
(1968) 03 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2063 of 1963

Vidya Ram and another

APPELLANT

Vs

The State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 26-03-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11

Citation : (1968) 38 AWR 325

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This petition Under Article 226 of the Constitution arises out of certain consolidation proceedings.

2. The Petitioners aggrieved by the order of the Consolidation Officer filed an appeal u/s 11 of the UP Consolidation of Holdings Act (hereinafter referred to as "the Act"). This appeal was dismissed by the Additional Settlement Officer (Consolidation) by his order dated 22-5-1962 on the ground that the appeal had not been properly presented. A second appeal by the Petitioners before the Deputy Director of Consolidation also failed and the Joint Director of Consolidation also upheld the order of the Deputy Director of Consolidation. The Petitioner has now come up Under Article 226 of the Constitution to this Court.

3. From a perusal of the order of the three consolidation authorities it is apparent that the memorandum of appeal was signed by one of the Petitioners Vidya Ram. There was also a vakalatnama along with the memorandum of appeal which contained the name of Sri S.P. Dube, Vakil, but it did not bear his signature. It is also evident that the memorandum of appeal bears the signature of one Badan Singh who is a Moharrir of the Vakil. According to the Petitioners averment the appeal was presented by Petitioner Vidya Ram personally accompanied by his Vakil who, however, forgot to put his signature on the Vakalatnama. Be that as it

may, one thing is quite obvious that the memorandum of appeal bore the signature of one of the Petitioners and the appeal was eventually lodged within time before the appellate authority. This, in my opinion, is sufficient for the purpose of filing an appeal u/s 11(1) of the Act. I had an occasion in several other cases earlier also to observe that the UP Consolidation of Holdings Act or the Rules made thereunder do not lay down any procedure for filing or presenting appeals. The UP Consolidation of Holdings Act is a special Act and the procedure relating to appeals under the CPC or under any other Act cannot be made applicable by implication. In this view of the matter, assuming that the appeal was not presented personally by the Petitioner or through his counsel, it would not in any way render the appeal bad in law because the appeal duly signed by the Petitioner did reach the appellate authority within the time prescribed under the law. In the circumstances the order of the consolidation authorities cannot be upheld.

4. This writ petition is accordingly allowed. A writ of certiorari will issue quashing the order of the Additional Settlement Officer (Consolidation), Etawah, dated 22-5-1962; the order of the Deputy Director of Consolidation dated 25-8-1962 and the order of the Joint Director of Consolidation dated 20-3-1963. The Petitioners' appeal shall be restored to its original number by the Additional Settlement Officer (Consolidation) who will decide it afresh in accordance with law and in the light of observations made above. In the circumstances of the case there will be no order as to costs.