

(1976) 04 AHC CK 0059
In the Allahabad High Court
Case No : Writ Petition No. 1414 of 1970

Sultan and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 26-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Citation : (1977) AWC 138

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Jha, J.—The Petitioners have filed this petition under Article 226 of the Constitution praying for quashing of the order dated 30-7-1970 contained in Annexure 1.

2. The brief facts of the case are that there was a dispute between the Petitioners and the opposite parties 2 to 7 with respect to khata No. 297 on the basis of an objection by the Petitioners with respect to an area consisting of 2 Bighas 15 Biswas and 10 Biswansis out of the total area of the disputed Khata which consisted of 34 Bighas and 11 Biswas. The Assistant Consolidation Officer brought about reconciliation vide his order dated 23-2-1967. This reconciliation was challenged by an appeal before the Settlement Officer (Consolidation) which was allowed on 19-2-1968. The opposite parties preferred a revision before the Deputy Director of Consolidation but the same was dismissed vide order dated 19-2-1969 and the case was remanded to the Consolidation Officer for disposal of the objections on merits. On remand order having been maintained the Consolidation Officer proceeded to dispose of the objection. At this stage the Petitioner filed an objection dated 10/12th November, 1967 claiming sirdari rights over whole of the Khata No. 297. These objections were dismissed by the Consolidation Officer on 23-11-1967. Against this order Sultan and others filed

an appeal no 4043. In this appeal on behalf of the opposite parties it has been stated that apart from these objections being time barred, and they not having been preferred before the Assistant Settlement Officer (Consolidation) were not maintainable. The said appeal preferred by the Petitioners, however, was not pressed by their learned Counsel and it was dismissed by the Settlement Officer (Consolidation) on 19-2-1968 on the ground that the appeal was not pressed. It may be mentioned that against this order neither any revision was filed nor any writ petition was preferred by the Petitioner. In the circumstances the order dated 23-11-1967 became absolute by means of which the claim of the Petitioner with respect to whole of the khata No. 297 had been rejected. When the Consolidation Officer in pursuance of the earlier order passed by the Deputy Director of Consolidation was proceeding to consider the matter on merits, another objection dated 24-12-1969 was filed by the Petitioners setting up the same claim with respect to the whole of the Khata No. 297. This time the Consolidation Officer allowed the objections vide his order 22-6-1970. It was against this order of the Consolidation Officer that the opposite parties preferred a revision and the Deputy Director of Consolidation vide his order dated 30-7-1970 allowed the revision (This Is Annexure 1) and ordered that the order dated 22-6-1970 of the Consolidation Officer be quashed, entertaining fresh objections dated 24-12-1969 of the opposite parties which aim at enlarging the scope of the dispute. The Petitioners feeling aggrieved have come up before this Court by means of the present petition.

3. The petition has been contested and the facts stated above have been brought out chronologically in the counter affidavit and an effort has been made to support the order being legal, just and proper.

4. I have heard the learned Counsel for the parties.

5. The learned Counsel for the Petitioners argued that since the matter was pending before the Consolidation Officer it was open to the Petitioners to supplement their objections which had been signified at the earlier stage. He further maintained that even if by the subsequent objection it was intended to enlarge the scope of the objections filed earlier there was no bar and the Deputy Director of Consolidation committed an error in setting aside the order passed by the Consolidation Officer allowing the objections preferred by the Petitioners. He placed reliance on a Full Bench decision of this Court in *Shanker Singh v. Deputy Director of Consolidation and Ors.* decided on 29-3-1972 in Writ Petition No. 496 of 1970. This Court held:

The question that after the amendment of the U.P. Consolidation of Holdings Act, 1953 by U.P. Act No. XXXVIII, 1958 the requirement of filing of objections u/s 9 before the Assistant Consolidation Officer has become procedural requirement which may be regarded as mandatory only till a dispute about some land has not been referred to the Consolidation Officer and once the Consolidation Officer is seized of a dispute in respect of such land, he will have jurisdiction to himself to entertain new objections in regard to such land or part thereof and to decide

such objections without the same having been presented to the Assistant Consolidation Officer.

In view of this decision it was open to the Consolidation Officer to entertain fresh objections. The learned Counsel for the Respondents on the other hand tried to distinguish this case on facts involved in the present case. He pointed out that Petitioners vide their objections dated 10/12th Nov., 1967 had filed objections claiming sirdari rights over whole of the disputed khata No. 297. These objections were dismissed by the Consolidation Officer on 23-11-1967 and the Petitioners had preferred an appeal before the Settlement Officer Consolidation on 29-2-1968 but for reasons best known, this appeal was not pressed and the order passed by the Consolidation Officer with respect to objections claiming whole of the disputed khata had become final. He urged that this finality could not be circumvented by the Petitioners in the garb of fresh objections tiled by them on 24-12-1969 before the Consolidation Officer when he proceeded to consider the case on merits, under the original order of the Deputy Director of Consolidation dated 19-8-1969. He argued that this second objection claiming whole of the sirdari rights was rightly rejected by the Deputy Director of Consolidation in his order dated 30th July, 1970. On giving any anxious consideration to the arguments advanced by the learned Counsel for the Petitioner I have no hesitation in holding that there is substance in the contention of the learned Counsel for the Respondent who very ably has scanned the whole facts of the case. If one subsequent objection preferred by the Petitioners had already been rejected for some reasons and Petitioners did not prefer to challenge the same either in appeal or by any legal procedure, in my opinion, they are debarred from taking up the same plea especially when the earlier matter had become final between the parties. I have no hesitation in observing that no rejoinder affidavit has been filed to the assertions made in the counter affidavit and as such they remained uncontroverted. In my opinion, the order passed by the Deputy Director of Consolidation does not suffer from any error and the Petitioners are also not entitled to any relief from this Court under Article 226 of the Constitution as they have not come with clean hands in this Court.

6. The result is that the writ petition fails and is accordingly dismissed. I however, make no order as to costs.