

Neutral Citation No. - 2024:AHC-LKO:36326

A.F.R.

Court No. - 18

Case :- WRIT - B No. - 1968 of 1978

Petitioner :- Raj Bahadur And Others

Respondent :- Deputy Director Of Consolidation
Faizabad And Others

Counsel for Petitioner :- Dr.

R.K.Srivastava,A.R.Khan,Dr. Ramesh Kumar
Srivasta,Prem Chandra,Vijay Kumar Dixit

Counsel for Respondent :- Bireshwar Nath,Ashok
Kumar Misra

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the parties and gone through the record of the case.
2. During the pendency of the present writ petition, petitioner nos. 1, 2, 4, 5 & 6 had died and their legal representative/heirs have already been substituted (hereinafter referred to as the petitioners). Similarly, the respondent nos. 5, 6, 7, 8, 9, 9/1, 10, 13, 14, 15, 15/1, 16 & 17 had died and their legal representatives/heirs have also been substituted (hereinafter referred to as the respondents).
3. The present petition has been preferred for quashing of the impugned revisional order dated 03.03.1978 passed by the Deputy Director of Consolidation.
4. Learned counsel for the petitioners has submitted that the original tenure holder was Angad Rai and thereafter his son Purai. Purai had three sons namely Horilal, Rikhai and Sheo Charan. The petitioners belong to the family of Horilal whereas the respondents belong to the family of Sheo Charan. The dispute is between the descendants of Horilal and Sheo Charan for Khata No. 23 situated at Danpur, Tanda, District Faizabad.
5. It is further submitted that when the village had come under the consolidation, the objections were filed by the petitioners and the respondents claiming their rights on Khata No. 23.

6. It is further submitted that the Consolidation Officer had decided the objections of the objectors and partly allowed the claim in favour of the petitioners with regard to certain Gatas of Khata No. 23 treating it as a sole tenancy of the petitioners.

7. It is further submitted that against the said order, two appeals under Section 11 (1) of the Consolidation and Holdings Act, 1953 (hereinafter referred to as, the Act, 1953) were filed by the both the parties as both were aggrieved. The appeal preferred on behalf of the petitioners was rejected vide order dated 04.04.1972 and the appeal preferred on behalf of the respondents was allowed. Against the appellate order dated 04.04.1972, the petitioners preferred a revision under Section 48 of the Act, 1953, which was also dismissed and feeling aggrieved the present writ petition has been preferred.

8. It is further submitted that the revisional Court has exceeded its jurisdiction by re-appreciating the evidence and substituting the findings given by the Consolidation Officer by its own finding which is not within the jurisdiction of Deputy Director of Consolidation under Section 48 of the Act, 1953.

9. It is further submitted that Section 48 of the Act, 1953 only empowers the Director of Consolidation to examine the record of any case decided or proceedings taken by any subordinate authorities for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order and not empowered for appreciating the evidence and substituting it by his own findings, hence the impugned order passed by the revisional court is without jurisdiction and in support of his submissions, learned counsel for the petitioners has relied upon several judgments of Hon'ble Supreme Court as well as this Court, which are as follows:-

(i) Firstly, learned counsel for the petitioners has relied upon the para no. 3 of the judgment passed by Hon'ble Supreme Court in the case of ***Ram Dular vs. Deputy Director of Consolidation, Jaunpur and Ors.*** reported in ***1994 Supp (2) SCC 198.***

(ii) Secondly, he has placed reliance upon the para no. 6 of the judgment passed by this Court in the case of ***Moti and Ors. vs. Deputy Director of Consolidation and Ors.*** reported in ***2005 (99) RD 222.***

(iii) Lastly, the learned counsel for the petitioners has relied upon the para nos. 13 and 14 of the judgment of Hon'ble Supreme Court in the case of ***Shri Jagdamba Prasad (Dead) Thr. LRs. & Ors. vs. Kripa Shankar (Dead), Thr. LRs and Ors.*** reported in ***2014 STPL (Web) 239 SC.***

10. On the other hand, learned counsel for respondents and the learned State Counsel has submitted that Section 48 of the Act, 1953 has been amended and Explanation-III has been added by Act No. 3 of 2002 and giving it a retrospective effect w.e.f 10.11.1980, whereby the Director of Consolidation/Deputy Director is empowered to examine the correctness, legality or propriety of any order to examine any finding whether of fact or by law, recorded by any subordinate authority with power to re-appreciate oral or documentary evidence.

11. At this stage, learned counsel for petitioner has submitted that Act No. III of 2002 has come into force with effect from 10.11.1980 empowering the Director of Consolidation to examine any finding whether of fact or law with power to reappreciate oral or documentary evidence whereas the order passed by the Revisional Court is of the year 1978 when there was no such amendment or power given to the Deputy Director of Consolidation.

12. Learned State Counsel in reply to the aforesaid has submitted that the submission of learned counsel for petitioner is not tenable. In support of his submission, he has relied upon the certain relevant paragraphs of the judgments of Hon'ble Supreme Court. The details of which are as follows :-

(i) **Preetam Singh (dead) by LRs. and Ors. vs. Assistant Director of Consolidation and Ors.** reported in **(1996) 2 SCC 273.**

(ii) The second judgment passed by Hon'ble Supreme Court, which has been relied by learned Standing Counsel is in the case of **Sheo Nand And Others versus Deputy Director of Consolidation Allahabad and others** reported in **2000 (3) SCC 103.**

13. It is further submitted that the judgment in the case of **Sheo Nand (supra)** given by the Hon'ble Supreme Court by referring to the Section 48 of the Act, 1953, when explanation-III was not added to the same.

(iii) Lastly, the learned Standing Counsel has relied upon paragraph 15 of the judgment in the case of Sri Jagdamba Prasad (Dead) (Supra), which has been relied by learned counsel for the petitioners also.

14. The court has asked the learned counsel for petitioners that except that legal submission any other submission if he wanted to make on the merits of the case, learned counsel for petitioner has replied that he is confining his submission only to the power of the Deputy Director of Consolidation as per Section 48 of the Act, 1953, except that the Deputy Director of Consolidation had not considered the agreement entered into between the parties for division of shares.

15. After hearing learned counsel for the parties and going through the record of the case, it is an admitted

case between the parties that they are descendents of Purai-the original tenure holder and the dispute is with regard to the Khata No. 23 situated at Village Danpur, Tanda, District Faizabad. The controversy involved in the present petition which is to be adjudicated by this Court is whether under Section 48, the Deputy Director of Consolidation is empowered to pass an order by appreciating the evidence and substituting the findings in the order passed by the Consolidation Officer. For that Section 48 alongwith explanation III is quoted hereinbelow:-

"48. Revision and reference. - (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order [other than an interlocutory order] passed by such authority in the case or proceedings, and may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1)].

.....[Explanation (III). - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re- appreciate any oral or documentary evidence"

16. Explanation (III) has come into force by U.P. Act No. 3 of 2002 w.e.f. 10.11.1983 whereby the Director/Deputy Director of Consolidation has been empowered to re-appreciate any oral or documentary evidence but prior to that the such power was not with the Director/Deputy Director of Consolidation but in the light of the judgment cited by learned Standing Counsel in the case of Sheo Nand (supra) wherein it has been held that Deputy Director of Consolidation would have full power under Section 48 to re-appreciate or reevaluate the evidence on record. The said finding was given by the Hon'ble Supreme Court when explanation-III was not added to the Section 48.

17. For proper adjudication of the controversy involved in the present petition, it is apt to reproduce the relevant paras relied by learned counsel for the petitioners as well as by the learned Standing Counsel.

18. Firstly, the judgments relied by learned counsel for the petitioners is being reproduced hereunder:-

(a) relevant extract of para no. 3 of the judgment passed by Hon'ble Supreme Court in the case of Ram Dular (supra) is extracted hereinbelow:-

".....It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity which goes to the root (sic root) of the matter, had been committed in recording the order or finding."

(b) para no. 6 of the judgment passed by this Court in the case of Moti (supra) is reproduced hereinbelow:-

"6. It is well settled that Deputy Director of Consolidation while exercising the revisional power conferred by Section 48 of the Act can only interfere with the finding recorded by Consolidation Officer and Settlement Officer, if they are found to be illegal, irregular, improper or correct, but he has no jurisdiction to substitute his own findings after re-appraisal of evidence. Reference may be made to the decision of the Hon'ble Apex Court in the case of Gaya Deen and Ors. vs. Hanuman Prasad reported in 2001 (92) RD 79 (SC) and that of learned Single Judge of this Court in the case of Jangi Lal v. Deputy Director of Consolidation, Allahabad reported in 2000 (1) AWC 59."

(c) para nos. 13 and 14 of the judgment passed by Hon'ble Supreme Court in the case of Shri Jagdamba Prasad (dead) supra is quoted hereinbelow:-

"13. Based on the rival factual and legal contentions raised by the parties, the following points would arise for our consideration :

- 1. Whether the Revisional Authority exceeded its jurisdiction under Section 48 of the Uttar Pradesh Consolidation of Holdings Act, 1953 in entertaining additional document at revision stage?*
- 2. Whether the High Court was correct in concurring with the findings of the Revisional Authority?*

3. 3. What order the appellants are entitled to?

Answer to Point No. 1

14. Section 48 of the Act is *pari materia* to Section 115 of the Code of Civil Procedure, 1908. It is pertinent to mention at this point the decision of this Court given in the case of *Sher Singh v. Joint Director of Consolidation & Ors.* [(1978) 3 SCC 172]. The relevant paragraphs read as under:

"4. The principal question that falls for our determination in this case is whether in passing the impugned order, the Joint Director of Consolidation, exceeded the limits of the jurisdiction conferred on him under Section 48 of the 1953 Act. For a proper decision of this question, it is necessary to advert to Section 48 of the 1953 Act as it stood on the relevant date before its amendment by Act VIII of 1963:

" Section 48 of the U.P. Consolidation of Holdings Act.— The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit." of the U.P. Consolidation of Holdings Act.— The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit."

5. As the above section is *pari materia* with Section 115 of the Code of Civil Procedure, it will be profitable to ascertain the scope of the revisional jurisdiction of the High Court. It is now well-settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction under Section 115 of the Code of Civil Procedure to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself."

19. Now, the judgments on which reliance has been placed by learned Standing Counsel are being quoted:-

(a) Para no. 6 of the judgment passed by Hon'ble Supreme Court in the case of *Preetam Singh (dead)* (supra) is quoted:-

"When the matter was in revision before the Assistant director (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revisional jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revisional jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants who

had been recorded at the crucial time in the Khasra of 1359 Fasli. That power as a superior court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a court of revisional jurisdiction otherwise having suo moto power to correct any order of the subordinate officer. In this situation the Assistant Director (Consolidation) should not have felt fettered in doing complete justice between the parties when the entire matter was before him. The war of legalistics fought in the High Court was of no material benefit to the appellants. A decision on merit covering the entire controversy was due from the Assistant Director (Consolidation)."

(emphasis supplied)

(b) para nos. 20 and 21 of the judgment passed by Hon'ble Supreme Court in the case of Sheo Nand (supra) is quoted hereinbelow:-

"20. The section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly.

21. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to reappraise or re-evaluate the evidence-on-record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law."

(emphasis supplied)

(c) para no. 15 of the judgment passed by Hon'ble Supreme Court in the case of Shri Jagdamba Prasad (supra) is quoted hereunder:-

"According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to

come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts."

20. In the light of the judgment cited by learned Standing Counsel in the case of Sheo Nand (supra) wherein it has been held that Deputy Director of Consolidation would have full power under Section 48 to re-appreciate or re-evaluate the evidence on record. The said finding was given by the Hon'ble Supreme Court when explanation-III was not added to the Section 48. The para nos. 20 and 21 of the said judgment has already been quoted in preceding paragraph no. 19 (b) of the present judgment.

21. The judgment relied by learned Standing Counsel in the case of Preetam Singh (supra) wherein it has been held that the Assistant Director of Consolidation should not have fettered in doing complete justice between the parties when the entire matter was before him. The relevant para no. 6 of the said judgment has already been quoted in the preceding paragraph no. 19 (a) of the present judgment.

22. As far as the judgments cited by learned counsel for the petitioners are concerned, thereafter in subsequent judgments, the Hon'ble Supreme Court has held that the Deputy Director of Consolidation has unfettered power in doing complete justice between the parties, as mentioned above.

23. Paragraph nos. 13 & 14 of the judgment in the case of Jagdamba Prasad (Dead) (supra), relied by learned counsel for the petitioners where the Hon'ble Supreme Court has made reference of the judgment in the case of **Sher Singh Vs. Joint Director of Consolidation and others** reported in **1978 (3) SCC 172**, wherein the power/jurisdiction of Deputy Director of Consolidation was confined to cases of illegal or irregular exercise or non exercise or illegal assumption of jurisdiction but para no. 15 of the same judgment which has been relied by

learned Standing Counsel has clarified the earlier settled position of law. The relevant extract of the said judgment has already been quoted in the preceding paragraph no. 18 (c) of this judgment.

24. In the judgment of Shri Jagdamba Prasad (Dead) *supra*, the Hon'ble Supreme Court has distinguished the earlier settled position of law by giving jurisdiction to the revisional authority to arrive at contrary conclusion on the same evidence but has held that revisional authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of document or otherwise to come to conclusion and it is not the case of the petitioners that the revisional Court in the revision had admitted any new fact either in the form of document or otherwise so the said judgment is not of any help to the petitioner.

25. The submission of learned counsel for the petitioners that the compromise was not considered by the revisional Court, the said submission was replied by the learned counsel for the respondents that there was no agreement /compromise between the petitioners and the respondents. The compromise which was relied by the petitioners was in between Baburam and Ram Narain- the real brothers and the decedents of the family of Horilal at the time of suit between the Baburam and Ram Narain in the year 1883 A.D. when Baburam and Ram Narain sought partition of the certain groves in the Court of learned Munsif and it was the partition between two real brothers i.e. decedents of the Horilal i.e. the family of the petitioners and not between the family of Horilal and Sheo Charan and this finding in the order of Consolidation Officer is not disputed by the learned counsel for the petitioners.

26. The reading of all the judgments relied by learned Standing Counsel in the cases of Preetam Singh (dead) (*supra*), Sheo Nand (*supra*) and the judgment in the case of *Shri Jagdamba Prasad (Dead) (supra)* (which has

been relied by both the counsels), clarified the position that the Deputy Director of Consolidation can decide the matter after appreciating the evidence to do complete justice to the parties.

27. From the aforesaid, the position which emerges out is that the Deputy Director of Consolidation is having jurisdiction to arrive at a different conclusion on the same evidence but the revisional authority cannot exceed its jurisdiction by admitting new facts either in the form of document or otherwise so the paragraph nos. 13 & 14 of the judgment in the case of Shri Jagdamba Prasad (Dead) (supra) is not of any help to the petitioner in the light of paragraph 15 of the same judgment, as the revisional court in the said case had admitted new and fresh evidence.

28. In view of the facts, circumstances and discussion made hereinabove, the writ petition is dismissed.

Order Date :- 10.5.2024

Nitesh