
(2002) 09 AHC CK 0177
In the Allahabad High Court
Case No : C.M.W.P. No. 18567 of 1995

Tilak Ram (D.) through L.Rs. and Others	APPELLANT
Vs	
Deputy Director of Education, Allahabad and Others	RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Constitution of India, 1950 — Article 133, 136, 141, 142, 143
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 48

Citation : (2002) 5 AWC 4078 : (2002) 93 RD 799

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : H.N. Shukla and R.R. Shukla, for the Appellant; S.C., Lalji Pandey, S.S. Pandey, R.S. Misra, S.N. Singh and R.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the parties.

2. By means of this petition filed under Article 226 of the Constitution of India, Petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 16.6.1995 passed by Respondent No. 1.

3. The relevant facts of the case, giving rise to the present petition, in brief, are that in the basic year, the name of Badri, father of the contesting Respondents was recorded in the revenue papers over the land in dispute. On receipt of C.H. Form No. 5, objection was filed by the Petitioners contending that the land in dispute was ancestral property and Badri, father of the Respondent Nos. 2 to 4, got illegally and fictitiously recorded his name over the land in dispute in the revenue papers. Parties produced evidence, oral and documentary, in support of their cases. The Consolidation Officer, after going through the material on the record, allowed the objection filed by the Petitioners by his judgment and order dated 14.2.1979. Feeling aggrieved by the judgment and order passed by the Consolidation Officer, Badri filed an appeal before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation allowed the appeal by his

judgment and order dated 31.3.1979. The Petitioner, therefore, had to file a revision u/s 48 of the U.P. Consolidation of Holdings Act before the Deputy Director of Consolidation. The revision filed by the Petitioners was dismissed by the Deputy Director of Consolidation by his judgment and order dated 17.4.1980. Therefore, the Petitioners filed Writ Petition No. 4365 of 1980. The said writ petition was, after hearing the parties, allowed by this Court by judgment and order dated 13.9.1984 and the impugned order dated 17.4.1980 was quashed. The said order has become final as no appeal against the said order was filed by the contesting Respondents. It appears that after about 11 years, Badri made an application before the Deputy Director of Consolidation for making a reference. On the said application, a reference was made and ultimately, the Deputy Director of Consolidation vide order dated 13.9.1984 expunged the names of the Petitioners from the revenue papers, hence the present petition.

4. On this petition, notices were issued to the contesting Respondents who have filed their counter-affidavit controverting the facts stated in the writ petition in reply of which a rejoinder-affidavit has also been filed, denying the facts stated in the counter-affidavit and reasserting the facts stated in the writ petition.

5. Learned Counsel for the Petitioners vehemently urged that the judgment and order passed by this Court in Writ Petition No. 4365 of 1980 has become final between the parties. The same operates as *res judicata*. It has also been urged that the orders passed by the authorities below merged in the order passed by this Court in Writ Petition No. 4365 of 1980. The Deputy Director of Consolidation, therefore, had no jurisdiction to subsequently pass an order contrary to the order passed by this Court. According to him, the Deputy Director of Consolidation has committed contempt of this Court. It was further urged that the contesting Respondents have slept over their rights for about 11 years, therefore, there was no justification for the Deputy Director of Consolidation to entertain their application for inviting a reference, he should have rejected the said application as not maintainable and barred by limitation.

6. On the other hand, learned Counsel for the contesting Respondents supported by the validity of the order passed by the Deputy Director of Consolidation. It has been urged that this Court in Writ Petition No. 4365 of 1980, only quashed the order passed by the Deputy Director of Consolidation, dated 17.4.1980. The other orders passed by the Consolidation Officer and the Settlement Officer Consolidation were not touched, therefore, the Deputy Director of Consolidation was right in passing the impugned order. According to him, the writ petition had no merit, the same is liable to be dismissed.

7. I have considered the submissions made by learned Counsel for the parties and also carefully perused the record.

8. In the present case, the question is as to whether in one case between the same parties, there can be two judgments in operation. It is not disputed that judgment and order dated 13.9.1980, passed by this Court in Writ Petition No.

4365 of 1980 became final. The said judgment was between the same parties and in respect of the same property which is involved in the present case. The judgments and orders passed by the authorities below merged in the order passed by the Deputy Director of Consolidation, which was ultimately quashed by this Court and the judgment and order passed by this Court became final. The said judgments, thus, operate as res judicata between the parties.

9. On the question of merger of the orders passed by the subordinate authorities in the order of the superior Court or Tribunal, learned Counsel for the Petitioners has referred to and relied upon the following decisions of the Apex Court:

(i) V.M. Salgaocar and Bros. Pvt. Ltd. v. Commissioner of Income Tax AIR 2000 SC 1623;

(ii) Kunhayammed and Others Vs. State of Kerala and Another, ; and (iii) Amba Bai and Ors. v. Gopal and others AIR 2001 SC 203.

10. Learned Counsel for the Respondents in support of his submissions referred to and relied upon the following decisions:

(i) Thakur Birendra Singh v. The State of Madhya Pradesh and others, (1969) 3 SCC 489 ;

(ii) Special Appeal No. 363 of 1970, Vishwa Swarup v. Kamla Prasad and others, decided by this Court on 14.12.1970;

(iii) Order passed on Misc. Application No. Nil of 1981 in Civil Misc. Writ Petition No. 7458 of 1978, Kamta Singh v. Lalta and Ors.

11. In the case of V. M. Salgaocar (supra), ultimately the SLP under Article 136 was dismissed by the Supreme Court. Under these circumstances, it was ruled as under:

In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under Clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of SLP under Article 136. When appeal is dismissed order of the High Court is merged with that of the Supreme Court. We quote the following paragraph from the judgment of this Court in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, :

22. It has been already noticed that the special leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well-settled principle of law that when a SLP is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. Vs. State of Bihar and others, , it has been held by this Court that the dismissal of a SLP in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the SLP on the

merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a SLP without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where SLP should be granted. In *Union of India (UOI) Vs. All India Services Pensioners' Association and Another*, , this Court has given reasons for dismissing the special leave petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the Courts within the territory of India. It, therefore, follows that when no reason is given, but a SLP is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution.

12. In the case of *Kunhayammed (supra)*, it was ruled by the Supreme Court as under:

12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

To sum up our conclusions are:

(i) where an appeal or revision is provided against an order passed by a Court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and SLP is converted into an appeal.

44. Having thus made the law clear, the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this Court was found devoid of any merits and hence dismissed. The order is a non-speaking and unreasoned order. All that can be spelt out is that the Court was not convinced of the need for exercising its appellate jurisdiction. The order of the High Court dated 17.12.1982, did not merge in the order dated 18.7.1983, passed by this Court. So it is available to be reviewed by the High Court.

13. In *Amba Bai* (supra), it was ruled by the Supreme Court as under:

If the judgment or order of an inferior court is subject to an appeal or revision by the superior court and in such proceedings the order of judgment is passed by the superior court determining the rights of parties, it would supersede the order or judgment passed by the inferior court. The juristic justification for such doctrine of merger is based on the common law principle that there cannot be, at one and the same time, more than one operative order governing the subject-matter and the judgment of the inferior court is deemed to lose its identity and merges with the judgment of the superior court. In the course of time this concept which was originally restricted to appellate decrees on the ground that an appeal is continuation of the suit, came to be gradually extended to other proceedings like revisions and even the proceedings before quasi-judicial and executive authorities.

14. From what is noted above, it is clear that if the judgment and order of an inferior court is subject to an appeal by the superior court and in such proceedings, the order or judgment is passed by the superior court determining the rights of parties, it would supersede the order or judgment passed by the inferior court and the judgment of the superior court shall remain operative and binding upon the parties. It would not be open to any one of the parties to say the judgment and order passed by the inferior court were still alive or operative.

15. The judgment in *Thakur Birendra Singh* case (supra), was the judgment on the facts of that case. In that case, it was held by the Supreme Court that in the opinion of the High Court, the appellate authority having overlooked this aspect of the matter and the order by the Collector or those in appeal could not be allowed to stand. It was also observed that the High Court quashed the order dated June 3, 1960, January 14, 1960 and July 27, 1964, directing at the same time that the case is remitted to the Collector for fresh decision with deference to the observation made in this order after giving an opportunity to the Petitioner of

being heard. The Supreme Court, in these circumstances, has taken the view that the High Court was wrong in giving further direction and that once the order complained are quashed, the matter should have been left at large without any further direction leaving the revenue authorities free to take any steps allowable under the law and the proceeding out of which the said proceeding arose, were pending disposal. The said case has got no application to the facts of the present case.

16. In Vishwa Swarup case (supra), the said case was also decided on the facts of that case. There was dispute regarding an entry which showed Kamala Respondent in the said case as sub-tenant. It was observed that an entry in that case in Khasra 1356F, which has got the special status under the law. The said entry confers the right of occupant u/s 20 of the U.P. Zamindari Abolition and Land Reforms Act and further confers the right of Adhivasi. The said view was taken by the single Judge. The Deputy Director of Consolidation held to the contrary. Once the order of the Deputy Director of Consolidation was quashed, this Court was right in holding that the case was to be re-considered by the Deputy Director of Consolidation.

17. In Kamta Singh (supra), the order was passed on an miscellaneous application. It is not known as to what had happened in the case ultimately, therefore, the said order has got no binding effect.

18. From the abovenoted authorities cited by learned Counsel for the Petitioner, it is abundantly clear that the orders passed by the subordinate authorities merge in the orders passed by the superior authority. In the present case, orders passed by the Consolidation Officer and the Settlement Officer Consolidation were merged in the order passed by the Deputy Director of Consolidation, which was ultimately quashed by this Court. Thus, the only judgment which remained operative between the parties was the judgment of this Court passed in the above noted writ petition. Learned Counsel for the Petitioners is right in his submission that the theory of merger was fully applicable in the present case. So far as the decisions referred by learned Counsel for the Respondents are concerned, for the reasons stated above, they have got no application to the facts of this case. They are decisions on the facts of those cases and are, therefore, distinguishable from the facts of the present case.

19. In view of the aforesaid discussion, this petition deserves to be allowed.

20. The writ petition succeeds and is hereby allowed. The order dated 16.6.1995, passed by the Respondent No. 1 is hereby quashed.

21. It is further directed that the name of Badri from the revenue papers be expunged and of Shri Nath and Radhey Shyam, who claim their rights on the basis of sale deed executed by Badri and the names of the Petitioners be entered in revenue papers.

22. No orders as to costs.