

Neutral Citation No. - 2023:AHC:202511

Reserved-: 09/10/2023

Delivered-: 19/10/2023

Court No. - 48

Case :- WRIT - B No. - 3323 of 2023

Petitioner :- Raisuddin

Respondent :- Deputy Director Of Consolidation And 3 Others

Counsel for Petitioner :- Umesh Vats

Counsel for Respondent :- CSC, R.P.S. Chauhan

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Umesh Vats, learned counsel for petitioner, learned Standing Counsel for State and Sri R.P.S. Chauhan, learned counsel for respondents, perused the writ petition and short counter affidavit filed on behalf of contesting respondents.

2. This writ petition is filed by petitioner being aggrieved by an order dated 18.07.2023 passed by Deputy Director of Consolidation, Sambhal, whereby a reference was accepted.

3. The controversy could be narrowed down on basis of following facts -:

a. The Assistant Consolidation Officer by an order dated 22.04.2006 passed in a Case No. 151 under Section 12 of U.P. Consolidation of Holdings Act, 1953 (Act of 1953) directed for mutation of name of one Kallu on land in dispute.

b. Name of answering respondent Smt. Sarvari Begum (respondent No.3) was mutated by an order dated 04.02.2008 passed by Assistant Consolidation Officer in Case No. 73 under Section 12 of Act of 1953 and accordingly name of above referred persons were recorded in CH Form-23. It appears that Form 40 and 41 were not prepared at that time.

c. Before finalization of consolidation operation, a reference was prepared under Section 48(3) read with Section 42A of Act of 1953 whereby chaks were carved out in favour of Kallu and contesting respondent no. 4 in regard to plot nos. 641, 641-A and 641-B.

d. Said reference which was proposed by Assistant Consolidation Officer on 05.01.2010, by Consolidation Officer on 25.01.2010 and by Settlement Officer of Consolidation on 28.01.2010 was approved by Deputy Director of Consolidation, Moradabad vide order dated 30.01.2010. On basis of said approval, CH Form-40 and 41 of land in dispute were prepared.

e. In aforesaid circumstances, respondent no.3 filed a restoration application on 12.01.2018 before Deputy Director of Consolidation, Sambhal vide Reference No. 183 taking a specific averment that reference proceedings were decided ex-parte and that location of her chak no. 641-B was not disclosed in proceedings and prayed that ex-parte order passed in reference may be set aside.

f. Deputy Director of Consolidation vide order dated 05.06.2018 allowed restoration application and order dated 30.01.2010 was set aside and it was directed that Consolidation Officer may send a fresh reference.

g. In pursuance of above order, amended reference dated 04.01.2020 was referred to Deputy Director of Consolidation which was allowed by an order dated 31.08.2021. According to order, no objection was filed to reference by any land-holder.

h. In aforesaid circumstances, petitioner has filed a restoration application on 09.03.2022 against ex-parte order dated 31.08.2021 with a direction to condone the delay along with application to maintain status-quo.

i. Deputy Director of Consolidation on above referred restoration application passed an order dated 06.04.2023 whereby an ex-parte order dated 31.08.2021 was set aside and reference was put for fresh hearing. It was held that no notice was issued to respondents in earlier proceedings.

4. In short counter affidavit, orders dated 09.05.2023 and 08.06.2023 passed by Deputy Director of Consolidation are placed on record that a spot inspection was conducted. It has also been brought on record that four persons have filed their affidavit before Revisional Authority that land was transferred to them by petitioner himself.

5. In aforesaid circumstances, impugned order dated 18.07.2023 was passed and reference was again accepted.

6. Above order dated 18.07.2023 is impugned in this writ petition.

7. Learned counsel for petitioner has submitted that Deputy Director of Consolidation has erred in considering the restoration application filed by contesting respondent No.3, which was allowed by an order dated 05.06.2018, where an order passed on merit was wrongly recalled.

8. Learned counsel has further submitted that said order was in teeth of judgment of Full Bench of this Court in **Smt. Shivraji Devi and another vs. D.D.C. and others, 1997 SCC Online All 505.**

9. Learned counsel has further submitted that Deputy Director of Consolidation has erred in law by approving the amended reference, which has caused great prejudice to him. The reliance

placed on spot inspection report, without inviting objections has also cause great prejudice to petitioner.

10. Learned counsel has further submitted that restoration application filed by respondents was barred since Notification under Section 52 has already been notified.

11. Learned counsel for respondents has opposed above submissions. He has submitted that in earlier round, Deputy Director of Consolidation has approved the reference by an unreasoned order dated 30.01.2010 and since it was an ex-parte order, therefore, on a restoration application filed by respondents, it was set aside and was directed to submit a fresh report.

12. Learned counsel has further submitted that fresh reference was submitted which was rightly approved by Deputy Director of Consolidation in first round as well as after restoration application of petitioner was allowed, it was reheard and was rightly again approved by impugned order.

13. Learned counsel has lastly submitted that there was no error which requires interference by this Court with impugned order.

14. Heard learned counsel for parties and perused the record.

15. In order to appreciate rival submissions, I have carefully perused various orders passed in present proceedings. Restoration application filed by petitioner as well as contesting respondents on different stages were allowed. Order passed by Deputy Director of Consolidation on restoration application filed by respondent no.4 whereby it was directed to submit a fresh reference was not challenged at the instance of petitioner, therefore, it has attained finality.

16. In pursuance of above order, a new reference was prepared and submitted before Deputy Director of Consolidation which was allowed, however, on a restoration application, order was recalled and both parties were heard on reference and finally, by the impugned order, reference was allowed.

17. In these circumstances, Court is of considered view that there was no procedural error in entire proceedings. Now the issue involved for consideration is that whether impugned order was passed rightly on merit.

18. In order to consider above issue, I have carefully perused the impugned order. The order indicates that it was passed after hearing both parties as well as perusal of record available with restoration application. Impugned order also indicates that in present case, Deputy Director of Consolidation has inspected land in dispute and villagers' statement were taken into consideration. Relevant part of order is quoted below -:

“स्पष्ट है की सरवरी बेगम ने गाटा सं० ९४/३/०.७५०, ९४/२/०.४०० कुल दो किता रकबे १.१५० है० का १/२ अंश की भूमि बख्शुद्दीन पुत्र नज़ीर से विक्रय पत्र दिनांकित २८.१२.२००७ के द्वारा क्रय की है जिसके नामांतरण का आदेश सहायक चकबंदी अधिकारी के वाद सं० ७३ आदेश दिनांक ४.२.२००८ के द्वारा किया गया है। सहायक चकबंदी अधिकारी के आदेश दिनांक ४.२.२००८ के अनुपालन में सरवरी बेगम को चक प्रदिष्ट जाना है। गाटा सं० ९४/३/०.७५० है० के दो नए गाटा सं० ४०० व ४००/१३२६ बने है। गाटा सं० ४०० कच्चे रस्ते के किनारे पूरब की ओर का गाटा है तथा गाटा सं० ४००/१३२६ पश्चिम की ओर गाटा है। ग्राम जाकर पक्षों की उपस्थिति में गाटा संख्या ४००,४००/१३२६ का स्थल निरीक्षण किया गया। गाटा संख्या ४०० मौके पर खाली पडा है तथा गाटा संख्या ४००/१३२९ जो गाटा संख्या ४०० के पीछे पश्चिम दिशा में है उसके अधिकांश भाग पर मौके पर पक्के मकान/आबादी बनी है। स्थल पर ग्राम के अन्य ग्रामवासियों के द्वारा बताया गया कि गाटा संख्या ४००/१३२६ की भूमि रहीसुद्दीन के द्वारा बिना बैनामे के ग्राम के अन्य व्यक्तियों को बेची है और उनके द्वारा मौके पर मकान बना लिये गये हैं। इस सम्बन्ध में भूरे पुत्र अली शेर, भूरा पुत्र अनवार, अल्ली पुत्र दुलारे, नूरवख्श पुत्र फकीरी निवासी ग्राम वेटला के द्वारा शपथ पत्र प्रस्तुत कर कथन किया

है कि पुराना गाटा संख्या ९४/३ जिसका नया गाटा संख्या ४००/१३२६ है जो पश्चिम दिशा में हैं, इस गाटे की भूमि को रहीसुद्दीन ने हमें बेचा है तथा उनके द्वारा मकान बना लिये गये हैं। वख्शुद्दीन पुत्र नजीर के द्वारा शपथ पत्र प्रस्तुत कर कथन किया है शपथकर्ता व उसके भतीजे रहीसुद्दीन पुत्र मकसूद की सहखातेदारी की समस्त भूमि है पुराना गाटा संख्या ९४/२ जिसका नया गाटा संख्या ३९९ रकवा ०.४०० बना है यह गाटा चकबन्दी प्रक्रिया से पृथक है। पुराना गाटा संख्या ९४/३ रकवा ०.७५० हे० जिसका विनिमय अनुपात ९० पैसा लगा है तथा सम्पूर्ण गाटा शपथकर्ता व उसके भतीजे का संयुक्त चेक संख्या - ६४१ बना है जिसका नया वर्तमान गाटा संख्या ४०० एवं ४००/१३२६ बने हैं। आपसी फैसले से प्राप्त भूमि गाटा संख्या ९४/३ पूरब की ओर की भूमि का बैनामा श्रीमती सरवरी पत्नी नौशे अली के पक्ष में दिनांक २८.१२.२००७ को किया है तभी से वह लगातार काबिज व दखील है। रहीसुद्दीन ने गाटा संख्या ९४/३ नया गाटा संख्या ४००/१३२६ को विक्रय कर, मकान बनाने के लिये अन्य व्यक्तियों को कब्जा कराकर मकान बना दिये गये हैं। तहसील स्तर पर गाटा संख्या ४०० व ४००/१३२६ की स्थल पर की गयी पैमाईश की आख्या जिसकी छाया प्रति रहीसुद्दीन द्वारा प्रस्तुत की है उसमें भी गाटा संख्या ४००/१३२६ में मौके पर आबादी होना दर्शाया गया है। स्पष्ट है कि सहायक चकबन्दी अधिकारी के आदेश दिनांक ०४.०१.२०२० को हस्ताक्षर किये गये हैं इस न्यायालय को निस्तारण हेतु प्रेषित किया गया है अभिलेखीय व उक्त साक्ष्यों के सही पाये जाने पर इस सन्दर्भ को न्यायालय द्वारा दिनांक ३१.०८.२०२१ को सही स्वीकार किया गया है। पूर्व पारित आदेश दिनांक ३१.०८.२०२१ को यथावत रखा जाना विधि सम्मत है।”

(Emphasis Supplied)

19. It is also relevant to point out that in a case of procedural error i.e. if one of parties was not heard, Authority concerned could recall its order being procedural error.

20. From above referred order, spot inspection was conducted and report was prepared on which rival parties have put their signatures and none of parties had filed any objection to it.

21. I find merit in argument of learned counsel for respondent that since proceedings were continuing even after earlier order was recalled and matter was put up for hearing, therefore, there would not be any bar under Section 52 of Act of 1953 and that Authorities could have exercised power under Section 42-A of Act

of 1953, therefore, in this regard there would be no irregularity in impugned order.

22. The impugned order reveals that Deputy Director of Consolidation has only on basis of spot inspection has accepted the amended reference and placed reliance on a measurement report submitted by respondents without granting any opportunity to petitioner to confront it. Therefore, Court is of considered opinion that impugned order was passed without giving opportunity to petitioner to place objection to the reports placed on record by respondents, which is an illegality, which goes to root of the case.

23. I am also of considered opinion that respective arguments have not been noted in impugned order and Revisional Authority has proceeded the case only on basis of reports considering it to be uncontroverted whereas it is specific contention of petitioner before this Court that they have right to controvert despite it was signed. Merely putting signatures on report does not estop the petitioner to oppose it.

24. In view of above discussion, this Court is of considered opinion that Deputy Director of Consolidation has committed an error, therefore, it is a fit case where this Court may exercise powers granted in writ jurisdiction.

25. Hence, impugned order is set aside and matter is remitted back to Deputy Director of Consolidation for fresh consideration. Parties are at liberty to file objections to reports as well as to file written submissions as well as to raise oral submissions thereof. The Deputy Director of Consolidation will pass a reasoned order after considering submissions of rival parties in accordance with law expeditiously, preferably within a period of six months.

26. Writ petition stands disposed of.

Order Date :- October 19, 2023

Nirmal Sinha

[Saurabh Shyam Shamsbery, J.]