
(1971) 01 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 539 of 1968

Smt. Bitto

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-01-1971

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 54
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 49(3)

Citation : AIR 1971 All 389

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : R.C. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—Under the provisional consolidation scheme petitioner was allotted Chak No. 276 and respondent Maharaj Singh was allotted Chak No. 189. Respondent No. 5 filed an objection against his Chak on 23-2-1967 before the Consolidation Officer issued a notice to the petitioner fixing 25-2-1967 for the hearing or the objection. That notice was not served on the petitioner. The Consolidation Officer, however, heard the objection, decided it and made material alterations in the Chak of the petitioner by taking away certain plots from it and substituting the same with others.

2. The petitioner filed an appeal against that order which was dismissed by the Settlement Officer on the ground of delay. Petitioner's revision also met the same fate at the hands of the Deputy Director who held that the petitioner had failed to explain the delay of six days; hence this writ petition.

3. I have heard the learned counsel for the petitioner. No one is present to support the case of the opposite parties.

Rule 49 (3) reads,

"Where the Consolidation Officer reflect's the objection, he shall cause a notice of rejection of objection to be served on the tenure-holder. Where, however, in accepting any objection, the Consolidation Officer finds it necessary to make any alteration in the Provisional Consolidation Scheme, he shall cause a revised extract in C. H. Form 23 to be served on the tenure-holder concerned free of cost. The objection under Sub-section (1) of Section 21 shall not be deemed to be disposed of until the aforesaid notice rejecting the objection or, as the case may be, the revised extract has been served on the tenure-holders concerned."

Under this Rule, therefore, it is incumbent on the Consolidation Officer, when he finds it necessary to make a change in the Provisional Consolidation Scheme to serve a revised extract in C. H. Form 23 on the tenure-holder concerned free of cost. In para 9 of the writ petition an allegation has been made by the petitioner that C. H. Form 23 was neither ever issued nor served on her and that she came to know about the orders passed by the Consolidation Officer for the first time on 7-9-1967 when his staff visited the spot in connection with demarcation of the Chaks. In the counter-affidavit filed by Opposite Party Mahraj Singh the only averment made in respect of allegations in para 9 of the petition is that "the Pairokar of the petitioner Bade Singh was aware of all the proceedings as he was present on all dates and occasions." It is thus obvious that the petitioner's allegation that G. H. Form 23 was not served on her has not been denied by any of the opposite parties. It has, therefore, to be accepted as correct.

4. Rule 49 (3) inter alia provides that the objection under Sub-section (1) of Section 21 shall not be deemed to be disposed of until the aforesaid notice rejecting the objection or, as the case may be, the revised extract has been served on the tenure-holders concerned.

5. In view of this provision, therefore, the petitioner was within her rights to file the appeal after she had come to know of the changes made in her Chak by obtaining a certified copy of C. H. Form 23 on 10-9-1967. In any case, even if there was a delay of six days in filing the appeal, as has been held by the Deputy Director, it was a fit" case in which he should have condoned the delay in view of the fact that the petitioner has not been served with the C. H. Form 23 as required under the afore-said Rule. In this view of the matter I am of opinion that the order passed by the Settlement Officer and the Deputy Director are not sustainable.

6. In the result, this petition is allowed. The impugned orders of the Settlement Officer and the Deputy Director are quashed. The Settlement Officer is directed to restore the appeal of the petitioner and to hear and decide it on merits after hearing the parties. Parties shall bear their own costs.