

Court No. - 48

Case :- WRIT - B No. - 572 of 1979

Petitioner :- Ram Lal and another

Respondent :- D.D.C. And Others

Counsel for Petitioner :- A.N. Singh, A.B. Singh, A.P. Singh, Amrendra Singh, Anand Pal Singh, H.C. Singh, Harish Chandra Singh

Counsel for Respondent :- H.S.N. Tripathi, C.B. Misra, Dharmendra Kumar, O.P. Singh Sikarwar, S.C., Shri Kant, Suresh Singh

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Amrendra Singh, learned counsel for petitioners and Sri Suresh Singh, Advocate for contesting-respondents.
2. This writ petition is pending since 1979.
3. It is not in dispute that case of petitioners was accepted by Consolidation Officer and appeal thereof was rejected by Settlement Officer of Consolidation. However, Revisional Authority, i.e., Deputy Director of Consolidation by means of impugned order dated 20.11.1978 has set aside the concurrent findings returned by above two authorities.
4. It is not in dispute that at the relevant time Deputy Director of Consolidation had very limited power, i.e., to scrutinize the orders passed by lower authorities only to the extent whether there was substantial irregularity which led to substantial injustice to a land holder or passed beyond jurisdiction or failed to exercise jurisdiction.
5. Learned counsel for petitioners has referred the impugned order in its entirety and submits that Deputy Director of Consolidation has acted as an expert and returned a finding that signature of Pradhan on family register appears to be under cloud of doubt as well as the authority has placed reliance on statement of a witness of petitioners' side in other suit with regard to dispute of pedigree.
6. Learned counsel appearing for contesting-respondents has tried to oppose the above submissions, however, miserably failed since it is not in dispute that Deputy Director of Consolidation could not disturb the concurrent finding in a very routine manner only on the basis of assumption.
7. Supreme Court in catena of decisions has repeatedly cautioned that Court

cannot act as an expert and in the present case Deputy Director of Consolidation has acted as a handwriting expert which is a specialized branch. It would be appropriate to refer some paragraphs of a judgment passed by Supreme Court in **O. Bharathan vs K. Sudhakaran And Another, 1996 AIR 1140** as under:

"Though it is the province of the expert to act as judge or jury after a scientific comparison of the dispute signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote, it had been held in Pali Ram:

"The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

The necessity for adhering to the said sound advice and guidance is all the more necessary in a case where hundreds of signatures are disputed, and the striking dissimilarities noticed by the court at the time of trial of the election petition."

8. The above legal position was reiterated in *Ajay Kumar Parmar vs. State of Rajasthan*, (2012) 12 SCC 406 and *Thiruvengadam Pillai vs. Navaneethammal and another*, (2008) 4 SCC 530.

9. Otherwise also, not only the Deputy Director of Consolidation has erroneously placed reliance on a statement given by witness of petitioners' side in other case without calling him as a witness and granting opportunity to cross

other side but has blatantly acted beyond jurisdiction, therefore, as held by Supreme Court in Krishnanand (Dead) through Legal Representatives and others vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553 that concurrent findings are not to be interfered in except they are perverse or without jurisdiction, therefore, no illegality erupted in impugned order.

10. In view of above, discussion I am of the considered opinion that Deputy Director of Consolidation has committed a legal error which goes to the root of the case and has acted beyond jurisdiction also.

11. In the result, writ petition is allowed. Impugned order dated 20.11.1978 is hereby set aside and legal consequences thereof would follow.

Order Date :- 12.10.2023

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