

(1996) 09 AHC CK 0073

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27560 of 1996

Terhai

APPELLANT

Vs

Addl. Collector, Administration Azamgarh/D.D.C. Azamgarh &
Ors.

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(4A), 44(ii), 48, 9A
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25, 25A
Uttar Pradesh Land Revenue Act, 1901 — Section 14A

Citation : (1996) 09 AHC CK 0073

Hon'ble Judges : S.P. Srivastava, J

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

1. Heard the learned Counsel for the petitioner and the learned Standing Counsel representing the respondents No. 1 to 3.
2. Perused the record.
3. Feeling aggrieved by an order passed by the Additional Collector (Administration)/Deputy Director of Consolidation, Azamgarh, dismissing the revision filed by the petitioner under Section 48 of the U.P. Consolidation of Holdings Act and affirming the order passed by the Assistant Consolidation Officer dated 24/11/1983, whereunder in the proceedings for conciliation envisaged under Section 9A of the aforesaid Act, the holding in dispute which pertains to Khata No. 106 recorded in the names of Terhai and Barsati was partitioned dividing the same by demarcating an area of 1 Bigha 350 Karis to be that of Terhai and the area of 2 Bigha 308 Karis to be that of Barsati, the petitioner has now approached this Court seeking redress praying for the quashing of the order passed by the Deputy Director of Consolidation as well as that of the Assistant Settlement Officer, Consolidation dismissing the appeal filed by him challenging the order passed in the conciliation proceedings.

4. The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The agricultural holding pertaining to Khata No. 106 in dispute was recorded in the basic year in the names of Terhai and Barsati. Subsequent to the issue of the notice inviting objections, two disputes relating to the Khata in question were registered as case No. 2802 and 2803. One dispute was in regard to the correction of the total area of Khata which was required to be reduced on the basis of the exclusion of an area of 211 Karis on account of the said area having been acquired for construction of a canal. The other dispute was in regard to the partition of the Khata separating the land belonging to the recorded tenure holders. Both the disputes were disposed of by the Assistant Consolidation Officer by conciliation between the parties appearing before him. In the conciliation which took place before the Assistant Consolidation Officer in the presence of the two members of the Consolidation Committee of the village it was settled that besides reducing the area which had gone out for canal an area of 1 Bigha 350 Karis was to be recorded in the name of Terhai and an area of 2 Bigha 308 Karis was to be recorded in the name of Barsati. The "Samjhauta" between the recorded tenure holders agreeing to the reduction of the total area of the agricultural holding pertaining to the Khata in question by reducing the same after excluding the area acquired for the purpose of the canal and partitioning the remaining area on the basis of actual possession of the parties was duly verified by the Assistant Consolidation Officer and the entries in the revenue records were ordered to be corrected accordingly.

5. However, Terhai, the petitioner filed a belated appeal, challenging the order of the Assistant Consolidation Officer dated 24/11/1983. This appeal was filed on 24/3/1983. The Settlement Officer, Consolidation, while considering the question of condonation of delay in filing the appeal expressed the view that the appellant was not entitled to the condonation of delay as he had not given an explanation for each day of the delay. But the Assistant Settlement Officer, Consolidation entered into the merits of the appeal as well and after recording a finding that the "Samjhauta" in question did bear the thumb impression of both the tenure holders and was duly verified by the Authority before whom the tenure holders including the petitioner had accepted the correctness thereof, there could be no justification for any interference in that order passed on the basis of conciliation.

6. The petitioner sought to challenge the aforesaid order passed by the appellate authority by means of a revision under Section 48 of the U.P. Consolidation of Holdings Act. The Revising Authority found that the "Samjhauta" in question did bear the thumb impressions of the tenure holders and two members of the Consolidation Committee of the village had also signed thereon. He further noticed that Terhai had accepted his having put his thumb impression on the "Samjhauta". On the aforesaid circumstances, the Deputy Director of Consolidation refused to interfere upholding the order passed by the Assistant Consolidation Officer.

7. The learned Counsel for the petitioner has strenuously contended that the

Additional Collector (Administration) who had passed the impugned order dated 21.5.1996 disposing of the revision filed by the petitioner under Section 48 of the U.P. Consolidation of Holdings Act, had no jurisdiction to pass such an order. It is urged that as provided under Section 3 (4A) of the Act, a "Deputy Director Consolidation" means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a "District Deputy Director of Consolidation" and Assistant Director of Consolidation, but an Additional Collector cannot be deemed to be a person appointed as Deputy Director of Consolidation as contemplated under the aforesaid provision so as to entitle him to exercise any delegated power which originally vests in the Director of Consolidation. The contention is that unless a person is appointed as a Deputy Director of Consolidation he cannot be deemed to be competent to exercise even the delegated power of Director of Consolidation which includes disposal of a revision under Section 48 of the U.P. Consolidation of Holdings Act.

8. The learned Standing Counsel has however, urged that the provision contained in Section 3 (4A) of the Act has to be read along with the provisions contained in Section 44 of the U.P. Consolidation of Holdings Act which provides inter alia that the State Government by a notification in the official Gazette and subject to such restrictions and conditions as may be specified in the notification delegate to any officer or authority any of the powers conferred upon it by the Act and confer powers of Director of Consolidation, Deputy Director of Consolidation, the Settlement Officer, Consolidation and the Consolidation Officer under this Act or the Rules made thereunder on any Officer or Authority. The contention is that the State Government has already issued a notification dated 23rd November, 1974 in exercise of the powers under Clause (ii) of Section 44 of the U.P. Consolidation of Holdings Act, conferring on all the Additional Collectors of all consolidation districts appointed and authorised to exercise powers of Collector under Section 14A of the U.P. Land Revenue Act, 1901, the powers of Director of Consolidation under Section 48 of the aforesaid Act. In view of the aforesaid delegation, it is urged, that the Additional Collector was fully competent to decide the revision filed by the petitioner and the impugned order passed by him cannot be deemed to be without jurisdiction as claimed.

9. I have given my anxious consideration to the rival contentions.

10. It seems to me that the scheme underlying the U.P. Consolidation of Holdings Act, does maintain a distinction between Officers appointed under a specific nomenclature as specified under the Act and a designated officer not carrying any such nomenclature but vested with the jurisdiction with which an Officer appointed under a particular nomenclature as indicated hereinabove stands vested, provided the jurisdiction of such an Officer is delegated by the State Government in favour of the designated officer of the latter category. An Officer carrying a designation other than that contemplated under the U.P. Consolidation of Holdings Act, appointed under the provisions of some other Act and not having

been appointed under a specific nomenclature as envisaged under the provisions of the U.P. Consolidation of Holdings Act, cannot be deemed to have been appointed as such an Officer even if there is a delegation in his favour authorising him to exercise the powers of the Officer of the earlier category with a given nomenclature. But in the presence of the delegation in his favour authorising him to exercise the powers of the Officer of the first category, the orders passed by him will be deemed to be the orders passed by an authority so appointed under the U.P. Consolidation of Holdings Act. It is obvious that once appointed as an Officer with a nomenclature under the U.P. Consolidation of Holdings Act, such Officer can do what can be done by such an officer under the Act and he does not need anything in addition to the order of appointment but any other Officer carrying a different designation who has not been so appointed as an Officer with the nomenclature as contemplated under the Act, while exercising the delegated jurisdiction can exercise the powers of the Officer with a nomenclature appointed as contemplated under the U.P. Consolidation of Holdings Act, which jurisdiction stands delegated to him and his action in exercise of such power will be perfectly legal even though by such delegation, he cannot be deemed to have been appointed as an Officer with such a nomenclature as contemplated under the Act whose powers are being exercised by him.

11. In the present case, what I find is that the Additional Collector (Administration), while disclosing his designation as such has also described himself as Deputy Director of Consolidation. This description it seems to me, has to be taken as indicative of the fact that this Officer is disposing of the revision exercising the powers vesting in a Deputy Director of Consolidation as a delegated and not as such an appointee.

12. Considering the implications arising under the provisions of the Act and the notification referred to hereinabove, the contention raised by the learned Counsel for the petitioner is without any merit and is not acceptable. I respectfully agree in this connection with the view expressed by the learned Single Judge in the decision in the case of Sita Ram v. The Additional Collector, Gorakhpur & others, reported in 1982, ALJ 829. So far as this aspect is concerned.

13. The learned Counsel for the petitioner has next contended that the Assistant Settlement Officer, Consolidation having come to the conclusion that no sufficient ground had been made out for the condonation of delay in filing the appeal ought not to have gone into the merits of the appeal. It seems to me that the petitioner cannot be heard to make a grievance against the consideration of his claim by the appellate authority on merits. It was he who had filed the appeal and had invited a decision of the appellate authority. In spite of the fact that the appellate authority was of the view that the delay in filing the appeal had not been satisfactorily explained, the said Authority chose to enter into the merits of the appeal and found that even on merits, the appellant had not made out any ground justifying any interference by the appellate authority. I further find that

the appeal was not inordinately delayed and the refusal to condone the delay only on the ground that each day's delay had not been explained could not be sustained in law taking into consideration the ratio of the decision of the Apex Court in the case of Collector Land Acquisition Anantnag and another v. Mst. Katiji & others, reported in AIR 1987 SC 1353. In the circumstances, the order passed by the appellate authority was not liable to be interfered with in a revision under Section 48 of the U.P. Consolidation of Holdings Act, on the ground as claimed. The contention of the learned Counsel for the petitioner in this regard is devoid of merit and is not at all acceptable.

14. Learned Counsel for the petitioner has next contended that the conciliation for settlement and partition effected by the Assistant Consolidation Officer was not in accordance with law and on its basis the petitioner could not be deprived of his half share in the holdings in question. What has been urged in that the Khata in question having been recorded jointly in the names of the petitioner and Barsati, he was entitled to half share which could not be reduced to less than that on the basis of the conciliation contemplated under Section 9(A) of the U.P. Consolidation of Holdings Act, and that too without complying with the provisions contained in Rule 25A of the rules framed under the U.P. Consolidation of Holdings Act, which are of a mandatory nature.

15. The provisions contained in Section 9A of the U.P. Consolidation of Holdings Act, cast a duty on the Assistant Consolidation Officer inter alia to settle the dispute in regard to the partition of the joint holdings after hearing the parties concerned and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation. Section 9A (3) further provides that the Assistant Consolidation Officer, while so acting shall be deemed to be a court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding.

16. Rule 25A of the Rules framed under the U.P. Consolidation of Holdings Act, provides that the Assistant Consolidation Officer shall, in deciding the disputes on the basis of conciliation in terms of subSection (1) of Section 9A, record the terms of conciliation in the presence of at least two members of the consolidation committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumbimpressions obtained. The members of the Consolidation committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall then pass the orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband register.

17. As observed by the Apex Court in its decision in the case of Hukum Chand Shyam Lal v. Union of India and others, reported in AIR 1976 SC 789, it is well settled that where a power is required to be exercised by a certain authority in a certain way it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden.

18. In the present case, the power with which the Assistant Consolidation Officer stands vested is provides for under Section 9A of the U.P. Consolidation of Holdings Act, which is to effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation. The provisions contained in Rule 25A of the Rules framed under the Act in effect provide procedural safeguards. It seems to me that the rigour of the procedural safeguards should not be relaxed in any manner. The scheme of the Act does not contemplate filing of only a written objection in the proceedings under Section 9 of the Act. A dispute can be registered even on an oral objection. Once the dispute has been registered it has to be decided either by conciliation or on merits in the manner prescribed, by the Consolidation Officer before whom also parties may enter into a lawful compromise. Since the Assistant Consolidation Officer has to deal with disputes raised by the illiterate persons and rustic villagers, it was necessary to provide, for procedural safeguards in the matter relating to conciliation and settlement of disputes or effecting partition by conciliation. The procedural safeguard prescribed even if it be a rigorous one has to be taken to be a handmaid of justice, and the statutory provisions in this regard should not be construed in a pedantic manner. However, it should be ensured that they achieve the object for which they are meant.

19. What has been contended by the learned Counsel for the petitioner is that the terms of conciliation have to be recorded by the Assistant Consolidation Officer in his own hand writing in the presence of atleast two members of the Consolidation committee of the village. In the present case, what has been urged is that the "Samjhauta" which had already been reduced in writing was presented before the Assistant Consolidation Officer and the terms of the conciliation had not been recorded by the Assistant Consolidation Officer in his own hand writing. In this connection, it may be noticed that both, the Assistant Settlement Officer Consolidation, who was the appellate authority as well as the Revision Authority have categorically found that the terms of the conciliation had been explained to the tenure holders and it was only after due verification that the Assistant Consolidation Officer after securing the signatures of the two members of the Consolidation Committee had passed the order relating to partition. The order passed by the assistant Consolidation Officer dated 24/11/1983 shows that the tenure holders were present and in their presence, the order affecting the partition on the basis of the duly verified "Samjhauta" was passed.

20. Considering the implications arising under the provisions of the Act and the Rules framed thereunder, it seems to me that the requirement of recording the terms of conciliation will be deemed to have been satisfied even if the terms of such conciliation are presented before the Assistant Consolidation Officer already reduced to writing and are duly verified by him in accordance with law acting as a court of competent jurisdiction as envisaged under Section 9A (3) of the Act. The contention of the learned Counsel in this regard is devoid of merit and is not at all acceptable.

21. Learned Counsel for the petitioner has next contended that it was not open to the Assistant Consolidation Officer to effect partition on the basis of possession. It is urged in this connection that "Samjhauta" in question could not be taken to be a family settlement. While, it is true that ordinarily, the persons recorded as cotenure holders are presumed to have equal shares on severance, in the absence of any specification thereof clearly indicated in the revenue Record of Right but this presumption is rebuttable as the shares of the recorded cotenure holders may vary for different reasons.

22. The entry in the Khatauni showing several persons as cotenure holders of an agricultural holding containing no words specifying the extent of their shares can safely be taken to denote the status of the so recorded cotenure holders as joint tenants at law. The cotenure holders recorded as such will have therein a beneficial interest as joint tenants in equity with equal share, incase however, there are no circumstances which dictate to the contrary. On subsequent severance, such cotenure holders would hold the beneficial interest in the land to which the Khatauni i.e. the Revenue Record of Rights pertains accordingly. There may be a situation where the recorded tenure holders even at the inception hold the beneficial interest as tenants in common in equity in equal shares or it may be that their beneficial interest as tenants in common in equity is of unequal shares. It all depends on the facts and circumstances of each case.

23. When however, cotenure holders agree to have a partition of holdings in a particular manner, may be making the possession as the basis for the same or any other consideration, they cannot later on be permitted to raise the grievance seeking to rely upon the rebuttable presumption indicated hereinabove.

24. In the present case, the presumption available in view of the entry in the revenue record stood effectively rebutted with the acceptance of the terms contained in the "Samjhauta" in question which "Samjhauta" was duly verified by the Assistant Consolidation Officer acting as a Civil Court of competent jurisdiction and following the procedure provided for in Rule 25 of the rules framed under the Act after obtaining the signatures of the two members of the Consolidation Committee of the Village. The "Samjhauta" in question having been verified in the presence of the two members of the Consolidation Committee of the village was more than sufficient to rebut the presumption arising under the basic year entry in the revenue record of Rights. In the circumstances, the case could not have been allowed to reopened as claimed.

25. In view of my conclusions indicated hereinabove, no justifiable ground has been made out for any interference by this Court, while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

26. The writ petition is accordingly dismissed.