

(1964) 02 AHC CK 0008
In the Allahabad High Court
Case No : Special Appeal No. 85 of 1963

Vidya Bhushan Chandra Shekhar and Others	APPELLANT
Vs	
Parag Balbhadra and Others	RESPONDENT

Date of Decision : 19-02-1964

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 12, 12(1), 12(2), 12(4)
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 34, 34(1), 34(2)

Citation : AIR 1964 All 360

Hon'ble Judges : M.C. Desai, C.J; R.N. Sharma, J

Bench : Division Bench

Advocate : K.S. Varma, for the Appellant;

Final Decision : Dismissed

Judgement

Desai, C.J.—This special appeal is directed against an order passed by our brother Beg quashing by certiorari orders passed by a Consolidation Officer, a Settlement Officer and a Deputy Director on an objection filed by the appellant u/s 12 of the U. P. Consolidation of Holdings Act. The statement of plots and tenure-holders was prepared u/s 11 and in it the respondent Parag was recorded as Sirdari of the land in dispute on the basis of similar entries in the village records. No objection was filed by the respondent claiming Bhumidhari rights over the land in dispute but an objection, though belated, was filed by the appellant claiming that he himself held Sirdari rights in the land and that the name of Parag was wrongly entered in the statement. The appellant had filed the objection before the Consolidation Officer. It has been filed u/s 12 (1) which as it stood then, was to the effect that

"any person may within 30 days of the publication of the statement prepared u/s 11 file before the Assistant Consolidation Officer an objection disputing the correctness or nature of an entry in the statement *****"

The objection was filed on 23-8-1957 when the Act contained Section 42 (5) to

the effect that

"where powers are to be exercised or duties to be performed by any officer appointed under this Act, such powers or duties may also be exercised or performed by the officers mentioned subsequent to him in Sub-section (1)."

The officers mentioned in Sub-section (1) of Section 42 were :

- "(i) Assistant Consolidation Officer;
- (ii) Consolidation Officer;
- (iii) Settlement Officer (Consolidation);
- (iv) Assistant Director (Consolidation); and
- (v) Director of Consolidation."

The Consolidation Officer condoned the delay in filing the objection and proceeded to dispose of it himself. The respondent appeared before him and filed a written statement claiming Bhumidhari rights in the land and denying that the appellant had Sirdari rights in it. The Consolidation Officer held that he was barred from claiming Bhumidhari rights by his failure to file an objection u/s 12 against the statement in which he was recorded as Sirdar. He held that the statement had, after the lapse of the period of 30 days prescribed for an objection u/s 12, become final as against him and that it was not open to him to claim any rights different from those which were recorded as possessed by him. It is to be noted that he did not decide the question whether he held Bhumidhari rights or not on the other hand he refused to go into the question on the ground that the respondent was debarred from raising the question in defence of the appellant's objection. He then held that the appellant was Sirdar and ordered the statement to be corrected by expunction of the name of the respondent and entry of the appellant's name in respect of the land in dispute. An appeal from his, order was dismissed by the Settlement Officer and a revision was also dismissed by the Deputy Director.

2. The respondent applied to our learned brother for certiorari to quash the above mentioned orders. Our learned brother quashed them on several grounds. One is that the Consolidation. Officer had no jurisdiction to entertain the objection u/s 12 and to pass orders on it. Another is that no opinion of the Land Management Committee on the objection had been obtained as required by Section 12 (2). Third is that a question of Bhumidhari rights is a question of title and the question raised by the respondent should have been referred to the arbitrator as required by Section 12 (4) and should not have been decided by the Consolidation Officer himself.

3. We agree with our learned brother that the Consolidation Officer had no jurisdiction to entertain the appellant's objection. u/s 12 (1) only an Assistant Consolidation Officer had jurisdiction to entertain it. He was bound by Section 12 (2), to obtain the views of the Land Management Committee, hear the parties if

necessary and submit his report on the objection to the Consolidation Officer, who was then to dispose of the objection in the prescribed manner. Rule 34 made by the State Government also required that an objection u/s 12 should be made in writing to the Assistant Consolidation Officer and should be accompanied as far as possible by the relevant extract in C. H. Form 20, that the Assistant Consolidation Officer should hear the parties in the village in order to ascertain from them the actual nature of the dispute and ascertain the views of the Consolidation Committee "on each case and record them in the form of resolution"s in the Proceedings BOOK" and then prepare a report "in each case specially mentioning the opinion of the Consolidation Committee on the points in dispute and his own views" and forward it to the Consolidation Officer. It is clear from these provisions that an objection u/s 12 could be entertained only by an Assistant Consolidation Officer and could not be entertained by a Consolidation Officer. The procedure laid down in Section 12 (2) and Rule 34 could be followed by him and was not contemplated to be followed by any other officer. A Consolidation Officer had jurisdiction to pass orders on the objection but only on receipt of a report from an Assistant Consolidation Officer; he had no jurisdiction to pass orders on it otherwise. His jurisdiction was confined to passing orders on the Assistant Consolidation Officer's report "after such verification of facts from the parties concerned as necessary", vide Rule 34 (2) (a).

4. Reliance by the appellant upon Section 42 (5) was misplaced. What was laid down in that provision was that officers mentioned in Sub-section (1) of Section 42 subsequent to a particular officer had his powers, i.e., what could be done by an officer mentioned in Sub-section (1) could also be done by any officer mentioned subsequently in the sub-section. But it did not follow that an officer mentioned in Sub-section (1) meant or included any officer mentioned subsequently in it. A Consolidation Officer could exercise the powers of an Assistant Consolidation Officer but he did not thereby become an Assistant Consolidation Officer and whenever an Assistant Consolidation Officer was referred to in the Act, it meant only an Assistant Consolidation Officer and did not mean a Consolidation Officer. Though, a Consolidation Officer might have had the power of entertaining an objection u/s 12 such objection had to be filed only before an Assistant Consolidation Officer because Assistant Consolidation Officer" used in Section 12 (1) did not mean or include a Consolidation Officer. Section 42 (5) conferred only Assistant Consolidation Officer"s powers upon a Consolidation Officer but did not authorise an objector to file an objection before him which should have been filed before an Assistant Consolidation Officer; It did not give him the choice of filing an objection either before an Assistant Consolidation Officer or before a Consolidation Officer or any other officer mentioned in Section 42 (1). As far as he was concerned, he was bound to file it before an Assistant Consolidation Officer. Further as pointed out by our learned brother the Legislature could not have intended that what could be done before an Assistant Consolidation Officer could be done not only before him but also before a Consolidation Officer, a Settlement Officer, an Assistant Director and a Director

and that any of the four superior officers could perform any of the duties, or exercise any of the powers, which could be performed or exercised by an Assistant Consolidation Officer. There is no force in the contention advanced before us that what was meant by Sub-section (5) was that only the officer immediately subsequently mentioned was to exercise the powers and not other officers. The word used in the sub-section was "officers" and not "officer" and did not distinguish between an officer who was mentioned immediately subsequent to an Assistant Consolidation Officer and other officers who were mentioned remotely subsequent to him.

5. No views of the Land Management Committee were obtained though tinder Section 12 (2) and Rule 34 (1) they had to be obtained and the Consolidation Officer had to pass orders on the objection after considering them. The use of the word "shall" in these provisions made it obligatory upon an Assistant Consolidation Officer to obtain its views and a Consolidation Officer to consider them before passing orders. The argument that its views were to be obtained only in regard to an objection against soil classification was rightly repelled by our learned brother, it is true that the soil classes of the plots to be mentioned in the statement prepared u/s 11 (a) (ii) had to be determined in consultation with the Land Management Committee, but it does not follow that the views referred to in Section 12 (2) and Rule 34 (1) were confined to an objection against the soil class of a plot. The provisions of Section 12 (2) were general and applicable in case of every objection regardless of its nature. Rule 34 (1) made it clear that in every case the Land Management Committee's opinion had to be obtained. Therefore, in the instant case also, it had to be obtained even, though the appellant's objection was in regard to Sirdari rights claimed by him and not in regard to soil classes of the plots in dispute. We agree with the view expressed in *Tajammul Husain v. Assistant Consolidation Officer, Jalalabad 1959 All LJ 209*, in which it was held that the provisions of Section 12 (2) are mandatory and that non-compliance with them justifies the quashing of the Consolidation Officer's order.

6. We are unable to agree with our learned brother that the appellant's objection involved a question of title within the meaning of Section 12 (4) and that the Consolidation Officer exceeded his jurisdiction in rejecting the respondent's claim to Bhumidhari rights instead of referring it to the arbitrator. It is not in dispute that a question of Sirdari rights is not a question of title. The appellant claimed only Sirdari rights; he did not claim Bhumidhari rights. In the statement the respondent was entered as Sirdar and not as Bhumidhar. An objection against an entry in a statement undoubtedly has two aspects (1) that the entry is incorrect and (2) that another entry which is correct should be made in its place. Had the respondent been entered in the statement as Bhumidhar, it could be said that the appellant's objection involved a question of title because he could not be recorded as Sirdar unless it was first found that the respondent was not Bhumidhar. Unless the entry of Bhumidhari in the respondent's favour had been found to be incorrect, the appellant's objection that he was Sirdar could not have

been allowed. What is required by Sub-section (4) of Section 12 is not that the objection should itself raise a question of title but that it should "involve" a question of title; so an objection against an entry which is an entry about title is an objection involving a question of title within the meaning of Sub-section (4). But here the entry was of Sirdari rights and was, therefore, not an entry of title and the appellant himself did not claim Bhumidhari rights; so neither aspect of his objection raised a question of title and the objection could not be said to be one which involved a question of title. If he had been found to be Sirdar and not the respondent, the entry in favour of the respondent could be cancelled, and an entry in favour of the appellant could be made, by the Consolidation Officer without exceeding his jurisdiction. He could have held that the appellant, and not the respondent, was sirdar without having to decide any question of title. We also do not agree with our learned brother that the Consolidation Officer decided the question whether the respondent was Bhumidhar or not. As we pointed out earlier, he did not go into that question and instead held that the respondent was debarred from taking the plea. When he held that the respondent was debarred from taking the plea there was no question of his referring the question of Bhumidhari rights to the arbitrator.

7. As we hold that the order of the Consolidation Officer was vitiated by an error of jurisdiction and by his failure to follow the mandatory provisions of law, we uphold the order of our learned brother quashing his order and the orders subsequently passed by the Settlement Officer and the Deputy Director and dismiss the appeal summarily.