

Court No. - 48**Case :-** WRIT - B No. - 4228 of 1978**Petitioner :-** Rajman**Respondent :-** D.D.C.**Counsel for Petitioner :-** Purnendu Prakash Pandey, C.K. Rai**Counsel for Respondent :-** N.P. Misra, D.Kumar Mishra, S.C., Yogesh Agarwal**Hon'ble Saurabh Shyam Shamshery, J.**

1. This case is arising out of consolidation proceedings. The Revisional Authority has upset the concurrent findings arrived by the two lower authorities namely Consolidation Officer and the Appellate Authority.
2. This Court has dealt with the powers of the Revisional Authority as then it was in the case of **Motilal v. DDC and others, 2023:AHC:197946**. For reference the same is reproduced hereinafter:-

"5. (i).....

X X X X X

(xvii) The argument that Deputy Director of Consolidation at relevant time may by limited power under Section 48 of Act of 1953, has also no basis since Deputy Director of Consolidation has after considering evidence and material on record and on basis of valid reasons has interfered with orders passed by Consolidation Officer and Settlement Officer of Consolidation that P.A.10 was not duly prepared, which would not fall under 're appreciation of evidence' rather examining the correctness and validity of the entries in Khasra/Khatauni in light of procedure to be followed during preparation of P.A.10 and it would be a case where substantial irregularity was committed by lower authorities. (See Ram Bahal & Anr Vs. Deputy Director of Consolidation, Azamgarh & Ors, (2016) 16 SCC 493).

(xviii) The Revisional Authority had jurisdiction to interfere with order or orders passed by lower authority or authorities only under such circumstances when authority has exercised jurisdiction not vested in him in law or failed to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appeared to have been caused to a tenure holder. (See Act No.XXXVIII of 1958).

(xix) The word 'substantial' carries importance. Word 'substantial' often means more than 'significant'. Word 'substantial' means 'having substance' 'essential', 'real', 'of sound worth', etc. According to P.Ramanatha Aiyar's: The Law Lexicon 3rd Edition, 2012 meaning of word 'substantial' is 'considerable' and is not the same as 'not substantial'. Hindi translation of word 'substantial' as used in Amendment Act is 'सारवान्' i.e. which goes to the root of dispute.

(xx) The Supreme Court in Ram Avadh & Ors Vs. Ram Das & Ors., (2008) 8 SCC 58, has held that concurrent findings of two lower authorities could not be disturbed mainly on basis of assumption or without any basis. It would be relevant that above referred clauses were neither referred nor considered effect of U.P. Land Laws (Amendment) Act, 1982 (U.P. Act No.XX of 1982) enforced with effect

from 10.11.1980."

3. Learned counsel for the petitioner submits that the Consolidation Officer has accepted the case of petitioner and entries of basic year was recorded and entry of Class 9 was expunged. The relevant part thereof is mentioned hereinafter:-

" Issue not.1and 2- Being inter connected have been taken together. Heard the parties evidence on file on behalf of the objectors Sripat has been examined and from the defendant side Fulchand has been examined. There is copy of judgment on file of the suit no.59 u/s 229 B which goes to show that Sripat contested in case on the ground that firstly he is a Bhumidhar of the suit land and alternatively he is sirdar u/s 210. He was defendant in that case from this it is find that Sripat of his ancestors were the sir holder of the suit land and in father of the recorded tenant Sobha was the tenant of class 20 of the suit and and after abolition he became sirdar of the suit land in 1362 F. The khasra of 1362 F is on file which shows that Soba the father of the present recorded tenant was the sikmi of the suit land and no one was recorded in possession in 1362 F. Hence, Sripat has been recorded in class 9in 1363 F by Naib Tahsildar. As there is no entry of possession in Khasra of 1362 F as per provisions of L.R.M. there is reason to disbelieve the entry of class 9 of 1363 F. made in favour of Sripat and there this entry does not give any right to Sripat. Thus, in this circumstances I decide that Sripat is not Sirdar of the suit land on the basis of possession the recorded tenants are sirdar of the suit land. Both issues are decided accordingly."

4. Learned counsel for the petitioner submits that the respondent has filed an appeal which was rejected by an order dated 16-08-1974 passed by the Settlement Officer of Consolidation and relevant paragraph thereof is mentioned hereinafter:-

" वर्ग 9 का इन्द्राज करने के लिये यह आवश्यक हो जाता है कि ऐसा इन्द्राज के आदेश के पहले कब्जे के इन्द्राज नियमानुसार किये गये हैं या नहीं। इस मुकदमे में कब्जे के इन्द्राज पर आदेश ऊपर कहा गया है विश्वास नहीं किया जा सकता है इसलिये विद्वान चकबन्दी अधिकारी ने इस सम्बन्ध में जो टिप्पणी दिया है वह सही है। सबसे प्रमुख बात यह है कि किसी माल चक्र 10 का जारी होना साबित नहीं होता है। इसलिये 1364 फ० लगायत 1374 फ० ने वादी अपीलकर्ता के नाम से शिकमियाना इन्द्राज किया गया है वह नियमानुसार किये गये कब्जे के इन्द्राज पर आधारित नहीं है। इसलिये उपरोक्त सालों के कब्जे के आधार पर अपीलकर्ता को सीरदारी अधिकार नहीं दिये जा सकते। पक्षी के दरमियान मुकदमा नं० 59 अन्तर्गत धारा 229 वी जमीन्दारी विनाश कानून राजमति आदि वनाम श्रीपति किया। असिस्टेन्ट कलेक्टर प्रथम श्रेणी के न्यायालय में चला था जो खारिज हो गया था। वाद उपरोक्त मुकदमा अपील से स्टे हो गये हैं। इसलिये उपरोक्त मुकदमे की कार्यवाही की कोई प्रभाव इस मुकदमे पर नहीं हो सकता है। अपील बलहीन है।

5. Learned counsel for the petitioner further submits that the two authorities have passed order in favour of the petitioner mainly on two grounds; firstly that order of the Tehsildar does not found to be genuine since it was not clearly indicated about name of the tehsil and secondly that entries mentioned in the Fasli 1364 to 1374 in name of the respondent were not found to be recorded in accordance with law as well as that the suit filed under Section 229 of U.P. Z.A & L.R. Act was abated.

6. Learned counsel for the petitioner further submits that aforesaid findings returned by two authorities were erroneously disturbed by the Revisional Authority mainly taking a ground that there is no ground to dispute the order passed by the Tehsildar as well as has place reliance of Khasra of year 1364 to 1375 Fasli and that since civil suit was dismissed therefore, it would have no effect.

7. Learned counsel submits that in order to set aside concurrent findings of two lower authorities, there must be substantial irregularity which has caused substantial injustice to a party.

8. None appears on behalf of the respondent despite being served. Though a counter affidavit has been filed by the respondent. The relevant paragraphs of the counter affidavit is reproduced hereinafter:

"9. That the first part of paragraph no.7 of the writ are admitted but the latter part is denied. After the judgment of the Assistant Settlement Officer Consolidation the judgment of the Consolidation Officer merged into the judgment of the Assistant Settlement Officer Consolidation and hence by setting aside the judgment of the Assistant Settlement Officer Consolidation the Deputy Director of Consolidation has set aside the judgment of the Consolidation Officer as well."

9. Heard Sri Punendu Prakash Pandey, learned counsel for the petitioner and perused the record.

10. As referred above in the present case, Revisional Authorities under limited power of revision has set aside concurrent findings of two lower authorities.

11. As referred above the documents which were rejected by two lower authorities i.e. an order passed by Tehsildar as well as basis of revenue entries made in favour of the respondent. However, the Revisional Authority has found above documents to be genuine.

12. The appellate authority has returned a specific finding that there were multiple stamps below the signature of the Tehsildar, therefore, it could not be ascertain name of jurisdiction, area of Tehsildar.

13. As referred above said finding has not been dealt with by the revisional

authority nor it has been rejected in a specific terms.

14. The Revisional Authority has merely relied upon an order passed by the Tehsildar without even verifying whether it was a genuine order or not. The only reason given in the impugned order is that, the order passed by the Tehsildar could not be disputed which appears to be incorrect approach.

15. The Revisional Authority has accepted the argument of petitioner (respondent before it) on basis Khasra of year 1363 Fasli as well as copy of the Khasra of 1364 to 1375 F without even advertng to findings returned by the lower authorities that basis of such entries was disputed as well as no finding was about entry in regard to PA-10, therefore, it was also an illegality committed by the Revisional Authority.

16. The concurrent findings could be interfered only wherein there was substantial illegality or substantial injustice was caused to a party, however, as referred above both circumstances are absolutely absent in present case.

17. The suit filed under Section 229 of U.P. Z.A & L.R. Act was abated since consolidation proceedings were commenced, however, the Deputy Director of Consolidation has also placed reliance on the findings returned in the suit which was a illegality committed by the Revisional Authority.

18. In the facts and circumstances as well as on basis of above discussion, since the Revisional Authority has committed multiple legal errors, therefore, the impugned order dated 06-02-1978 is set aside and this writ petition is **allowed** by upholding the orders passed by the Consolidation Officer and the Settlement Officer of Consolidation dated 27-12-1973 and 16-08-1974 respectively.

Order Date :- 12.12.2023/pks