

Court No. - 48

Case :- WRIT - B No. - 4596 of 1997

Petitioner :- Sita

Respondent :- D.D.C. And Others

Counsel for Petitioner :- C.M. Yadav, Yatindra

Counsel for Respondent :- C.S.C., Ajay Kumar

Srivastava, Faujdar Rai, Rahul Sahai, Rinkoo

Keshari, S.N.S. Yadav, Sankatha Rai, Smt. Kamla Yadav, Suresh
Chandra Varma

Hon'ble Saurabh Shyam Shamsbery, J.

Civil Misc. Substitution Application No.12 of 2023

Heard.

Substitution application is allowed.

Learned counsel for petitioner is directed to carry out necessary changes in cause title during the course of day.

Order on memo of petition

1. Heard Sri Yatindra, learned counsel for petitioner and Sri R.C. Singh, learned Senior Advocate, assisted by Sri Ajay Kumar Srivastava, learned counsel for contesting respondents at length.
2. This writ petition is pending since 1997. This is a proceeding arising out of second consolidation proceeding on basis of objections filed by petitioner. The proceedings were initiated under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 wherein 11 issues were framed.
3. The Consolidation Officer has considered at length the rival submissions and returned findings, rejecting the claim of petitioner in regard to khata No.26, 27, 50, 52 and 61 of land in question. Thereafter petitioner filed an appeal before Settlement Officer Consolidation which was allowed by an order dated 05.10.1995 and it was directed that name of petitioner be recorded on Khata No.26, 27, 50, 52 and 61. The relevant part of said order is reproduced hereinafter :-

"इस प्रकार उक्त सुलहनामा खेलावन के वारिसान भी पाबन्द हैं। अभिलेखीय साक्ष्यों के अवलोकन से यह बात स्पष्ट होती है कि चकबन्दी अधिकारी के आदेश दिनांक 18-7-59 का अमलदरामद अभिलेखों में नहीं हो सका। पूर्व चकबन्दी में लालचन्द व राम आशीष का नाम खारिज करने का आदेश अन्तिम रूप से हो चुका है। राम आशीष व लाल चन्द के विरुद्ध धारा 49 जो च०अ० भी लागू होता है। लाल चन्द व राम आशीष ने दिनांक 20-9-66 को नई गाटा संख्या 226/0-9-19, 235 अ/0-7-18 तथा 235 ब/3-14-1 का रजिस्टर्ड कबाला बहक बैजनाथ, देवनाथ, राम वृक्ष पुत्रगण अलियार, राम बचन पुत्र दूधनाथ के हक में कर दिया। जब खेलावन या उनके वारसान का हक ही नहीं रह जाता है तो केबाला करने का क्या औचित्य है। भूमिधरी स्वत्व की मांग के संबंध में सीता अपीलकर्ता का दावा एक पक्षीय रूप से डिग्री हुआ जिसका अमलदीमद आधार वर्ष की खतौनी पर किया गया है। उपरोक्त आदेश हो कि परगना दिनांक 22-8-75 एक पक्षीय होने के बावजूद भी पक्षों के मध्य प्रांग न्याय का प्रभाव रखता है।

पत्रावली पर उपलब्ध लिखित साक्ष्यों एवं मौखिक साक्ष्यों तथा उपलब्ध रसीदात का अवलोकन करने के उपरान्त मैं इस निष्कर्ष पर पहुँचता हूँ कि चकबन्दी अधिकारी ने जो आदेश पारित किया है, उन्होंने अभिलेखीय साक्ष्यों का सावधानीपूर्वक अध्ययन नहीं किया। अपीलकर्ता की मांगों पर विचार करते हुए मैं इस नतीजे पर पहुँचता हूँ कि उसकी मांग उचित एवं न्याय संगत है। अपील स्वीकार योग्य पाई गई।"

4. Thereafter a recall application filed by petitioner against order dated 05.10.1995 was rejected by Appellate Authority, vide order dated 21.11.1995.

5. In the aforesaid circumstances, three revision petition were filed at the behest of contesting respondents. The Revisional Authority has recorded the rival submissions at length and finally concluded that order passed by Appellate Authority was not only ex-parte but was contrary to law since both parties were bound by provisions of Section 49 of U.P. Consolidation of Holdings Act, 1953.

6. Learned counsel for petitioner submits that since the Revisional Authority has categorically returned a finding that order passed by Appellate Court was ex-parte, therefore, it has to be remitted to Appellate Authority to decide afresh.

7. Learned counsel further submits that order dated 18.7.1959 passed in first consolidation proceeding was not implemented.

8. Learned Senior Counsel has vehemently opposed the above submission and has drawn attention of this Court on various parts of orders passed by Consolidation Officer, by Appellate Court as well as by Revisional Court.

9. Learned Senior Counsel further submits that in the garb of objections, petitioner has tried to re-open the case and even in the above referred khata that contesting respondents have purchased a certain part of aforesaid referred khata during an auction proceedings and entries to that effect have already been entered in revenue records in the name of contesting respondents.

10. Learned Senior Counsel further submits that order passed by a detailed and reasoned order passed by Consolidation Officer was very lightly interfered with, by Appellate Authority, and Revisional Authority has only cured the defect and error committed by Appellate Authority.

11. Heard counsel for parties at length and perused the record.

12. I have carefully perused the order passed by Consolidation Officer and it has been rightly pointed out that all the issues have been dealt in detail.

13. I have further perused the order passed by Appellate Authority and it appears that Appellate Authority and after recording the rival submissions has concentrated mainly on one issue that order dated 18.7.1959 passed by Consolidation Officer in the first consolidation proceeding was not implemented in its entirety in revenue records and the effect of Section 49 of U.P. Consolidation of Holdings Act will be followed.

14. The Settlement Officer Consolidation has also referred the order dated 22.8.1975 that despite ex-parte order has legal consequence of *res judicata* at this stage, it would be appropriate to mention that Consolidation Officer while rejecting the claim of petitioner by an order dated 12.07.1989 has returned a finding that order dated 22.08.1975 was appeared to be a document surrounded

by circumstances of doubts.

15. I have also carefully perused the order passed by Deputy Director of Consolidation and as referred above, the Revisional Authority has referred rival submissions of counsel for parties at length and as referred above has returned a specific finding that orders passed by Settlement Officer Consolidation dated 21.11.1995 was an ex-parte order, however, further decided the case on merit that objections filed by petitioner were barred by Section 49 of U.P. Consolidation of Holdings Act.

16. In the aforesaid circumstances, the Court is of the considered opinion that in case, the Revisional Authority came to conclusion that order passed by Settlement Officer Consolidation was an ex-parte, it ought to have remitted the case to Appellate Authority or in case, it proceeded to decide the case on its own, it must have dealt with every aspect of case including the findings returned by Consolidation Officer as well as by Settlement Officer Consolidation to reverse the order passed by Appellate Authority, however, as discussed above, the said process was not undertaken.

17. In the aforesaid circumstances, the Court is of the view that matter has to be remitted to Appellate Authority, however, I find merit in the argument of learned Senior Counsel appearing on behalf of respondents that the writ petition is pending since 1997 and that presently Revisional Authority has wide power to consider the case on merit at length, therefore instead of remanding the matter to Settlement Officer Consolidation, the Court is of opinion that order impugned be set aside and matter is remitted to Deputy Director of Consolidation to decide the revision petition afresh ordered accordingly.

18. It is further directed that while deciding the revision petition the concerned Authority shall take note of effect of order dated 18.7.1959 i.e. whether it was completely implemented or not as well as that findings returned by Consolidation Officer in regard to order dated 22.08.1975 passed in proceeding initiated under Section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and land purchase during auction, if any.

19. This writ petition is accordingly, **disposed of**.

20. The aforesaid proceeding shall be concluded within a period of three months from today.

Order Date :- 7.11.2023/P. Pandey