

(2003) 05 AHC CK 0183
In the Allahabad High Court
Case No : C.M.W.P. No. 18644 of 1999

Smt. Savitri Devi

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 44A, 48, 9A(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 44A, 48, 9A(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 44A, 48, 9A(2)

Citation : (2003) 4 AWC 2749

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : M.R. Gupta, for the Appellant; Ram Niwas Singh and S.C. Advs., for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—The land in dispute is situate in several villages. Gokul Pandey was its tenant. He is said to have executed a registered sale deed dated 6.8.1973 in favour of Gauri Shankar Mishra on the basis of which the name of Gauri Shanker Mishra was mutated. Gauri Shanker died on 16.6.1981. Meera Devi, the 4th respondent claims that she is his widow. Badri Prasad, the 5th respondent claims that Gauri Shankar had executed in his favour a sale deed for half share in the land of village Bhabhnauli Kala. He also relies upon a sale deed by Meera Devi in respect of the land of village Sidhauna. After the death of Gauri Shankar, the Consolidation Officer by order dated 4.11.1981 directed that the name of Gokul Pandey be recorded over chak No. 47 in place of Gauri Shankar as successor. Meera Devi then applied for setting aside the order dated 4.11.1981. It appears that Gokul Pandey died on 15.2.1988. The petitioner Savitri Devi claims that a registered Will was executed in her favour by Gokul Pandey. The Consolidation Officer originally allowed the restoration application filed by Meera Devi by his order dated 25.6.1990 but that order was subsequently set aside on the application of the petitioner. The restoration application filed by Meera Devi

thus, became pending. The petitioner Savitri Devi then filed an application alleging that the real Meera Devi was unheard of for the past several years and that the restoration application was forged and filed by an imposter and it was prayed that Meera Devi be summoned in Court. The Consolidation Officer by order dated 9.12.1991 rejected the application filed by the petitioner. The petitioner went up in appeal and the Assistant Settlement Officer, Consolidation also turned down by his order dated 29.4.1997 the prayer to summon Meera Devi to appear in person. The petitioner then filed a revision against the order dated 29.4.1997 of the Assistant Settlement Officer, Consolidation.

2. It appears that several cases were pending amongst the parties at level of the Consolidation Officer and the Settlement Officer, Consolidation. The Deputy Director of Consolidation before whom the aforesaid revision of the petitioner was pending called for the files of these cases in exercise of powers u/s 44A of the U. P. Consolidation of Holdings Act as also in exercise of suo motu powers in the revision. The files of Appeal No. 259/290 in respect of village Ishapur-Smt. Savitri Devi v. Meera Devi ; Objection No. 893 u/s 9A (2) in respect of village Bhabhnauli Kala--Smt, Meera Devi v. Gokul Pandey ; Objection No. 902 u/s 9A (2) in respect of village Bhabhnauli Kala--Smt, Savitri v. Sarkar ; Objection No. 985 u/s 9A (2) in respect of village Bhabhnauli Kala-Smt. Meera Devi v. Sarkar ; Objection No. 986 u/s 9A (2) in respect of village Bhabhnauli Kala--Bhadri Narain v. Sarkar ; Objection No. 2463 u/s 9A (2) in respect of village Rampur--Smt. Meera Devi v. Sarkar ; Objection No. 2136 u/s 9A (2) of village Ishapur--Smt. Meera Devi v. Sarkar ; Appeal No. 123 under Rule 65/109 kha framed under U. P. Consolidation of Holdings Act in respect of village Bhabhnauli Kala and Rampur--Meera Devi v. Sarkar were thus, summoned.

3. By the impugned order dated 12.3.1999, the Deputy Director of Consolidation disposed of all the objections and the appeals and the revision. The objections of Savitri Devi, the petitioner have been rejected and the objections of Meera Devi and Badri Narain were allowed. The Deputy Director of Consolidation directed that the name of Gauri Shanker entered in the land situate in the aforesaid villages be expunged and ordered that the names of Badri Narain and others be recorded as bumidhar. Modifications were also made in the entries of the names in the records of villages Ishapur, Bhabhnauli Kala and Rampur. The present writ petition has been filed against the order of the Deputy Director of Consolidation dated 12.3.1999.

4. I have heard Shri M. R. Gupta, learned counsel for the petitioner and Shri Ram Niwas Singh, counsel for respondents.

5. The submission of the learned counsel for the petitioner is that what was pending before the Deputy Director of Consolidation was a revision against an interlocutory order of the Consolidation Officer, affirmed in appeal, that it was not necessary to summon the respondent Meera Devi in person and the Deputy Director of Consolidation acted beyond jurisdiction in exercising powers u/s 44A of the U. P. Consolidation of Holdings Act and in deciding of aforesaid objections

and appeals along with the revision itself on merits.

6. The scope of Section 44A of the U. P. Consolidation of Holdings Act was considered in Sukh Lal and Anr. v. Deputy Director of Consolidation and Ors., 1986 RD 99. Section 44A provides that where powers are to be exercised or duties to be performed by any authority under the Act or the Rules framed thereunder, such powers or duties may also be exercised or performed by an authority superior to it. The words "an authority superior to it" were interpreted to mean the authority next superior to the authority entrusted by the statute with the duty or power. In other words, the power of entertaining objections exercisable by the Assistant Consolidation Officer can be exercised by the Consolidation Officer directly but could not be exercised by an authority exercising appellate or revisional jurisdiction, viz., the Settlement Officer, Consolidation or Deputy Director of Consolidation. The decision is squarely applicable to this case and the Deputy Director of Consolidation could not, while exercising power u/s 44A, have decided the objections pending before the Consolidation Officer,

7. Shri Ram Niwas Singh, learned counsel for respondents relied upon Tarkeshwar Pandey v. Deputy Director of Consolidation, 1983 RD 249, in support of his contention that the Deputy Director of Consolidation did have power to decide the case exercising suo motu powers u/s 48 and also u/s 44A. The decision in Tarkeshwar Pandey is on different facts. It was there held that the Deputy Director of Consolidation could set aside a provisional consolidation scheme, although that power was not specifically conferred u/s 48. The distinguishing feature of the case is that u/s 21 (4) of the Act, the Consolidation Officer and the Settlement Officer, Consolidation have been given powers to set aside a provisional consolidation scheme and thereafter the Deputy Director of Consolidation, while deciding a revision u/s 48, could exercise power u/s 44A and set aside a provisional consolidation scheme.

8. Learned counsel for respondents then relied upon Mahadeva Singh v. Deputy Director of Consolidation, Banda 1990 RD 120. That case too is distinguishable. In that case, the Deputy Director of Consolidation, while exercising power u/s 48 of the Act, had allotted 4 chaks but had not given any reason for allotment of these chaks. The Court relied upon the proviso to Sections 19 (1) and held that u/s 44A read with Section 48 of the Act when the revisional court decides the revision petition, it is under obligation to apply its mind to the relevant provisions relating to the question of allotment and was required, therefore, to bear in mind the principles of allotment u/s 19.

9. The scope of the suo motu powers of the Deputy Director of Consolidation in revision has been considered recently in Ranjeet and others Vs. Deputy Director of Consolidation, Ballia and another, The earlier cases on the question have been considered in this case including the Full Bench decision in Ramakant Singh v. Deputy Director of Consolidation 1974 (Supp) RD 262. It was held, while distinguishing certain decisions, that where an appeal is pending, it was not

appropriate for the Deputy Director of Consolidation to interfere in revision. The scheme under the U. P. Consolidation of Holdings Act is a self-contained well knit scheme. Objections regarding title are to be presented before the Assistant Consolidation Officer and in case they cannot be decided by compromise are referred to the Consolidation Officer for decision. The order of the Consolidation Officer is subject to appeal before the Settlement Officer, Consolidation and the order of the Settlement Officer, Consolidation can be challenged in revision. It was held that where, therefore, an objection or appeal is pending, the suo motu Jurisdiction of the Deputy Director of Consolidation cannot appropriately be invoked.

10. On facts, it is not clear whether the evidence had been closed in all the cases which were pending before the Consolidation Officer. In the counter-affidavit, it has been stated in paragraph 20 that evidence had been led. In the rejoinder-affidavit in paragraph 15, it has been stated that whole evidence had not been led. In the order of the Deputy Director of Consolidation, there is no reference to the fact that evidence had been led in all the cases. The Deputy Director of Consolidation has not referred to the evidence in each case separately. He has also not referred specifically to the pleadings of the parties in each of the cases and the issues arising in them. Nor has he referred to the findings recorded by the Consolidation Officer in the cases in which appeals were pending, the files of which, were summoned by the Deputy Director of Consolidation. The manner in which findings have been recorded by the Deputy Director of Consolidation without reference to the pleadings and evidence in each case cannot be accepted as proper application of mind and his order cannot be sustained.

11. In the present case, the objections and appeals relating to title were pending and it was not appropriate for the Deputy Director of Consolidation to exercise suo motu powers in the revision against an interlocutory order of the Consolidation Officer affirmed in appeal that it was not necessary for Smt. Meera Devi to appear in person. The order of the Deputy Director of Consolidation is liable to be quashed on this ground also.

12. The cases cited by Sri Ram Niwas Singh may now be considered. In *Vikram Singh v. District Magistrate* 2002 (93) RD 278, the Apex Court upheld the power of the Collector to pass a consequential order for expunging a wrong entry in favour of the appellant, who had lost from the High Court. In *Rama Kant Singh* (supra), it was held that after summoning the records, the Deputy Director was required to examine whether suo motu powers were to be exercised. This case has been considered in *Ranjeet and others* (supra) and distinguished on the ground that in the case appeal was not pending. In *Sahebray v. Deputy Director of Consolidation*, 1990 (Supp) RD 226, it was held that suo motu exercise of the revisional power by the Deputy Director of Consolidation was not bad merely because the power was exercised at the instance of a third party. These cases are not applicable in the present situation where objections and appeals were pending.

13. It was then submitted that the parties had consented to the jurisdiction of the Deputy Director of Consolidation and had not raised any objection there. As it has been held that the Deputy Director of Consolidation could not have appropriately invoked the suo motu power u/s 48 and on merits too his order cannot be sustained as held above, the question of acquiescing to the jurisdiction does not really arise. The submission of Shri Ram Niwas Singh learned counsel for respondent that no interference should be made in writ petition as the order passed by Deputy Director of Consolidation on merits was correct, therefore, cannot be accepted. The decisions cited by Sri Ram Niwas Singh on the point that where substantial justice has been done, no interference under Article 226 is called for even if the order is without jurisdiction (Sitaram alias Baba Vs. Deputy Director Consolidation Varanasi and others, unless the wrong is referable to grave dereliction of duty or abuse of process resulting in grave injustice Ouseph Mathai and Others Vs. M. Abdul Khadir, and that the High Court will not interfere if the result of quashing an erroneous order is to revive another illegal order (Ram Dhiraj v. Board of Revenue. 1997 (88) RD 324 and that the High Court could not interfere in the order of the Commissioner recalling an order of dismissal of a claim under the Workmen's Compensation Act obtained by fraud (Roshan Deen Vs. Preeti Lal, are not applicable to the facts of this case.

14. In the result, the writ petition is allowed. The order of the Deputy Director of Consolidation dated 12.3.1999 is quashed. He is directed to decide the revision filed by the petitioner against the order dated 29.4.1997 in accordance with law and in the light of the observations made above.