

(2008) 03 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No 5179 of 1989

Triloki (Dead) Through Lrs.

APPELLANT

Vs

Deputy Director, Consolidation, Lucknow Camp at Moradabad
and others

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4

Citation : (2008) 03 AHC CK 0175

Hon'ble Judges : S.K.Singh, J

Final Decision : Allowed

Judgement

S.K. Singh, J.—Matter was taken up in the revision of the list. Counsel for the petitioner informs that substitution application of the sole petitioner and respondent No. 6 was allowed on 23.8.2007. On a perusal of the record it transpires that both were decided on the same date but by inadvertence order could not be passed/transcribed on the substitution application of respondent No. 6. There was no objection to that application also. Accordingly this Court directs that substitution application in respect to respondent No. 6 also stands allowed. Necessary amendment be carried out.

2. Learned Counsel for the petitioner submits that this petition is pending since 1989 and no counter affidavit is there and no body appeared till date for the simple reason that the respondents have transferred the land to the petitioner and there was simple dispute which is covered by decision of this Court. Learned Counsel submits that the writ petition be decided as there is no dispute about the facts which can be ascertained from the orders of the Courts below.

3. In view of the aforesaid, this writ petition is being decided.

4. Submission is that mutation was sought on the basis of registered sale deed dated 27.7.1982 which was rejected by the Courts below on the ground that notification under section 4 of the U.P.C.H. Act took place on 10.7.1982 although

there is a finding that notification was published in the village on 22.9.1982. Submission is that bar is to operate in respect to transfer of the land in view of section 5 of the U.P.C.H. Act from the date of publication of the notification in the village.

5. In support of the aforesaid, reliance has been placed on a judgment of this Court given in the case of Slritla Prasad, 2007 (102) RD 116 which has taken note of two others decisions of this Court.

6. Accordingly, there is no dispute about the fact that notification was published in the village on 22.9.1982 and the sale deed is dated 27.7.1982 i.e. much earlier to the publication of the notification in the village. In view of the decided cases on the point there is no other infirmity/ illegality in the sale deed and the sale deed being after the notification under section 4 U.P.C.H. Act if the publication in the village has taken place after the sale deed, cannot be ignored and mutation cannot be refused. Thus on the admitted facts as appears from the judgment this Court satisfied that rejection of the claim of the petitioner for mutation on the basis of registered sale deed, on the ground that village was notified under section 4 of the U.P.C.H. Act on 10.7.1982 is clearly illegal and that deserves to be quashed.

7. Accordingly this writ petition succeeds and is allowed. Impugned judgment of the Deputy Director of Consolidation is hereby quashed. Matter is sent back to the concerned revisional Court to entertain the petitioner's revision and, pass appropriate orders preferably within a period of three months from the date of production of certified copy of this order in the light of observation as made above.