

Court No. - 48

Case :- WRIT - B No. - 14464 of 1993

Petitioner :- Indrasan Singh

Respondent :- D.D.C. And Others

Counsel for Petitioner :- K.N. Tripathi, Gopal Narain, Harishchandra Dubey, Narayan Dutt Shukla, Rituvendra Singh Nagvanshi, Shyam Narain

Counsel for Respondent :- S.C., J. Sahai

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri R.C. Singh, learned Senior Advocate assisted by Sri N.D. Shukla, Advocate for petitioner and Sri A.K. Rai, learned Additional Chief Standing Counsel for State-Respondents. None appeared on behalf of contesting-respondents despite due service.
2. This is a case arising out of proceedings under Section 48(3) of U.P. Consolidation of Holdings Act, 1953 (*hereinafter referred to as "Act, 1953"*).
3. In pursuance of a reference submitted by concerned authority the Deputy Director of Consolidation, Ballia after hearing rival parties held that there was a purported agreement between parties which was an issue before Consolidation Officer, however, since there was no specific finding on it, the matter was remitted back to Consolidation Officer to pass order after considering the effect of compromise.
4. Learned Senior Advocate appearing for petitioner vehemently contended that power to decide reference under Section 48(3) of Act, 1953 lies only with Deputy Director of Consolidation and in case there was a dispute amongst the report submitted by Consolidation Officer as well as report submitted during pendency of reference, the Deputy Director of Consolidation ought to have decide the case on merit itself. He further submits that in the later report which has been considered by Deputy Director of Consolidation it was indicated that compromise appears to be not genuine and he refers following paragraphs of impugned order:

"जहां तक सहायक चकबन्दी अधिकारी की रिपोर्ट व रामाज्ञा यादव के बयान का प्रश्न है, उनमें समझौता के स्थल तिथि एवं अमलदरामद करने के प्रश्न पर परस्पर विरोधाभास है। इससे भी स्पष्ट होता है कि समझौता हुआ या नहीं, यह सन्दिग्ध है।

सहायक चकबन्दी अधिकारी ने अपने बयान में यह कहा है कि उन्होंने समझौता कराया है तथा इन्द्राज समझौते के अनुसार है। चकबन्दी न्यायालयों में विशेषकर सहायक चकबन्दी अधिकारी के न्यायालयों की पत्रावलियों के दाखिल में यह सम्भव हो सकता है कि समझौता हुआ हो तो पत्रावली दाखिल दफ्तर न हुयी हो। खाता संख्या 62 के आ० पत्र 4 की प्रतिलिपि दाखिल की गयी है जिसमें खाता सं० 62 के स्तम्भ 5 में खाता से इन्द्राज इन्द्रासन कक्ष का नाम खारिज होना बताया गया है तथा स्तम्भ 8 में यह वाद च० अ० को सन्दर्भित करने का उल्लेख है। खाता संख्या 2 के सम्बन्ध में यह बताया गया कि जमुना से मुकदमा चला जिसमें आराजी संयुक्त रूप से मुरिसों के समय की पायी गयी। तथा जमुना का दावा खारिज हुआ। ये दो परिस्थितियां ऐसी हैं जो यह सन्देह पैदा करती हैं कि इन्द्राज का नाम तनहा होने की बाबत चकबन्दी अधिकारी के न्यायालय ने प्रारंभिक स्तर पर विवाद चला था तथा यदि इसका निस्तारण सहायक चकबन्दी अधिकारी के यहां समझौते के धारा नहीं हुआ तो इसका निस्तारण होना चाहिये। अतः इस सन्दर्भ में चकबन्दी अधिकारी व ब०अ०च० की आख्या के आधार पर सन्दर्भ अनुमोदित करने का औचित्य नहीं है। तथा पत्रावली चकबन्दी अधिकारी, अन्तिम, अभिलेख, रामपुर, बलिया को इस निदेश के साथ प्रत्यावर्तित की जाती है कि वे खाता संख्या 62 व 2 के बारे में बनाये गये वाद पर दोनों पक्षों के साक्ष्य लेने के उपरान्त गुण-दोष के आधार पर विधिपूर्वक निस्तारण करें और वाद के निस्तारण के उपरान्त ही सन्दर्भ की बाबत कार्यवाही करें।"

5. Learned Senior Advocate submits that in aforesaid circumstances the matter be remitted to Deputy Director of Consolidation to decide case on merit.
6. Learned Additional Chief Standing Counsel appearing for State-Respondents submits that above referred findings appears to be self contradictory, therefore, matter has to be remitted back to Deputy Director of Consolidation to decide case on merit.
7. Heard learned counsel for parties and perused the material available on record.
8. As referred above, the dispute is with regard to a purported agreement on the basis of report submitted during pendency of reference and since agreement itself has been disputed, therefore, reasons given by Deputy Director of Consolidation to remit the case do not appear to be legally sustainable. Even otherwise, on the basis of said report the decision ought to have been taken by Deputy Director of Consolidation itself instead of remitting case to Consolidation Officer, which appears to be an incorrect approach.
9. In aforesaid circumstances and in the interest of justice, the impugned order dated 18.02.1993 is set aside. Matter is remitted back to Deputy Director of Consolidation to decide case on merit after hearing rival parties in accordance

with law expeditiously, preferably within a period of six months from today, if there is no legal impediment.

10. With aforesaid direction/ observation, the writ petition is disposed of.

Order Date :- 22.11.2023

AK