

Court No. - 48

Case :- WRIT - B No. - 3100 of 2023

Petitioner :- Mohd. Shamsuddin

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Shailendra Yadav

Counsel for Respondent :- C.S.C.,Lal Sahab Yadav,Panchu Ram Maurya,Shiv Kumar Gupta

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri C.S. Agnihotri, Advocate holding brief of Sri Shailendra Yadav, learned counsel for petitioner and Sri P.R. Maurya, Advocate for contesting-respondent.
2. Learned counsel for petitioner vehemently urged that not only two simultaneous proceedings are undertaken by contesting-respondent which are illegal but Revisional Authority has erroneously acted beyond its jurisdiction and treated a reference to be a revision without even challenge to any impugned order as well as without condoning delay as provided under Rule 111 of U.P. Consolidation of Holdings Rules, 1954. In support of submission learned counsel for petitioner placed reliance on this Court's judgments in **Devesh Singh and others vs. Deputy Director of Consolidation and others, 2005(1) RD 446** and **Hari Ram vs. Deputy Director of Consolidation, Azamgarh, 1989 RD 281**.
3. Learned counsel appearing for contesting-respondent has not denied that two proceedings are undergoing. He, however, submits that Deputy Director of Consolidation has wide power and since prima facie there is an element of fraud and order of Amaldaramad was passed after 37 years, therefore, authority concerned has put

up the case to be heard on merit.

4. Heard learned counsel for parties and perused the material available on record.

5. I find substance in argument of learned counsel for petitioner so far as two simultaneous proceedings are concerned as it is not disputed that contradictory orders may be passed in two proceedings, therefore, I find force in the reliance placed on a judgment passed by this Court in **Devesh Singh (supra)** that in aforesaid circumstances one of the proceeding may be stayed.

6. So far as argument on merit is concerned, I do not find that issue of fraud and other circumstances were taken note by Division Bench of this Court in **Hari Ram (supra)** wherein it has been held that after notification issued under Section 52 of U.P. Consolidation of Holdings Act, 1953, Deputy Director of Consolidation has no jurisdiction to exercise power under Section 48(3) of the Act.

7. However, in the present case Deputy Director of Consolidation has noted that there is prima facie an element of fraud which is to be scrutinized and it is not in dispute that order of Amaldaramad was passed after 37 years. In **Hari Ram (supra)** Division Bench of this Court has not dealt with the relevant provisions in detail, therefore, it would not fall under the category of ratio decidendi. There are judgments of Supreme Court that in case of fraud all solemn acts would be vitiated. In the present case, matter has still to be heard on merit where petitioner and contesting-respondent have liberty to place their case. The decision of this Court passed in Writ-B No. 1458 of 2021 (dated 14.09.2021) is substantially complied with. Therefore, at this stage, I do not find that any interference is called for in impugned order. It is also pointed out that referred issue has been referred to Full Bench by judgment

dated 16.11.2019 passed in bunch of matters, leading being, Ashrafi Devi and others vs. Deputy Director of Consolidation, Varanasi and others (Writ-B No. 33966 of 2016) by a Division Bench of this Court.

8. In view of above, the writ petition is disposed of with liberty to petitioner to move an application before Deputy Director of Consolidation in order to show that other proceedings, if continued, it may lead to a contradictory order and authority shall pass appropriate order on the said application. Deputy Director of Consolidation will conclude the aforesaid proceedings, i.e., revision petition, expeditiously, preferably within a period of three months from today, if there is no legal impediment.

Order Date :- 18.10.2023

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