

(2013) 01 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3932 of 2013

Tufani Singh

APPELLANT

Vs

Joint Director of Consolidation U.P. and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65(2)

Citation : (2013) 3 ADJ 553 : (2013) 119 RD 34

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Jeevan Prakash Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Shri Jeevan Prakash Sharma, learned counsel for the petitioner and learned Standing Counsel appearing for respondent. With the consent of the learned counsel for the parties, the writ petition is taken up for final decision.

2. Through this writ petition, the petitioner has prayed for issuing writ of certiorari quashing the order dated 8.1.2013, passed by Joint Director of Consolidation, U.P., Lucknow in Transfer Application No. 514 of 2012 (Tufani Singh v. Vinod Kumar and others). While assailing this order, Shri Jeevan Prakash Sharma, learned counsel for the petitioner contends that the Joint Director of Consolidation has exceeded his jurisdiction in rejecting the petitioner's transfer application by directing the Settlement Officer, Consolidation to decide the appeal on merit. In his submissions, at the stage of filing of the restoration application, the transfer application was filed on the ground that other side is exerting pressure through members of the Bar Association upon the Settlement Officer, Consolidation to get favourable decision in his favour and he has no hope of justice from the Court of Settlement Officer, Consolidation. The transfer application has been rejected on the ground that the allegations made are unbelievable. However, while doing so, the Joint Director of Consolidation has

directed the Settlement Officer, Consolidation to decide the appeal on merit.

3. I find substance in the submissions of the learned counsel for the petitioner. Before the Joint Director of Consolidation, the transfer application was pending, filed u/s 65(2) of the Uttar Pradesh Consolidation of Holdings Rules, 1954 (hereinafter referred to as the Rules). Rule 65 (2) of the Rules reads as under:

65 (2) The Director of Consolidation may withdraw any case from the file of any Settlement Officer, Consolidation, and refer the same to any other Settlement Officer, Consolidation for disposal.

From the perusal of the aforesaid rule, it transpires, that the Joint Director of Consolidation has been conferred with the power to withdraw a case from the Court of one Settlement Officer, Consolidation and to refer the same to another Settlement Officer, Consolidation, meaning thereby he has been empowered to transfer the cases from the Court of one Settlement Officer, Consolidation to another Settlement Officer, Consolidation and not beyond that.

Here, in this case, the Joint Director of Consolidation while rejecting the transfer application, has passed the following order:

4. From the perusal of the aforesaid order, it transpires that it is contained in two parts. One part is related with the rejection of the transfer application, and another part contains the direction of the Joint Director of Consolidation to the Settlement Officer, Consolidation to decide the appeal on merit, after hearing both the parties. The second part of the order, in my considered opinion, is without jurisdiction, as the Joint Director of Consolidation cannot travel beyond the scope of Rule 65 (2) of the Rules, which only confers the jurisdiction to transfer the appeal from the Court of one Settlement Officer, Consolidation to another Settlement Officer, Consolidation.

5. It is well-settled that jurisdiction goes to the root of the matter and any order passed without jurisdiction is nullity. It is also well-settled that the jurisdiction can neither be assumed nor presumed, nor conferred or acquired by acquiescence of parties.

6. This Court in Writ B No. 48893 of 2012, decided on 21.9.2012, taking note of the decisions in M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., , Sarup Singh and Another Vs. Union of India (UOI) and Another, , and a Division Bench of this Court in the case of Committee of Management Shri Jawahar Inter College and another v. State of U.P. and others, in Special Appeal No. 164 of 2012 decided on 25.1.2012, held that the order without jurisdiction is a nullity.

7. In the result, the writ petition succeeds and is partly allowed. The order dated 8.1.2013, passed by Joint Director of Consolidation, U.P., Lucknow in Transfer Application No. 514 of 2012 (Tufani Singh v. Vinod Kumar and another) is hereby quashed to the extent to which the Joint Director of Consolidation has directed the Settlement Officer, Consolidation to decide the appeal on merit. Looking into

the facts and circumstances of the case, it is provided that the pending restoration application be decided by the Settlement Officer, Consolidation, in accordance with law, after hearing both the parties.