

(1987) 11 AHC CK 0075

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3510 of 1980

Sodhey

APPELLANT

Vs

Deputy Director of Consolidation and Another

RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 54

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 14, 14(1), 14(2)

Citation : (1988) 1 AWC 361

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : R.N. Singh and S.N. Singh, for the Appellant; Sankatha Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Misra, J.—The present petition is directed against order dated 24th January, 1980, and 21st August, 1976, passed by the Deputy Director of Consolidation by virtue of which he rejected the restoration application of the petitioner and allowed the reference in revision.

2. The petitioner's case is, long after carnation of chak proceedings one Salfu moved an application for providing him a Nali through his chak on which the Assistant Consolidation Officer made a recommendation in favour of contesting Respondent. The petitioner filed an objection to it stating that there is already an existing Nali and there is no occasion for granting another Nali. The Deputy Director of Consolidation, it is alleged, without hearing the petitioner or his counsel accepted the reference by means of the impugned order dated 21st August, 1976. Thereafter, the petitioner being a minor, through his natural guardian, viz. mother, filed a restoration application before the said court for setting aside the ex-parte order and for giving an opportunity of being heard. The Deputy Director of Consolidation, however, rejected the application by means of order dated 24th January, 1980. Aggrieved as against the said, the present

petition has been filed for quashing both the impugned orders dated 24th January, 1980 and 21st August, 1976.

3. The main contention on behalf of the petitioner is that the petitioner being a minor and brother of Ram Adhar, Radhey and Bodhey and he not having been heard, the orders which pre-judicially affected him, are liable to be set aside on this ground alone. Learned Counsel for the petitioner further urged that, in fact, no changes could have been brought about by the Consolidation authorities after the conclusion of the Consolidation proceedings and thus even on merits the court should not have interfered.

4. Learned Counsel for the Respondent, on the other hand, strenuously urged that there is nothing wrong in the impugned order. The petitioner was represented through Ram Adhar, who acted as his guardian and next akin. He filed vakalatnama on his and on behalf of the minor petitioner and thus it cannot be said that the petitioner was not given an opportunity of being heard.

5. I have perused the impugned order dated 24th January, 1980. A finding has been recorded that if any one of the brother was represented it was not necessary to hear other brothers in a joint holding inherited by them from their father and as such the order could not be said to be ex-parte order, The aforesaid finding cannot be sustained. After death of the father, each one of the sons have independent right to agitate before the authorities and to be given an opportunity of being heard, The finding to the contrary cannot be sustained.

6. Learned Counsel for the Respondent, however, urged that there is nothing wrong in the brother acting as a guardian of the petitioner (minor) and he having filed an objection on his behalf and on behalf of other brothers the order passed cannot be challenged.

7. It is relevant here to refer to Section 54 read with Rule 14 of the U.P. Consolidation of Holdings Act and Rules. There is a provision for appointment of a guardian to a minor under the consolidation proceedings under Sub-rule (1). It is provided: " The Assistant Consolidation Officer shall in consultation with the Consolidation Committee appoint guardian of such minors, idiots or lunatics unless such guardians have been already appointed by order of a competent court ". Sub-rule (2) gives guidelines wherein it provides: " the guardian appointed for a minor shall be natural guardian unless the natural guardian possesses an interest adverse to the interest of the minor ". It was also provided in case the natural guardian is not appointed the Assistant Consolidation Officer shall record its reasons therefor.

8. In the present case, it appears that no appointment as contemplated under the aforesaid Act and the rules has been made by the authorities referred to therein. Thus, the appointment of Ram Adhar as guardian was self-imposed and his acting on behalf of the petitioner by filing before the authority a Vakalatnama was his individual act, and it could not be said to be an appointment under the aforesaid consolidation Act and the rules.

9. It was next contended that even if Ram Adhar acted as guardian, even under the aforesaid Act and the rules, a person other than a natural guardian can be appointed and there could not be any illegality in the same. The argument is contradictory and opposed to the very idea of appointment of guardian under Rule 14 (1) and (2) of the rules. Under Sub-rule (2) it clearly provides that the appointment of guardian shall only be the natural guardian, which in the present case was the mother and who was living and has also made an application before the consolidation authorities for restoration of the order, but instead of the natural guardian being appointed, Ram Adhar is said to have been allowed to act as guardian of the petitioner. It is true that under Sub-rule (2) there could be in a given case for the appointment of a person other than a natural guardian has an interest adverse to the minor and if such a recourse is taken then authorities are bound to record its reasons for appointing somebody other than the natural guardian. Learned Counsel for the petitioner has not been able to show such reasons. Neither any such order was passed, nor it has been justified otherwise as to why a person other than the natural guardian should act, which is in contradiction to the very spirit of the consolidation Act and the rules.

10. In view of the aforesaid the finding recorded by the Deputy Director " of Consolidation that it is not necessary to hear him (minor) would be contrary to the very principle and would defeat the very object of appointing a guardian under this Act of the minors. When the question of minors being represented is clearly stipulated under the Consolidation Act and the rules and that not having been followed the act of Ram Adhar acting as guardian being a brother of the minor cannot be sustained.

11. In view of the aforesaid it is clear case in which no opportunity was given to the petitioner before the order dated 21st August, 1976, was passed. The Deputy Director of Consolidation on 24th January, 1980 was not justified in rejecting the application for giving an opportunity to the petitioner. In view of this, the impugned orders dated 24th January, 1980 and 21st August, 1976 are hereby quashed and it is directed that the matter be decided afresh after giving Opportunity to the petitioner of being heard, after appointing his guardian in accordance with law.

12. Learned Counsel for the petitioner then urged, on merits this change which is brought about by the Deputy Director of Consolidation in reference Was not justified since the consolidation operations have come to an end. The question raised by the learned Counsel for the petitioner is going on to the merits of the question and that can only be entertained after the restoration of the application is allowed and he is given an opportunity of being heard. It shall be open to the petitioner to raise such an objection before the authorities at the time of bearing of this case.

13. In view of the aforesaid, this writ petition is allowed. The impugned orders dated 24th January, 1980 and 21st August, 1976, are hereby quashed. He shall decide afresh after giving opportunity to the petitioner in accordance with law.

Costs easy.