
(2003) 08 AHC CK 0181
In the Allahabad High Court
Case No : C.M.W.P. No. 30876 of 2003

Smt. Premwati

APPELLANT

Vs

Chief Revenue Officer and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 48, 52, 8A, 9A(2)

Citation : (2003) 6 AWC 4676

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; V.K. Singh, Neeraj Tiwari and S.C., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri Sankatha Rai, learned Counsel appearing for the Petitioner, Sri V. K. Singh appearing for the Respondent No. 2 and Sri Neeraj Tiwari appearing for the contesting Respondent No. 3. Respondent No. 4 being proforma Respondent, notice has not been issued to him. As agreed by both the parties, the writ petition is being finally disposed of.

2. By this writ petition the Petitioner has prayed for quashing the order dated 2.7.2003 passed by the Chief Revenue Officer/Deputy Director of Consolidation, Allahabad.

3. Facts giving rise to this writ petition lie in a very narrow compass:

Respondent No. 4 has been the original tenure holder of plots No. 1814/1 area 1.4.0, 1814/3 area 0.16.0 and 1814/5 area 0.3.10 apart from other plots. The Respondent No. 4 was allotted chak No. 413. In plot No. 1814 Harijan Abadi was reserved. An objection was filed by Bhagwat Prasad u/s 20 of the U.P. Consolidation of Holdings Act which was decided by the Consolidation Officer vide order dated 21.6.1979. Bhagwat Prasad filed a time barred appeal No. 395 against the order of the Consolidation Officer dated 21.6.1979. It is claimed that

Pradhan of the Gaon Sabha filed an application before the Settlement Officer of Consolidation that two Biswa land in plot No. 1814/1 towards east be reserved for Harijan Abadi and the earlier reservation in the western side be set aside. The Settlement Officer of Consolidation decided the appeal modifying the Harijan Abadi. Harijan Abadi which was in plot No. 1814/1 area 0.5.0 was removed and Harijan Abadi was made in plot No. 1809/3 area 0.3.0 and 1814/1 area 0.2.0. Petitioner claimed to be purchaser of plot No. 1814/1 area 0.12.19 of his Chak No. 413 by sale deed dated 10.3.1989. The name of the Petitioner was also directed to be mutated on the basis of the sale deed. New Plot No. 2678 area 0.16.4 was carved out for Harijan Abadi and plot No. 2676 was carved out in the name of the Petitioner in respect of land purchased by him. The village was de-notified u/s 52 of the U.P. Consolidation of Holdings Act on 26.12.1998. Respondent No. 3 filed an application in appeal No. 395 praying that the ex parte order dated 15.3.1990 be set aside and applicant be made party. On an application filed by the Respondent No. 3, the Settlement Officer of Consolidation also passed an interim order on 25.10.2000 directing the parties to maintain status quo. On 25.10.2000 the Respondent No. 3 also filed revision No. 152 before the Deputy Director of Consolidation u/s 48 of the U.P. Consolidation of Holdings Act against the order dated 15.3.1990 passed by the Settlement Officer of Consolidation. An application u/s 5 of the Limitation Act supported with an affidavit for condonation of delay was also filed by the Respondent No. 3. The Deputy Director of Consolidation granted interim order on 25.10.2000. Petitioner filed an objection on 29.10.2000 in the revision raising question of maintainability of the revision as well as the locus of Respondent No. 3 to file the revision. It was prayed by the Petitioner that the revision be dismissed and should not be entertained. Objection was raised by the Petitioner before the Deputy Director of Consolidation that the Respondent No. 3 Moti Lal is not an aggrieved person since he was not party before the Settlement Officer of Consolidation, he has no right to file revision. It was further contended that the revision was filed with delay of more than ten years and the Respondent No. 3 is not entitled for condonation of delay. The Deputy Director of Consolidation vide his order dated 2.7.2003 admitted the revision and fixed for hearing on 4.7.2003. The Deputy Director of Consolidation held that the Respondent No. 3 being Harijan belonging to the same village, is naturally affected person and is aggrieved party. It was further observed by the Deputy Director of Consolidation that with regard to ex parte order there is no questions of revision being barred by time and raising of said question is not in accordance with law.

4. Sri Sankatha Rai, learned Counsel for the Petitioner challenging the order of the Deputy Director of Consolidation has made following submissions:

(1) That the Respondent No. 3 had no right to file revision since he was not party before the Settlement Officer of Consolidation nor he can be said to be aggrieved in any manner against the order of the Settlement Officer of Consolidation dated 15.3.1990.

(2) Respondent No. 3 has no right to file revision on behalf of the Gaon Sabha who alone could have challenged the order of the Settlement Officer of Consolidation dated 15.3.1990.

(3) There being delay of more than ten years in filing the revision, the Deputy Director of Consolidation had no jurisdiction to entertain the revision for hearing without condoning the delay in filing the revision. It is submitted that the Deputy Director of Consolidation has not considered and decided the question of delay and has wrongly observed that the order of the Settlement Officer of Consolidation being ex parte, the question of delay cannot be raised.

5. Sri Neeraj Tiwari appearing for the contesting Respondent contended that the Respondent No. 3 is aggrieved person since he is affected by the order of the Settlement Officer of Consolidation. He further contended that the order of the Settlement Officer of Consolidation being ex parte there is no question of revision being barred by time. The counsel for both the parties relied on various decisions in support of their respective submissions which will be referred to while considering the aforesaid submissions.

6. The first and second submissions of the counsel for the Petitioner being inter related are being considered together. The first question is as to whether the Respondent No. 3 had right to file a revision against the order of the Settlement Officer of Consolidation or not. Learned Counsel appearing for the Petitioner has placed reliance on the judgment of this Court in *Sita Ram v. Deputy Director of Consolidation and others*, 1982 ALJ 76.

7. Section 48 of the U.P. Consolidation of Holdings Act provide for revisional jurisdiction of the Deputy Director of Consolidation. Section 48 of the U.P. Consolidation of Holdings Act is quoted below:

48. Revision and reference.-

(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings, or as to the correctness, legality or propriety of any order (other than interlocutory order) passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceeding as he thinks fit.

(2) Powers under Sub-section (1) may be exercised by the Director of Consolidation also on a reference under Sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under Sub-section (1).

8. The U.P. Consolidation of Holdings Act being an special Act the right of objection and appeal and revision has been provided under the Act. Section 9

Sub-section (2) refers to filing of objection by person to whom notice is served u/s 9 (1) or any other person interested.

Section 9 (2) is quoted below:

"9 (2) Any person to whom a noticed under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under Sub-section (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom or in the Statement of Principles, or the need for partition."

9. Section 11 of the Act provides for appeal. Section 11 uses two phases. Any party to the proceedings and aggrieved by the order of the Assistant Consolidation Officer or Consolidation Officer may file an appeal. Section 11 (1) is quoted below:

"11 (1) Any party to the proceedings u/s 9A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law."

10. It is to be noted that whereas Section 9 and Section 11 of the Act uses words "person interested" and "party aggrieved", Section 48 does not limit exercise of revisional jurisdiction by any such requirement. Section 48 of the U.P. Consolidation of Holdings Act is wide enough under which a revision filed by any person having sufficient locus can be entertained by the Deputy Director of Consolidation for examining the record of any case decided or proceedings taken by the subordinate authority for purposes of satisfying as to the irregularity, or as to the correctness, legality or propriety of any order.

11. The question now is as to whether Moti Lal can be said to be aggrieved party or affected by the order of the Settlement Officer of Consolidation dated 15.3.1990. From the facts as brought on record of the writ petition it is clear that the Harijan Abadi was reserved in plot No. 1814 area 0.8.8. In plot No. 1809 the said reservation was made in proceedings u/s 8A of the U.P. Consolidation of Holdings Act. A plot which is reserved for Harijan Abadi definitely has to be used for purposes of Abadi by Harijan of the village. By reservation of particular plot with specific area in the statement of principles all residents of village who were to use Harijan Abadi became entitled to use said plot. Settlement Officer of Consolidation on time barred appeal filed by the Respondent No. 4 after more than ten years, has changed the Abadi plots. The right of Respondent No. 3 to use the plot as Harijan Abadi came to be affected by changing the Harijan Abadi by the Settlement Officer of Consolidation. Section 9B deals with the disposal of objections on the statement of principles. Section 11A creates a bar of objection. When the Abadi is reserved in the Statement of Principles and no objection was

filed within time and the said reservation of Harijan Abadi became final, the residents of village entitled to use the said plot as Harijan Abadi. Under the U.P. Consolidation of Holdings Act rights accrue to tenure-holders and residents of village with regard to public utility land at different stages and when the Settlement Officer of Consolidation set aside the reservation of Harijan Abadi changing the situation of Harijan Abadi, the residents of village who were to use Harijan Abadi can be said to be aggrieved by the said order. The contention of the counsel for the Petitioner that the Respondent No. 3 is not aggrieved by the order of Settlement Officer of Consolidation cannot be accepted. Respondent No. 3 was aggrieved person. Furthermore, in the grounds of revision which has been filed as Annexure-19 to the writ petition, it was stated that after the reservation of Harijan Abadi, the said plots were measured and with the permission of the then Pradhan and revenue authorities, Harijans including the Respondent No. 3 started residing on the said plot. In the facts of the present case, the submission of counsel appearing for the Respondents that the Respondent No. 3 was affected by the order of the Settlement Officer of Consolidation, has to be accepted.

12. Much reliance has been placed by the counsel for the Petitioner on the judgment of this Court in *Sita Ram v. Deputy Director of Consolidation and others*, 1982 ALJ 76. In the aforesaid case this Court held that the Respondent No. 3 of that case Shiv Prasad had no right to file objection on behalf of the Gaon Sabha for expunction of the name of the Petitioner. The Court considering the provisions of para 128 of the Gaon Sabha Manual held that the provisions are mandatory. The objection filed by the private individual on behalf of the Gaon Sabha was not maintainable. It was laid down in paragraph 22 of the aforesaid judgment:

"22. Thus, in view of the above I am of the opinion that the objection filed by opposite party No. 3 Sheo Prasad cannot be treated to be a valid objection on behalf of the Gaon Sabha u/s 9A (2) of the U.P. Consolidation of Holdings Act, on the ground that he was himself an interested person u/s 9A (2) of the Act, as admittedly the Land Management Committee of the Gaon Sabha had not passed any resolution taking decision to file objection, appeal and revision nor opposite party No. 3 was authorised to file those on behalf of the Gaon Sabha. It is also not disputed that the action of the opposite party No. 3, in filing objections, appeal, and revision on behalf of the Gaon Sabha, was not ratified by the Land Management Committee in its meetings. Thus, the objections, appeal and revision filed by opposite party No. 3 Sheo Prasad on behalf of the Gaon Sabha were wholly incompetent and opposite parties Nos. 1 and 2 acted illegally and without jurisdiction in passing the impugned orders."

13. In the aforesaid case the Court laid down that the private person had no right to file objection on behalf of the Gaon Sabha u/s 9A (2). There cannot be any dispute with the proposition laid down by this Court in the aforesaid case. In the present case the Respondent No. 3 Moti Lal was not espousing the cause of

Gaon Sabha but he was espousing of his own cause, that the Harijans of his village are entitled to live in Harijan Abadi as ear marked during the Statement of Principles.

14. As observed above, the revisional jurisdiction, as given u/s 48 of the Act is wide enough and the Deputy Director of Consolidation is fully empowered to exercise its revisional jurisdiction at the instance of Respondent No. 3 in the facts of the present case. In view of foregoing discussions, it is held that the revision filed by the Respondent No. 3 was maintainable against the order of the Settlement Officer of Consolidation dated 15.3.1990.

15. Now coming to the third submission of the counsel for the Petitioner regarding the revision being barred by time, the submission of the Petitioner's counsel has substance. The counsel for the Petitioner contended that the revision could not be heard by the Deputy Director of Consolidation on merits unless the Deputy Director of Consolidation condones the delay in filing the revision. The counsel for the Petitioner submitted that unless the delay in filing the revision is condoned, the Deputy Director of Consolidation has no jurisdiction to decide the revision on merits. Reliance has been placed by the counsel for the Petitioner on the judgment of the Apex Court in P.K. Ram Chandran v. State of Kerala and Anr. 1998 (89) RD 18 and Ragho Singh Vs. Mohan Singh and Others, . The aforesaid judgments do support the contention of the Petitioner that unless delay in filing the revision is condoned, the Deputy Director of Consolidation cannot decide the revision on merits. Another Division Bench judgment relied by the counsel for the Petitioner Tirath v. Joint Director of Consolidation and others, 1985 RD 276, also supports the contention of the counsel for the Petitioner. In the aforesaid case the Division Bench held that when the appeal was dismissed by the Settlement Officer of Consolidation as barred by time, the Deputy Director of Consolidation could not have interfered with the order without adverting as to whether the order of the Settlement Officer of Consolidation dismissing the appeal as barred by time, was valid order or not.

16. From the perusal of the judgment of Deputy Director of Consolidation it is clear that the Deputy Director of Consolidation has not adverted to the question of delay and has not condoned the delay in filing the revision rather the Deputy Director of Consolidation has observed that the order of the Settlement Officer of Consolidation being ex parte, the question of delay cannot be lawfully raised. The said observation of the Deputy Director of Consolidation is erroneous. The Deputy Director of Consolidation was required to advert to the question raised by the revisionist for condoning the delay in filing the revision and unless the Deputy Director of Consolidation condoned the delay in filing the revision, he ought not to have proceeded with the hearing of the revision on merits. The observation of the Deputy Director of Consolidation that since the order is ex parte the question of delay cannot be raised, is erroneous. The order is ex parte or the revisionist had no knowledge of the order were the questions on the sufficiency of cause for delay and those questions cannot altogether obviate the

question of condoning the delay. The revision being admittedly barred by time and the revisionist himself having prayed for giving benefit of Section 5 of the Limitation Act, the Deputy Director of Consolidation ought to have examined the explanation given by the revisionist for delay on merits. Thus, the observation of the Deputy Director of Consolidation that the question of delay cannot be raised in revision since the order of the Settlement Officer of Consolidation was ex parte cannot be sustained. The Deputy Director of Consolidation is required to decide the Section 5 application filed in revision afresh.

17. In the result, the writ petition is partly allowed. The order of the Deputy Director of Consolidation holding that the question of delay cannot be raised is set aside. The order of the Deputy Director of Consolidation in so far as it holds that the revision at the instance of the Respondent No. 3 is maintainable is upheld. The Deputy Director of Consolidation is directed to decide the question of delay in revision afresh and consider the question of condonation of delay in revision afresh.

18. Ordered accordingly.