

Court No. - 6

Case :- WRIT - B No. - 1122 of 2023

Petitioner :- Anand Narayan

Respondent :- Deputy Director Of Consolidation, Ambedkar Nagar And Others

Counsel for Petitioner :- Yogesh Singh

Counsel for Respondent :- C.S.C., Abhishek Mishra, Arun Kumar Mishra

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Yogesh Singh, learned counsel for the petitioner and Shri Abhishek Mishra, learned counsel for the respondent no.3. Learned Standing Counsel is present for respondent no.1 and 2.

2. This petition has been filed challenging the order dated 28.12.2021 passed by the Consolidation Officer, Akbarpur, District-Ambedkar Nagar/respondent no.2 under Rule 109-A(2) of Consolidation of Holdings Rules, 1954 (here-in-after referred as the Rules) and the order dated 25.11.2023 passed in Revision No.1156/2022530404000004; Anand Narayan Vs. Lalji and others and Revision No.1197/2022530404000003; Lal Bahadur Vs. Lalji and others, under Section 48 of the U.P. Consolidation of Holdings Act (here-in-after referred as the Act) by Deputy Director of Consolidation, Ayodhya Camp, Ambedkar Nagar/respondent no.1.

3. Learned counsel for the petitioner submits that by means of the order dated 23.03.2019 passed in Revision No.136 under Section 48 of the Act, while setting aside the order dated 16.09.2008 and 28.09.1989 and remanding the matter, the revisional authority had observed that the Consolidation Officer shall, after examining the file of order dated 31.03.1981 of Revenue Record Room and hearing the parties, take appropriate action, but without examining the original record of order dated 31.03.1981, the impugned order dated 28.12.2021 has been passed by the respondent no.2 holding that the order dated 31.03.1981 cannot be said to be forged and called a report from the Assistant Consolidation Officer under Rule 109 of the Rules, which could not have been done.

4. He further submits that thereafter said order dated 28.12.2021 had been challenged in two separate revisions. The Revisions have also been dismissed by means of the order dated 25.11.2023 by the respondent no.1 without considering that the order passed by the Deputy Director of Consolidation on 23.03.2019 has not been complied and the grounds raised by the petitioner have not been considered. Therefore the petitioner is constrained to approach this court.

5. Learned counsel for the petitioner, relying on **Chandrajeet Ram Versus State of U.P. and another; 2009 (108) R.D. 190 and Ghanshyam Versus D.M.Jaunpur, and another; 2009 (108) R.D.189**, submits that after 12 years of passing of the order the proceedings under Rule 109 of the Rules could not have been held. Thus the submission is that the impugned orders are not sustainable and liable to be quashed.

6. On the other hand, learned counsel for the respondent no.3 submits that the impugned orders have rightly been passed in accordance with law and the direction issued by the order dated 23.03.2019 because the file of the order dated 31.03.1981 has already been weeded out and the revisional authority, on the basis of the records of the court of Consolidation Officer has recorded specific finding that the copy of the 'Goswara' received from the Revenue Record Room is available, in which the revisional files are also recorded, which have already been weeded out on 05.04.1997. The certified copy of the revisional orders and the order dated 31.03.1981 issued from the revenue record room is also on record and the order is recorded in the 'Goswara' as produced by the revisional authority, therefore even if the same has not been recorded by the Consolidation Officer, it does not vitiate the order because the same is on the record of the Consolidation Officer and it has not been disputed by the petitioner, therefore the Consolidation Officer has also passed the order on the basis of record of the Revenue Record

Room. He further submits that since the file of the record room has already been weeded out, therefore, the question of consideration of file does not arise and the records of the case available in the Revenue Record Room could have been considered and the same have been considered, therefore there is no illegality or error in the impugned orders. The petition is misconceived and lacks merit and it is liable to be dismissed.

7. Having considered the submissions of learned counsel for the parties, I have perused the records.

8. It is admitted by the parties that the order dated 31.03.1981 has not been challenged till date. The petitioner had also challenged the ex-parte order dated 28.09.1989 only on the ground that the same has not been passed in terms of order dated 31.03.1981, according to which the partition had to take place. Perusal of the order dated 31.03.1981, as recorded in the order of the respondent no.1 dated 25.11.2023 contained in annexure no.1 to the writ petition, indicates that partition had to take place because the shares have been determined by the said order.

9. During consolidation proceedings some orders were passed, which were challenged in revision before the Deputy Director of Consolidation. The revisions were decided by means of order dated 31.03.1981, a copy of which has been placed on record by the petitioner as annexure no.3 to the petition, which was implemented under Rule 109-A of the Rules by means of order dated 28.09.1989.

10. The petitioner and the respondents no.7 to 9 moved an application for recall of the order dated 28.09.1989 on 03.10.2007 i.e. after about 18 years alleging therein that the said order is ex-parte and after coming to know about the same, inspection was made on 01.10.2007 and thereafter, the application is being moved. It has been alleged in the application, a copy of which is annexed as annexure no.4 to the writ petition, that in pursuance of the alleged

forged order dated 31.03.1981, on the basis of a wrong report, order dated 28.09.1989 has been passed, whereas in compliance of the said order the partition has to take place, but no amendment chart has been annexed with the report dated 31.05.1988 and 03.06.1988. Considering the application for recall filed by the petitioner, a direction was issued by means of the order dated 16.09.2008 calling a reference in terms of order dated 31.03.1981, which was the grievance of the petitioner. However, the petitioner challenged the said order dated 16.09.2008 with order dated 28.09.1989 in Revision No.136 before the Deputy Director of Consolidation, Akbarpur. The revision was allowed by means of order dated 23.03.2019 setting aside the order dated 16.09.2008 and 28.09.1989 and the matter was remanded to the Consolidation Officer, Akbarpur/Ambedkar Nagar with a direction to take a fresh decision after examining the file of the order dated 31.03.1981 from the Revenue Record Room and affording opportunity of hearing to the parties.

11. In compliance of the order dated 23.03.2019, the impugned order dated 29.12.2021 contained in annexure no.2 to the writ petition has been passed by the respondent no.2 recording the finding that in pursuance of the order dated 31.03.1981 the 'Parwana' Amaldaramat was sent to the Consolidation Officer, Tanda on 14.04.1981 and the Consolidation Officer had directed to the Assistant Consolidation Officer to take necessary action. Thereafter, after proceeding in the matter, the order dated 28.09.1981 was passed. Therefore the order dated 31.03.1981 cannot be said to be forged. Accordingly, the Consolidation Officer by means of order dated 28.12.2021 directed to call a report from the Assistant Consolidation Officer under Rule 109 of the Rules in compliance of the order dated 31.03.1981 passed in revision No.648 and 684.

12. The said order was challenged by the petitioner and respondent no.11 in two separate revisions. The revisional authority i.e. the respondent no.1, after considering the records of the court of

Consolidation Officer, on the basis of which the order dated 29.12.2021 has been passed after affording opportunity of hearing to the parties, recorded specific finding that the copy of 'Goswara' received from the revenue record room is available on the record of Lower Court, in which the aforesaid files of the revision are recorded at Sl.No.215 and 216, which have been weeded out on 05.04.1997. It has also been recorded that the certified copy of the revisional order sent from the revenue record room is also available on the lower court record and also reproduced the operative part of the order dated 31.03.1981 in revisional order dated 25.11.2023. The relevant paragraph is extracted here-in-below:-

“अवर न्यायालय की पत्रावली पर राजस्व अभिलेखागार से प्राप्त गोश्वारा की नकल उपलब्ध है, जिसमें गोश्वारा क्रमांक 215 व 216 पर उक्त निगरानी पत्रावलियाँ दर्ज हैं तथा उक्त पत्रावलियाँ दिनांक 05.04.1997 को नष्ट की जा चुकी हैं। अवर न्यायालय की पत्रावली पर निगरानी न्यायालय से प्रमाणित कर भेजी गयी आदेश की प्रतिलिपि तथा राजस्व अभिलेखागार से प्राप्त कर दाखिल की गयी प्रमाणित नकल आदेश दिनांक 31.03.1981 संलग्न है। जिसमें निम्नांकित आदेश पारित किया गया है—

“उपर्युक्त विवेचन के आधार पर दोनों निगरानियों आंशिक रूप से स्वीकार की जाती हैं। खाता संख्या-90 का गाटा संख्या-209/0-18-14, खाता संख्या-38 का गाटा संख्या-205अ/0-7-16, 174अ/0-8-3 श्रीपती, रामलगन, भागवत के नाम अंकित किया जाय। इसमें प्रत्येक का 1/3 अंश होगा। खाता संख्या-38 के गाटा संख्या-172/0-12-7, 174/0-2-10, 186/0-17-0, 202/0-6-10, 205ब/0-1-0, 203/00-6-1, 204-0-7-16, 208अ/0-17-14, 258/1-6-11, 297/0-10-0 सन्त कुमार, लालजी के नाम अंकित हो। प्रत्येक का 1/2 भाग दर्ज हो। पक्ष सूचित हो।”

13. In view of above, it is apparent that the Consolidation Officer has passed the order dated 28.12.2021 after considering the records of the revenue record room and accordingly the revisional order has

been passed on 25.11.2023 dismissing the revision No.1156 filed by the petitioner and revision No.1197 filed by respondent no.11. As recorded in the revisional order the file in question has already weeded out on 05.04.1997, therefore the same could not have been considered and the records as available in the revenue record room could have been considered and the same have been considered, therefore this court does not find any illegality or error in the impugned orders.

14. So far as the judgments relied by learned counsel for the petitioner are concerned, the same are not applicable on the facts and circumstances of the present case because as recorded in the impugned order dated 29.12.2021, in pursuance of the order dated 31.03.1981, Parwana Amaldaramad had been sent to the Consolidation Officer, Tanda on 14.04.1981 from the Court of the Deputy Director of Consolidation and the Consolidation Officer directed to the Assistant Consolidation Officer to take appropriate action and in pursuance thereof after the proceedings, the order dated 28.09.1989 was passed, therefore the same was within time. In fact the petitioner had filed an application for recall of the order dated 28.09.1989 on 03.10.2007 i.e. after about 18 years of passing of the order dated 28.09.1989, that too after about 10 years of weeding of the files. However learned counsel for the petitioner submits that Parwana was issued on 27.10.2007, but it is not the case of the petitioner in the application for recall of the order dated 28.09.1989 and he has given the alleged date of knowledge prior to 01.10.2007, when he claims to have made the inspection, which is prior to that date. Even otherwise as pleaded in the petition in paragraph 14, even after filing of the recall application by the petitioner on 03.10.2007 a parwana amaladarad dated 06.02.2008 was issued, a copy of which has been placed on record as annexure no.5. Perusal of annexure no.5 indicates that it is an amended parwana amaldaramad dated

06.02.2008 and not the original, therefore, the contention of learned counsel for the petitioner is misconceived and not tenable.

15. In view of above and considering the over all facts and circumstances of the case, this court does not find any illegality or error in the impugned orders, which have been passed in accordance with law after affording opportunity to the parties by passing reasoned and speaking orders. The writ petition is misconceived and lacks merit.

16. The writ petition is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 15.12.2023

Banswar