiorari are "not of course". (Vide Halsbury's "Laws of England", Hailsharn Edition, Vol. 9, paras 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Article 226, we could refuse to interfere unless we are satisfied that the justice of the case requires to. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere."

In *Murugayya Udayar and Another Vs. Kothampatti Muniyandavar Temple By Trustee Pappathi Ammal*, . the Court declined to interfere with the order passed in revision by the District Judge repelling the contention that the revision against the order of the Sub-Division Officer was not maintainable, on the ground that if substantial justice has been done, the Court under Article 226 is not bound to quash the order passed by any authority relying upon various decisions of the Supreme Court and the High Court. The observation in *Bux Singh Vs. Joint Director of Consolidation and Others*, . was quoted "Where orders impugned are equitable and substantial Justice seems to have been done to the parties, the

High Court would not be inclined to interfere in its writ jurisdiction merely on the ground that such orders are wrong in law."

9. In *Om Prakash v. U. P. Secondary Education Service Commission, Allenganj, Allahabad and others* (1990) UPLBEC 983, the Court observed as under:

"It is well settled that a decision of an authority, even though without jurisdiction, may not be quashed in proceedings under Article 226 of the Constitution if by the decision the substantial justice is done between the parties."

10. In the instant case, respondent No. 1 having found that though the inspection was alleged to have been done but the inspection memo being not on the record, he rightly directed for inspection again and thereafter to decide the case afresh after giving opportunity of hearing to the parties. I do not find that it is a fit case for interference under Article 226 of the Constitution of India.

11. In view of the above, I do not find that it is a fit case for interference under Article 226 of the Constitution of India. The writ petition is accordingly dismissed. The parties shall bear their own costs.