

Court No. - 6

Case :- WRIT - B No. - 1018 of 2023

Petitioner :- Phool Chandra And Others

Respondent :- Deputy Director Consolidation, Barabanki And Others

Counsel for Petitioner :- Satish Kumar Misra

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

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Satish Kumar Misra, learned counsel for the petitioners and Shri Ambuj Kumar, learned counsel for opposite party no.5/Caveator. Learned Standing Counsel is present for respondents no.1 and 2.

2. Learned counsel for opposite party no.5 raised a preliminary objection that this petition, challenging the order dated 27.05.1978 passed in appeal No.0374/16, is not maintainable because against the said order the petitioners have already filed a Revision before the Deputy Director of Consolidation, Barabanki on 24.09.2014, which is still pending. In view of above this petition is not maintainable against the order dated 27.05.1978 and is liable to be dismissed.

3. Learned counsel for the petitioners submits that the order dated 25.09.2023 passed in Revision No.85 has been passed in arbitrary and illegal manner without looking into the grounds raised by the petitioners and considering the merit of the case, therefore the petitioners are constrained to approach this court. He further submits that brother of father of the petitioners had died in the year 1977, therefore he and the father of the petitioners, who was working out at that time, had no knowledge about the order passed under Rule 109 of the U.P. Consolidation of Holdings Act dated 13.03.1981 and the said order was passed without any notice to them, but without considering it the application for condonation of delay has been

dismissed and the revision filed by the petitioners has been consigned to records.

4. Learned counsel for the respondent no.5 submits that the father of the petitioners Mangal Singh had died in the year 1997 and this fact has been disclosed by the respondent no.5 in the objection filed before the Revisional Authority, which has not been disputed, therefore even if brother of father of the petitioners had died, the father of the petitioners was alive. Even otherwise the submission is that the petitioners have not disclosed any date of death of the father and grand father of the petitioners in his application filed before the Revisional Authority and only vague assertion had been made that the grand father and the father of the petitioners had died and their grand father had possession till his death, therefore, even if the grand father of the petitioners had his possession till his death, it cannot be said that the father of the petitioners was in possession of the land in dispute during his life time after the orders passed in consolidation proceedings, which were challenged in revision. The application of the petitioners for condonation of delay and the revision have rightly been dismissed and consigned to records, respectively, in accordance with law. There is no illegality or error in the impugned orders.

5. I have considered the submissions of learned counsel for the parties and perused the records placed on record with this petition.

6. It appears that on the basis of some compromise admitting the equal shares of predecessor-in-interest of private respondents an order was passed, on the basis of which appeal No.0374 of 2016 was allowed by means of order dated 27.05.1978. The said order was not challenged by the predecessor-in-interest of the petitioners during their life time.

The petitioners challenged the said order in Revision filed before the Deputy Director of Consolidation in the year 2014 i.e. after about 36 years, which is still pending as admitted by learned counsel for the parties.

7. Prior to challenging the order dated 27.05.1978, the petitioners challenged the order dated 13.03.1981 passed under Rule 109 of the U.P. Consolidation of Holdings Rules, by means of which the order dated 27.05.1978 was implemented, in the year 2008 alongwith an application for condonation of delay before the Deputy Director of Consolidation in revision filed under Section 48 of the U.P. Consolidation of Holdings Act. The revisional authority, after considering the fact that the order dated 13.03.1981 was passed after issuing notice and affording opportunity to the father of the petitioners and the same was not challenged by him during his life time and it was challenged only after about 27 years by the sons without sufficient explanation for such a long delay, dismissed the application for condonation of delay and consigned the revision to the records.

8. Perusal of the application filed by the petitioners, annexed as annexure no.6 to the writ petition, indicates that only vague assertions have been made that their father and grand father had their possession during their life time on the land in dispute and the respondents have got the same recorded in their name on the basis of a forged order and the date of the death of the father and grand father of the petitioners has not been given in the application. However before this court the petitioners have annexed a certificate dated 01.12.2019 issued by the Pradhan, Gram Panchayat Sikrohra, Barabanki, on the basis of information gathered from the villagers, showing the date of death of brother of father of the petitioners in the year 1977. So far as the father of the petitioners is concerned, the respondents

have taken specific plea before the revisional authority that he had died in 1997-98 and the same has not been denied by filing any objection or contradicting before this court, therefore even if the date of death of the brother of father of the petitioners, as has been shown in the certificate dated 01.12.2019 without any proof, is presumed to be correct and he and grand father of the petitioners was in possession during their life time, it cannot be said that the father of the petitioners was in possession after the order dated 13.03.1981 was passed under Rule 109 of the U.P.Consolidation of Holdings Rules and it was not in his knowledge, which was passed after issuing and service of notice on father of the petitioners and affording opportunity to him, which was not availed by him, merely on the ground that he was in service at Kanpur on the basis of annexure no.5 to the petition i.e. leave book, front page of pass book and letter dated 05.07.1996 of office of Commissioner, E.P.F., U.P., Kanpur. Even otherwise, letter dated 05.07.1996 indicates issuance of Cheque dated 03.07.1996 and sent to the father of the petitioners at his address at Barabanki, which shows his residence at that time at the said address. The father of the petitioners had never challenged or questioned the order dated 13.03.1981 during his life time. The petitioners have challenged only after a delay of about 27 years without any proper and sufficient explanation for delay in filing the revision. Even otherwise the order dated 27.05.1978 has neither been set aside nor modified or altered till date because nothing has been brought before this court to show it. Therefore this court is of the view that the impugned order dated 25.09.2023 has rightly been passed in accordance with law by the Deputy Director of Consolidation in Revision No.85 by a reasoned and speaking order, which does not call for any interference by this court. No other ground or plea has been pressed or argued before this

Court.

9. The writ petition is misconceived and lacks merit. It is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 9.11.2023

Banswar