

(2006) 02 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7334 of 2006

Umesh Kumar and Smt. Mahendri

APPELLANT

Vs

Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48, 9A

Citation : (2006) 3 AWC 2325

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

Bench : Single Bench

Advocate : Sankatha Rai, Vijay Kr. Rai and Vinod Kr. Rai, for the Appellant;
C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—By means of this writ petition, the petitioners have canvassed the legality of the impugned orders dated 27.9.2005, and 3.7.2004 passed by Deputy Director Consolidation. It would appear that by order-dated 3.7.2004, the Deputy Director Consolidation directed to enter the plots namely plot nos. 1955, 2433,2435, 2436 and 2437 in the revenue record in terms of settlement: area. The restoration application preferred against the said order came to be dismissed by a subsequent order dated 27.9.2005 on the premises that the impugned order was made on merits.

2. It would transpire from the record that the dispute revolves round plot Nos. 1955, 2433/1, 2433/2, 2435, 2436/1, 2436/2 and 2437, It would further transpire that the area of these plots in the basic year as well as in the Settlement year was as under:

Plot Nos. Area recorded in Area at present basic year 1955 10 Biswa 10 Dhur
1955 16 Biswa 10 Dhur 24 33 2 Bigha 2433/1 2 Bigha, 3 Biswa

2433/2 4 Biswa 2435 1 Bigha 14 Biswa 2435 1 Bigha 18 Biswa 2436 2 Bigha 17
Biswa 2436/1 3 Bigha 2436/2 4 Biswa 2437 3 Bigha 16 Biswa 2437 4 Bigha The

record further shows that pursuant to measurement undertaken of these plots by the consolidation staff, the area of plots was increased in terms of above details. It would further appear from the record that an appeal was preferred by contesting Opp. parties which was registered as Appeal no. 1731/1992 by which the contesting Opp. parties prayed for correction of plots in question according to settlement records. It is also eloquent from a perusal of paragraphs 2 and 3 of the affidavit that the chaks of petitioners and contesting respondents adjoin each other. The substance of what has been stated therein is that area was increased but actual measurement: was not done and further that now the authorities seem prepared to make measurement which according to the case of the Opp. party would affect the position of their chaks and therefore, it is prayed the plots may be recorded according to the area recorded in the settlement year. The appeal came to be dismissed by the appellate authority on the ground of delay and it was held that sufficient cause was not shown for condonation of delay. Revision preferred against the said order was allowed attended with direction to correct the area of the plots regard being had to the area recorded in the settlement records.

3. Learned Counsel for the petitioner argued that contesting Opp. parties were not aggrieved persons and therefore, they were wholly incompetent to prefer an appeal. He further argued that appeal was filed after efflux of several years and therefore, the matter attained finality as nobody challenged that order and the appellate authority rightly rejected the appeal as time barred. He further canvassed that the revisional authority erroneously allowed the revision. He lastly canvassed that the order passed by Deputy Director consolidation has the complexion of an exparte order and therefore the same is liable to be quashed on the grounds and the matter deserves to be reheard by he Deputy Director Consolidation.

4. I have heard learned Counsel for the petitioners as well as learned Standing Counsel.

5. Upon a careful scrutiny of the record, it leaves no manner of doubt that the matter of the nature stands settled by a decision rendered in Ved Pal and Others Vs. Joint Director of Consolidation and Others, . The crux of what has been held in the said decision is that the consolidation authorities under the scheme of the U.P. Consolidation of Holdings Act are wholly incompetent to increase or decrease the settlement area. It was further held that consolidation proceedings are initiated to rectify the mistake and not to perpetuate the mistake committed by the subordinate consolidation staff. Paragraphs 12 and 13 of the said decision being relevant are quoted below.

12. We are governed by Constitution and the law of constitutional scheme is rule of law. Unless law so permits nobody could get any right other than the right given by law. A Bhumidhar is a Bhumidhar with a particular holding and his right cannot be recognised over an area more than the area of a specific plot unless he has legitimate right recognised under law as Bhumidhar. Admittedly, as in the

present case no adverse right was claimed by the petitioner for the excess land on spot verification, they cannot be recorded as Bhumidhar of such excess land. They simply say that by reason of spot verification, some area is reported to have been enhanced in a particular plot should be subsumed with that area as Bhumidhar and accordingly, be recorded as reported by the subordinate consolidation officer.

13. The distillate of what has been stated and discussed supra, is summed up. Unless a person claims and establishes a right arising out of proceeding u/s 9A of the U.P. Consolidation of Holdings Act in relation to an area in excess to the area of a plot for which he is not recorded in the basic year Khatauni that excess area cannot be added in his name as Bhumidhar and the area of a particular plot cannot be increased or decreased. A tenure holder is entitled to get valuation in lieu of his original holding recorded in the basic year record for the purposes of consolidation scheme only.

In view of what has been held in the aforesaid decision, it brooks no dispute that the Consolidation authorities were wholly incompetent to increase the area of the petitioner in utter disregard of what is recorded in the basic year/settlement area. In my considered view, the Deputy Director Consolidation rightly passed the order to correct the area of aforesaid plots according to the area recorded in the settlement records.

6. The learned Counsel for the petitioner next urged that the appeal filed by the Opposite parties was not maintainable. In this connection, he referred to Section 11 of the U.P. Consolidation of Holdings Act and urged that only the aggrieved party could file an appeal u/s 11 of the U.P. Consolidation of Holdings Act and further that the Opposite parties being not affected parties, the appeal was not maintainable at their behest. In connection with the above arguments, this Court also considered the affidavit filed before the appellate authority by the Opp. parties. It would appear that the Opposite parties have clearly established that they are the aggrieved parties and further that the chaks of both petitioners and Opp. parties adjoin to each other according to the averments in the memo of appeal as well as in the application/affidavit. No doubt, the petitioners did not get their chaks measured on the spot as yet but at the same time, it brooks no dispute that they were going to take steps seeking measurement, which otherwise may affect the position of the chak of Opposite parties.

7. I may now refer to contents of application as well as affidavit in support of application as also memo of appeal particularly paragraph 7 of the affidavit, from a perusal of which it is clearly eloquent that the Opposite parties have every right to file appeal. The Opposite parties have elaborated upon relevant facts explaining delay in filing the appeal after such a long lapse of time. Concededly, the Opposite parties were not party to proceedings before the Consolidation Officer and there was every likelihood of their being affected by the actual measurement. Therefore, they rightly filed appeal. On the question of limitation, I am of the view that the limitation will commence to run from the date on which

the Opposite parties came to know of orders passed by the Consolidation officer in proceedings in which Opposite parties were not arrayed. Besides, there is plausible explanation for the delay. In the light of the above facts, the first argument of the learned Counsel for the petitioner falls to the ground.

8. It is also worthy of notice that from a perusal of order passed by Deputy Director consolidation in Restoration Application, it is clear that the petitioners were heard. It would further appear that the Deputy Director Consolidation dwelt upon every details from date to date upto the stage of hearing. It would further appear from the order that on 30th June 2003, petitioners were heard although it is further clear, hearing also took place subsequently and rulings were also cited by the parties. In the light of all these facts, the argument of the learned Counsel for the petitioner that the petitioners were not heard, cannot be countenanced. It may also be noticed here that admittedly, the petitioners filed Vakalatnama on 23rd May 2003 and hearing took place on 30th June 2003. It has not been shown by the petitioners that they were prevented on the date of hearing from appearing in Court. In the circumstances, any subsequent absence of the petitioners will be wholly irrelevant for the purposes of the present case.

9. One more important aspect worthy of notice here is that Section 48 of the U.P. Consolidation of Holdings Act makes it clear that there is a noticeable difference between the provisions of Sections 48 and Section 11 of the Act inasmuch as there is no expression like "any party aggrieved occurring in Section 48 of the U.P. Consolidation of Holdings Act.

10. Having considered the matter in its pros and cons, I am of the view that the Deputy Director rightly directed to correct the area of plots and rightly set aside the exparte order passed by Consolidation Officer. At this stage, the Court called upon the learned Counsel to enlighten the Court about the correct position of law whether under any provision of the U.P. Consolidation of Holdings Act, the Consolidation authorities were competent to either increase or decrease the areas of plots recorded in the settlement records like in the present case. I am afraid, the attention of the Court has not been drawn to any such provision.

11. As a result of foregoing discussion, the petition fails and is accordingly dismissed.