

(2014) 03 AHC CK 0223

In the Allahabad High Court

Case No : W.P. (Cons.) Nos. 26, 598 and 977 of 2014

Sushila Singh

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 48(3), 9A(2)

Citation : (2014) 124 RD 800

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : S.C. Tewari, Rakesh Pathak and R.N. Gupta, Advocate for the Appellant; Azad Khan, Vijai Bhadur Verma, Ajay Kumar Singh Raj, I.D. Shukla, N.N. Jaiswal, Prasant Jaiswal, S.K. Mehrotra, Suresh Chandra Tiwari, Vidya Bhushan Dwivedi and Ajay Pratap Singh, Advocate for the Respondent

Judgement

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Anjani Kumar Mishra, J.—Writ Petition No. 26 of 2014 has been filed by Smt. Sushila Singh wife of Rajat Ram Singh, Kamla Devi @ Safarsi wife of Jai Narain Singh, and Amar Bahadur Singh son of Ram Mundar Singh seeking a writ of certiorari quashing the order dated 9.9.2013 passed by the Deputy Director of Consolidation, Faizabad in Revision No. 1422, Narendra Bahadur Singh and others v. Smt. Shanti Devi and others. By this impugned order, the Deputy Director of Consolidation has set aside the order dated 28.7.2004 passed by the Consolidation Officer in Case No. T.B. 6/2008 under section 9A(2) of the U.P. Consolidation of Holdings Act whereby the Consolidation Officer had valued plot Nos. 1111, 1112, 1113 and 2491 which were chak-out plots, being parti land, grove and pond on the spot. One of the grounds taken in the writ petition was that another Writ Petition No. 977 of 2006 was already pending on the same subject matter and therefore the Deputy Director of Consolidation should not have entertained the revision or passed any order therein. In view of the said averment, this petition was directed to come up along with record of the Writ

Petition No. 977 (Cons.) of 2006 vide order dated 20.1.2014. Subsequently, on the request of the parties, the record of the Writ Petition No. 598 of 2006 was also summoned. As a result the records of these three writ petitions, namely, 26 of 2014, 977 of 2006 and 598 of 2006 are before me.

2. I have heard the learned Counsel for the parties in the writ petitions.

3. Writ Petition No. 598 of 2006 was dismissed for want of prosecution by the order dated 13.12.2012 and there is no application available on record for recalling the said order nor has it been stated by anybody that any such application has been filed and is pending. The impact if any, of the dismissal of this writ petition will be considered at the appropriate place.

4. Even though no counter affidavit has been filed in Writ Petition No. 26 of 2014 nor any counter affidavit was called for, yet I have heard the Counsel for the parties on merits and the writ petition is being decided finally with the consent of the parties.

5. I am dealing with Writ Petition No. 26 of 2014 first and the relevant facts are as follows:

(i) It has been submitted that the village Majnawan, Pargana Magansi, Tehsil Shohawal, District Faizabad was brought under consolidation operations. Publication under section 20 of the U.P. Consolidation of Holdings Act was made on 1.2.1986. Subsequent to the notification, objections under section 20 were decided and even the chak revisions have been disposed of in the units. Plot Nos. 1111, 1112, 1113 and 2491 were kept out of the consolidation operations on account of the fact that they were parti land, grove and pond on the spot. On 18.12.2002, Amar Singh executed a sale deed of his share in favour of Smt. Sushila Devi and Kamla Devi, Petitioner Nos. 1 and 2.

(ii) On 26.11.2002, an objection purporting to be under section 9A(2) of the Act was filed by Amar Singh, Amar Bahadur Singh and Kamla Devi @ Sarfarsi on the allegation that the trees existing on the aforesaid plots had been cut way and the same was now being used for agricultural purposes. Under the circumstances, it was prayed that the plots be valued as they were now agricultural plots.

6. On the objection aforesaid a report was obtained from the Assistant Consolidation Officer and relying upon the same, the Consolidation Officer by his order dated 20.8.2007, allowed the objection. He valued plot Nos. 1111, 1112 and 1113 at eight annas while plot No. 2491 was valued at ten annas. Subsequently a reference was prepared to implement the order of the Consolidation Officer passed on 28.7.2004. This reference was accepted on 20.9.2006. Against the order dated 20.9.2006 a Writ Petition No. 977 of 2006 was filed by Nakchhed which is one of the connected writ petitions.

7. On the other hand, the respondents, Narendra Bahadur Singh and Amar Bahadur Singh, challenged the order dated 28.7.2004 passed by the Consolidation Officer by means of revision No. 1422. This revision was allowed by

the order dated 9.9.2013 which order is impugned in the writ petition.

8. I have considered the submissions made by the learned Counsel for the parties and have perused the impugned order. The Deputy Director of Consolidation has allowed the revision and set aside the order passed by the Consolidation Officer on the reasoning with the other co-tenure holders of the plots in question were not made parties to the objection and the plots have been valued without hearing them. The Deputy Director of Consolidation has further recorded that the Consolidation Officer had valued these plots relying exclusively on the report submitted by the Assistant Consolidation Officer and without considering the revenue records and the circumstances of the case. As far as plot No. 2491 is concerned, he has recorded that it is not clear as to who is in possession over the said land which is recorded as pond in CH Form 2-A and therefore the Deputy Director of Consolidation has held that there was no justification for valuing the said plot. On the aforesaid reasoning the revision were allowed and the order of the Consolidation Officer has been set aside and the four plots have been ordered to be recorded as chak out as was the position before the order of the Consolidation Officer.

9. A perusal of the grounds taken in the writ petition reveals that in fact, there is no cogent ground on which the petitioners can challenge the order impugned. An attempt has been made to challenge the impugned order on the ground of pendency of Writ Petition No. 977 (Cons.) of 2006 and the interim order operating therein. It has also been taken as a ground that the impugned order is contradictory to the order dated 20.9.2006 which is impugned in the connected writ petition.

10. In the aforesaid background, it would be now be appropriate to refer to the relevant facts as regards Writ Petition No. 977 of 2006. It has been pointed out that a substitution application to bring on record the heirs of Amar Singh, respondent No. 3 is still pending being application No. 85092 of 2013. Amar Singh died on 12.8.2009. An abatement application was filed to abate the writ petition as no substitution application had been filed within time. It is thereafter that the substitution application was filed on 18.9.2013.

11. Shri M.A. Khan, learned Senior Counsel appearing for the respondents in this writ petition has strongly opposed the substitution application. He states that it is highly belated and the delay has not been explained. He further stated that the application is defective as there is no prayer for setting aside the abatement which in any case is automatic. He therefore, prays that the substitution and delay condonation application be rejected and the writ petition be ordered to abate.

12. Since, the heirs of deceased Amar Singh are on record in the connected petition and they have been heard on merits, the substitution application is allowed after condoning the delay in filing the same.

13. A perusal of the record of this writ petition reveals that a reference was

prepared and made under section 48(3) of the U.P. Consolidation of Holdings Act as excess valuation to the tune of 7.49 annas was included in the chak of Nakchhed the petitioner in this writ petition and the reference was prepared to exclude this excess valuation from his chaks. This reference was duly accepted by the Deputy Director of Consolidation rejecting each and every objection made by the various parties thereto. Even though the reference was prepared primarily to exclude excess valuation included in the chak of the petitioner, Nakchhed, there is no whisper in the writ petition as to why this valuation should not be excluded from his chak. Thus for all practical purposes, the primary object of the reference has not been disputed by the petitioners Nakchhed and Om Prakash Singh. The only arguable ground that has been taken in this writ petition is ground (E) which is quoted below:

"(E) Because due to impugned order the petitioners have been put in great irreparable loss by which much area of about nine bighas has been taken where the tube-well of the petitioner is running."

14. Other grounds are to the effect that the reference was also to give effect to the order dated 28.7.2004 whereby the objection of the petitioners in writ petition No. 26 of 2014 was allowed and four plots which were earlier chak out were valued.

15. This ground however is not substantiated on record. There appears no co-relation between the order valuing the plots and the reference that has been impugned in the writ petition, which was for excluding excess valuation from the chak of the petitioners, Nakched and another, and for its inclusion in the chak of the respondents in the writ petition. As regards the first ground that the impugned order deprives the petitioners of their tube well and excludes it from their chak, it would suffice to state that there is no material on record apart from the bald allegation made in the writ petition that the tube-well of the petitioners exists over the land which is being excluded from that chak. More importantly, no such issue has been raised by the petitioners before the Deputy Director of Consolidation where their objections were duly considered. Under the circumstances, this is an altogether new plea which is raised for the first time in the writ petition and therefore I am not prepared to consider the same. No relief can be granted to the petitioners on this ground.

16. The petitioners have not disputed the fact that excess valuation included in their chak is liable to be excluded therefrom. They have failed to demonstrate any co-relation between the impugned reference order and the order of the Consolidation Officer valuing four chak out plots. In any case, this order of the Consolidation Officer in Case No. T.B. 06/80 whereby plot Nos. 1111, 1112, 1113 and 2491 were valued has been set aside by the Deputy Director of Consolidation.

17. It has also been alleged in this writ petition although in a rather oblique manner that this petition needs to be entertained on account of the pendency of Writ Petition No. 598 (Cons.) of 2006, Nakchhed and others v. DDC and others,

which is directed against an order dated 27.1.2006 whereby another reference which was accepted on 16.6.1990 was recalled on the ground that it had been asses ex pate against some of the affected parties. Even this ground becomes redundant in view of the fact that writ petition No. 598 of 2006 was dismissed in default as far back as on 13.12.2012. Accordingly and in view of the aforementioned discussion, I find no merit in this writ petition No. 977 of 2006, and the same deserves to be dismissed with costs which I quantify as Rs. 10,000/-.

18. Since the only ground taken in writ petition No. 26 of 2014 for challenging the order impugned therein is pendency of writ petition No. 977 of 2006 which the writ petition has been dismissed by me herein above, this writ petition is also devoid of merits and deserves to be dismissed. Normally, since the impugned revisional order set aside the order of the Consolidation Officer on the ground that it was passed without impleading and without any notice and information to all necessary parties, it would have been appropriate to remand the matter for a fresh decision after affording opportunity of hearing to such parties. The Deputy Director of Consolidation has not passed any order of remand and I am not inclined to pass any such direction for re-consideration of the matter after affording opportunity of hearing to the necessary parties because the objection itself was highly belated, having been filed almost 20 years beyond time and orders were obtained in a very surreptitious manner. Under the circumstances, there is no illegality in the order passed by the Deputy Director of Consolidation which is hereby affirmed. Accordingly and for the reasons given above, writ petition No. 26 of 2014 are devoid of merits and is dismissed. Writ petition No. 977 of 2006 is dismissed with costs of Rs. 10,000/-.