
(2008) 07 AHC CK 0159

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28073 of 2008

Teja

APPELLANT

Vs

Deputy Director of Consolidation and another

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 07 AHC CK 0159

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard learned Counsel for the petitioner and Shri Rishi Kant Rai for the respondent No. 2, who states that he does not propose to file any counter affidavit.

With the consent of the learned Counsel for the parties, the writ petition is being finally disposed of at this stage.

2. Undisputed facts are as under:

In the basic year, khata in dispute was recorded in the name of the petitioner as well as respondent No. 2, each having half share. An objection under section 9A of the Consolidation of Holdings Act (for short the Act), was filed by respondent No. 2 stating that the name of Teja has wrongly been recorded over the khata inasmuch as he was not the son of Thakuri. Consolidation Officer vide order dated 25.4.1991 rejected the objection. Respondent No. 3 went up in appeal, which was also dismissed against which respondent No. 3 went up in revision. Deputy Director of Consolidation finding that the parties were not given any proper opportunity to adduce evidence, vide order dated 20.5.1998 remanded the case back to the Consolidation Officer to decide the same afresh after opportunity to the parties to produce evidence.

3. The matter remained pending before the Settlement Officer, Consolidation and ultimately vide order dated 15.1.2005, the appeal was again dismissed with the

finding that even though the proceedings have remained pending for six years, but the parties have failed to adduce any evidence. Respondent No. 3 went up in revision. Deputy Director of Consolidation vide impugned order dated 27.3.2008 allowed the same.

4. It has been urged by the learned Counsel for the petitioner that even though there was absolutely no evidence on record, yet the Deputy Director of Consolidation has wrongly and illegally held that petitioner was not son of Thakuri.

5. In reply, learned Counsel appearing for the respondent has tried to justify the impugned order. It has been submitted that during the pendency of the proceedings before the Settlement Officer, Consolidation, only dates were being fixed in a mechanical manner and no opportunity was ever afforded to adduce any evidence.

6. I have considered the argument advanced by the learned Counsel for the parties and perused the record.

A perusal of the impugned judgment of the Deputy Director of Consolidation goes to show that there is absolutely no reference of any evidence, oral or documentary and abruptly a conclusion has been arrived at that petitioner was not son of Thakuri. The said finding is without reference to any evidence whatsoever.

7. In such circumstances, the impugned order of the Deputy Director of Consolidation is not liable to be sustained and is hereby quashed. The writ petition stands allowed.

8. The dispute stands remanded back to the Settlement Officer, Consolidation and he after receiving the certified copy of this order, shall fix a date for adducing evidence by the parties and after the evidence is led, proceed to hear and decide the appeal on merits afresh. The entire exercise may be completed by the Settlement Officer, Consolidation within a period of four months from the date of production of a certified copy of this order before him.