

Court No. - 48

Case :- WRIT - B No. - 976 of 2023

Petitioner :- Munni Lal

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pyare Lal Yadav, Kirti Kumar Singh, Sanjay Kumar

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Shyam Shamschery, J.

1. Heard Sri Pyare Lal, learned counsel for petitioner and Sri Sanjay Kumar, learned counsel for respondents.
2. An appeal filed by petitioner was allowed by Settlement Officer of Consolidation by an order dated 19.12.2022. During hearing of appeal, legal heirs of deceased Chhabi Nath (respondent) have appeared and requested the Authority to make them party in appeal, however, no such order was passed. Instead of it, the Settlement Officer of Consolidation has allowed the appeal without even hearing said party on the ground that they have not filed any written submission.
3. It is very strange that on one hand, the Settlement Officer of Consolidation has not made legal heirs of deceased respondent as party and on the other hand, has insisted the said legal heirs to file written submissions. Later on, son of deceased respondent has filed a restoration application and this time, a good legal sense prevails with Settlement Officer of Consolidation and since order dated 19.12.2022 was passed ex-parte, therefore, it was recalled by an order dated 25.01.2023.
4. The petitioner has directly approached this Court challenging the order dated 25.01.2023 without taking remedy of filing a revision before Revisional Authority available to him.
5. Learned counsel for petitioner submits that Settlement Officer of Consolidation has decided the appeal on merit after hearing the parties and has referred certain part of said order, however, as referred earlier, learned counsel for petitioner has

failed to convince this Court that order was an ex-parte since legal heirs of deceased respondent were not formally made party on their request. A reference in impugned order that legal heirs were substituted was not supported by any material on record. Otherwise also, no submission of legal heirs was recorded in order. The Settlement Officer of Consolidation could have heard the appeal on its own after impleading Gaon Sabha instead of remitting it to Consolidation Officer.

6. In these circumstances, I do not find any illegality in the order dated 25.01.2023 whereby an ex-parte order was recalled and it is well settled that a procedural irregularity could be cured by allowing a recall application. This order will not be considered to be contrary to the judgment of Full Bench of this Court in **Smt. Shivraji Devi vs. DDC, Allahabad and others, 1997 SCC Online All 505**.

7. In view of above, writ petition has no merit, hence, **dismissed**.

8. However, Settlement Officer of Consolidation, Jaunpur is directed to conclude hearing of appeal within a period of three months from today, if there is no legal impediment.

Order Date :- 12.10.2023

Nirmal Sinha