
(1992) 10 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37019 of 1991

Sri. Shanker

APPELLANT

Vs

Assistant Director of Consolidation and Another

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3)

Citation : (1993) 1 AWC 165

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Swaraj Prakash, for the Appellant; Sunil Kumar Gaur, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—By the present Petition the prayer is that the order dated 25-9-91 (Annexure-6), passed on the application dated 26-3-90 and the order dated 6-3-90 (Annexure-5) rejecting the restoration application, in proceedings u/s 48(3) of the U.P. Consolidation of Holdings Act. (for short the Act), for preparing reference, and the order dated 21-11-88 (Annexure-3), accepting the reference u/s 48(3) of the Act, with the observation that Horam, son of Shankar, Chak holder No. 374 has raised objection that by accepting the reference his Chak near the boaring over plot No. 217 would not remain rectangular, are sought to be quashed by issuing a writ of certiorari.

2. Sri. Swaraj Prakash, learned Counsel for the Petitioner contended that in proceedings for reference the Petitioner was not served with any notice, and without recording a categorical finding about the service of notice on the Petitioner the subsequent two orders rejecting the restoration application, were passed. In the first two orders rejecting the restoration application, the grievance of the Petitioner Shankar was that "he was not heard, nor he was present on the date of hearing, i.e. 21-11-88 but an observation has been made that in place of

Shankar, Chak Holder No 374, his son Horam has raised objection and was present on the date of hearing. It was further urged that the Petitioner did not make signature on the order sheet, nor he was heard on the date fixed, any by making an incorrect observation about the presence of Horam, the son of Petitioner, reference has been accepted by order dated 21-11-88 (Annexure-3), in proceedings u/s 48(3) of the Act, and Petitioner's restoration application has incorrectly been dismissed without recording a finding that the Petitioner was not heard.

Reliance was placed on Nawal Kishore Lal v. Deputy Director of Consolidation 1986 ALJ 117, Kunwarpal v. Dy. Director of Consolidation 1986 ALJ 576; Suba v. Mohd. Shafi 1986 RD 180 and Nathani Singh v. Asstt. Director of Consolidation 1990 RD 258.

3. Sri. S.K. Gaur, learned Counsel for the Respondents urged that notice about the date fixed for hearing of reference u/s 48(3) of the Act was served on the Petitioner and instead of attending himself, the Petitioner deputed his son Horam to appear on the date fixed. Horam did appear and he was doing pairvi and made signature on the order sheet and was heard also. The restoration application has correctly been dismissed. Reliance was placed on Bipin Kumar Agarwal v. Board of Directors, Vidhur Gramin Bank 1990 AWC 983; Nawal Kishore Lal v. Dy. Director of Consolidation 1986 ALJ 117; and Kunwarpal v. Dy. Director of Consolidation 1986 ALJ 576.

4. Learned Counsel for both the parties have suggested that the petition may be decided on merits. Consequently, I proceed to decide the petition on merits.

5. Having heard learned Counsel for the parties, the short point that fall for determination is as to whether the Petitioner was served with a notice for the date fixed and was actually heard while accepting the reference u/s 48(3) of the Act. The irresistible conclusion of the first point would be as to whether the Petitioner's restoration application has correctly been dismissed. Before deciding the point it is pertinent to mention that Section 48(3) of the Act itself contemplates that the reference can be accepted only after affording opportunity of hearing to the parties concerned. No doubt the word "may" has been employed by the Legislature about the bearing of the parties affected by the reference. But normally the word "may" is directory and "in view of reference to the context, particularly when the word "may" is used for exercising jurisdiction or following procedure by a Court, Tribunal, or Authority deciding the rights of the parties, is that situation the word "may" means "must" and "shall", and is mandatory.

6. In the present case in the impugned order dated 21-11-88 (Annexure-31, an observation has been made that the Petitioner's son Horam has raised objection on behalf of Petitioner. In paras 6, 7 and 8 of petition it was averred that the Petitioner was not heard on 21-11-88, when the reference was decided on merits. These paras have been replied in paras 7, 8 and 9 of the counter affidavit

filed on behalf of Respondent no 2, and it has been stated that on 21-11-88 both the parties were present before the Deputy Director of Consolidation. Petitioner's son Horam was present on 21-11-88 and he has signed the order sheet and the order dated 21-11-88 accepting the reference was not an ex parte order and the restoration application was filed by the Petitioner beyond the prescribed period of limitation, and there was no application u/s 5 of the Limitation Act for condonation of delay, and the order rejecting the restoration application was correct. A copy of the order sheet has been filed as Annexure C.A. 2 which indicates that Horam has made signature on the order sheet, on 21-11-88 when the reference was accepted. A certified copy of the actual notice issued to Petitioner for appearance on the date fixed In reference was also shown to me which indicates that actually on the date fixed on 12-9-88 notice was sent to the Petitioner and was served personally on him. But as the same has not been filed along with the counter affidavit, I keep it out of consideration. But since it was shown in the presence of the learned Counsel for the Petitioner, I made mention about it.

7. After perusing the order sheet filed as Annexure C.A. 2 Indicating the signature of Horam, son of Shankar, the Petitioner, I am satisfied that notice was actually served on the Petitioner in person, and in his place, on the date fixed, his son Horam used to appear and do pairvi. There is no irregularity in such matters. It is normal practice in the litigation that normally the actual party need not appear, but he can depute somebody else to do pairvi It was not stated in the petition specifically that Petitioner was not served with notice. However, the matter has been clarified in the counter-affidavit by filing a copy of the order sheet I am convinced that the Petitioner was personally served with a notice and on his behalf his son Horam was doing pairvi on the relevant dates. As the Petitioner was represented through his son, the restoration application filed by him has correctly been dismissed by the order dated 25-9-91 (Annexure 6).

8. As regards Suba v. Mohd. Shafi (Supra), that was a case where no notice was sent or served on the person concerned, but by chance that person appeared in court. But in the absence of notice that was not deemed to be sufficient in the present case notice was actually served on the Petitioner and in his place his son was doing pairvi on the dates fixed and made signatures on the order sheet. Hence that case is of no assistance to the Petitioner.

9. Nawal Kishore Lai v. Dy. Director of Consolidation, (Supra), was a case where it was held that restoration application in reference proceedings cannot be allowed unless there is any good reason. In that case by bona fide mistake the person concerned has made signature on the order sheet and he was made to understand that further proceedings would be stayed and hence he could not appear on 30-3-73. However, there was no misunderstanding in the present case. Hence that case is also besides the point.

10. Kunwarpal v. Dy. Director of Consolidation, (Supra), was a case where observation was made In the impugned order that the parties were heard and

did not record a finding that the observation made in the revision that the parties were heard, was incorrect. In the present case also observation has been made that on behalf of Petitioner, his son appeared on the date fixed and raised objection in favour of Petitioner, which means that, the Petitioner was represented and was heard. Hence that case would not take the matter any further.

11. Naibani Singh v. Asst. Director of Consolidation, (Supra), was a case where it was held by Hon A.N. Verma, J. (for whom I have all regards) that the authorities have to consider the explanation for delay and cause for absence, and where the delay in filing application was satisfactory and entitled to be accepted, and where there was sufficient cause for absence of Petitioner, and these aspects were not considered by the court concerned. Hence the Assistant Director of Consolidation was directed to dispose of the Petitioner's application according to law. But in the present case the facts are different.

12. Similarly learned Counsel for the Respondents has also relied upon Nawal Kishore Lai v. D.D.C. (Supra), and Kunwarpal v. D.D.C (Supra), which has already been discussed above and need not be repeated. Under the circumstances of the case, I am of the view that the Petitioner was served with a notice and on his behalf his son Horem was doing parivi and was heard in reference proceedings. Consequently the reference has correctly been decided on merits and restoration application of the Petitioner has correctly been dismissed.

13. In view of the premises aforesaid, the present petition fails and it is dismissed. The interim stay, Dt. 17-12-91, is vacated.