

(2019) 05 UK CK 0276
In the Uttarakhand High Court
Case No : Writ Petition No.789 Of 2007 (M/S)

Zinda

APPELLANT

Vs

District Deputy Director Of Consolidation & Ors

RESPONDENT

Date of Decision : 27-05-2019

Acts Referred:

Uttar Pradesh Consolidation Of Holdings Act, 1953 — Section 9A(2), 48
Code Of Civil Procedure, 1908 — Section 151, Order 22 Rule 4
Government Of India Act, 1915 — Section 107
Constitution Of India, 1950 — Article 227

Citation : (2019) 05 UK CK 0276

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : M.S. Tyagi, Narain Dutt

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. Petitioners have invoked the extra-ordinary jurisdiction of this Court under Article 227 of The Constitution of India seeking a writ of certiorari quashing the impugned order dated 7.6.2007 passed by the respondent no.1 (contained as Annexure No.9 to this writ petition).

2. Factual matrix of the case is that Late Zinda (since deceased) filed objections under Section 9-A(2) of Consolidation of Holdings Act. Consolidation Officer, Roorkee, vide its judgment and order dated 31.12.2001, dismissed the said objections. Feeling aggrieved, petitioner preferred appeal before the Settlement Officer of Consolidation, which was allowed vide judgment and order dated 27.03.2005. Feeling aggrieved, respondent no.5-State preferred a revision being Revision No.220/2005 under Section 48 of the Consolidation of Holdings Act. In the revision, real brother of petitioner, namely Kalu was impleaded as respondent no.2. During the pendency of revision, on 19.9.2006, respondent no.5-State filed an application under Order 22 Rule 4 and Section 151 of C.P.C. for substituting

legal heirs of respondent no.2. Against the said substitution application, Late Shri Zinda (deceased) filed his objections stating that the respondent no.2 has died four years ago, prior to filing of revision, as such, the substitution application is barred by limitation. Respondent no.1-Deputy Director of Consolidation, by order dated 7.6.2007, has allowed the substitution application and has directed to bring on record the legal heirs of Late Sri Kalu in the memo of revision.

3. Learned counsel for the petitioners would contend that the order passed by respondent no.1 is illegal and unsustainable in the eyes of law as the date of death was not mentioned in the substitution application whereas in fact Kalu had passed away in the year 1995, prior to filing of revision. He would also contend that procedure prescribed has not been adhered to in filing the substitution application and the application ought to have been rejected by the respondent no.1.

4. I have heard learned counsel for the parties and have perused the material available.

5. By the impugned order, Deputy Director of Consolidation has directed to substitute the legal heirs of Kalu in the memo of revision but on perusal of memo of parties of the present writ petition, it transpires that the petitioner has not arrayed said legal heirs of Kalu as party respondent in the present writ petition. Be that as it may, the fact remains that the respondent no.1 has allowed the substitution application moved by the respondent no.5-State.

6. It would be apt to reproduce Section 48 of U.P. Consolidation of Holdings Act, 1953 which is extracted hereunder:-

"48. Revision and reference.-(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by an subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order [other than an interlocutory order] passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit."

7. A perusal of the aforesaid section makes it clear that it is discretionary for the revisional authority to call for the record and to examine it. But the discretion has to be exercised on sound judicial principles. Under this Section the revisional authority may exercise its powers either suo motu or on the application of an aggrieved party. Thus, in any case, the revisional court has not committed any illegality or irregularity in allowing the substitution application. On account of death of any person, revision will not abate.

8. Besides above, learned counsel for the petitioner could not show as to what prejudice or miscarriage of justice has been caused to the petitioner by the impugned order. The jurisdiction under Article 227 of The Constitution of India is limited. In *Radhey Shyam and another vs. Chhabi Nath and other*, (2015) 5 SCC

423 it has been held by the Hon'ble Apex Court that proceedings under Article 227 of the Constitution of India are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

9. In view of the above discussion, there is no merit in the writ petition. Writ petition fails and is hereby dismissed. No order as to costs.

10. Let a copy of this judgment be immediately sent to the revisional court to proceed further.z