

A.F.R.

Court No. - 18

Case :- WRIT - B No. - 518 of 2024

Petitioner :- Ram Sukh And Others

Respondent :- Deputy Director Of Consolidation,
Sultanpur And Others

Counsel for Petitioner :- Mata Prasad Yadav, Shiva
Shashank

Counsel for Respondent :- C.S.C., Vijai Shankar
Tripathi, Vijay Bhan Pandey

Hon'ble Manish Kumar, J.

1. Heard learned counsel for petitioner as well as Shri Hemant Kumar Pandey, learned State Counsel.

2. The present writ petition has been preferred for quashing of the impugned revisional order dated 12.04.2024 passed by respondent no. 1, Deputy Director of Consolidation and impugned appellate order dated 04.03.2024 passed by respondent no. 2 i.e. Settlement Officer Consolidation, District Sultanpur.

3 The learned counsel for the respondent nos. 8 and 9 has stated that it would not be necessary to file counter affidavit and the matter may be heard at this stage itself.

4. Learned counsel for petitioner has submitted that the dispute is with regard to Gata No. 2774 (new number) and the old number was Gata No. 1652, Area- 2 Biswa. The petitioners and respondents were co-tenant on the above mentioned gata number.

5. It is further submitted that initially Ram Kalap and Raj Nath Singh, son of Sahdev, i.e. respondent nos. 8 and 9 were the co-tenant of 1 Biswa and on another 1 Biswa, the ancestors of the petitioners namely late Urai and late Ram Kishan along with their brother Bhagirathi i.e. fathers of respondent nos. 3, 4 and 5.

6. It is further submitted that the names of the petitioners along with the family members of late Sahdev were entered in the Khatauni as co-tenants on the Gata No. 2774 and the names of the co-tenants were intact at the time of consolidation operations.

7. It is further submitted that the names of the ancestors of petitioners and respondent nos. 3 to 7 were entered in Form C.H- 45, the consolidation proceedings were finalised and notification under Section 52 of the Consolidation and Holdings Act, 1953 (hereinafter referred as Act, 1953) was

published/notified.

8. It is further submitted that after the denotification under Section 52, an application was preferred by respondent no. 8 Ram Kalap before the Deputy Director of Consolidation that the proceedings have been finalized without deciding the objections preferred by respondent no. 8 against Form CH-4. The said application preferred by respondent no. 8 was rejected by order dated 22.05.2007. Within four days of rejection of the said application, a recall application was preferred on 26.05.2007 by respondent no. 8, the same was allowed by order dated 16.06.2008 a reference was made and referred to the Consolidation Officer to decide objections against Form C.H.-4 preferred by respondent no. 8

9. Thereafter, the proceedings had started afresh with a reference to the Consolidation Officer to a limited extent to consider the objections filed against Form C.H-4 of Ram Kalap, and the Consolidation Officer decided the matter to the limited extent of reference i.e the Consolidation Officer had decided the matter and has allowed the application by order dated 20.09.2021 and has enhanced the area from 1 Biswa to 2 Biswa as that was the only objection against Form C.H.-4 by respondent no. 8. Against which respondent no. 8 alone had preferred an appeal before the Settlement Officer Consolidation disputing about the entry of the name of the petitioners along with respondent nos. 3 to 7. The Settlement Officer Consolidation had allowed the appeal by order dated 04.03.2024 and had given a finding that the father of respondent nos. 3 to 5 i.e. late Bhagirathi had executed a sale deed in favour of widow of Sahdev in the year 1987 of his share, so his name has wrongly been entered in Form C.H.-45.

10. Against the said order a revision was preferred by petitioner no. 5, Smt. Sita, wife of Maharajdeen, the son of late Ram Kishan and others which was also rejected by impugned order dated 12.04.2024.

11. The Appellate Authority as well as the Revisional Authority had exceeded their jurisdiction by deciding the matter relating to the title/rights of the petitioner along with respondent nos. 3 to 7.

12. On the other hand, Sri V.S. Tripathi, learned counsel for the caveator has filed his Vakalatnama on behalf of respondent no. 9 also, which is taken on record and has submitted that the submission of learned counsel for petitioners is not tenable against C.H. Form- 4, the objections were filed, which was decided by the Consolidation Officer by its order dated 26.12.12 whereby only the names of respondent no. 8 and 9 have been entered. The objections were filed with regard to correction in area of land from one biswa to two biswa, but no such document in support of the submission was enclosed.

13. It is further submitted that once Bhagirathi had sold his share to the widow of Sahdev i.e. the grandmother of the respondent nos. 8 & 9, then he has no share in the said land, particularly, when the said fact is neither denied or disputed by the petitioners. The names of the petitioners or their ancestors were wrongly entered in Form C.H. 45.

14. It is further submitted that objections were decided by order dated 26.12.2012 by the Consolidation Officer in favour of respondent nos.8 and 9 and deleted the names of petitioners and respondent nos. 3 to 7 and their names were entered in the revenue record in compliance of the order passed under Rule 109 A(1) of Consolidation and Holding Rules, 1954 (hereinafter referred as Rules, 1954) at the time of taking decision on the objection of respondent no. 8 and 9 under Section 9A(2). The names of the petitioners and respondent nos. 3 to 7 were added which is illegal for the reason that the names of the petitioners and respondent nos. 3 to 7 was not on the record or were deleted by allowing the objections of respondent nos. 8 under Section 9A(2) of the Act, 1953 and the executing Court or the authority who is empowered to implement the order under Rule 109A(1) of Rules, 1954 again added names of the petitioners along with respondent nos. 3 to 7. So this is only the correction which was made by these orders and it cannot be said that it is a new proceedings initiated by the Authorities after the notification of Section 52 of Act, 1953. The petitioners and respondent no. 3 to 7 had never filed any recall, appeal or revision and the order dated 26.12.2012 has attained finality.

15. On the other hand, learned Standing Counsel has submitted that after publication of Form C.H. 4, Parcha no. 5 is distributed to every tenure holders and if they are aggrieved by the same, they could raise their objection under Section 9A(1)/9A(2) of the Act, 1953 and after deciding the objections, the Consolidation proceedings initiated further and at every stage, there are appeals and the revisions and after that Form C.H. 45 is to be prepared which is final and thereafter publication is made under Section 52 of the Act, for de-notification of the consolidation operations.

16. After hearing learned counsel for the parties and going through the record of the case, it is clear that the dispute is with regard to the old Gata no. 2774 area 2 biswa (now Gata No. 1652). The names of ancestors of petitioners and respondent nos. 3 to 7 along with respondent nos. 8 & 9 in the *khatauni* and the names were there at the time of consolidation in the basic year *khatauni*. After the partaal, Form C.H. 4 was prepared and thereafter parcha no. 5 would have been served upon the tenure holders. The respondent no. 8 & 9 had filed their objection under Section 9A(2) of the Act, 1953, regarding the claim of the petitioners in the said land against the entry of names of the petitioners along with respondent nos. 3 to 7 in the

revenue records/khatauni. The said objections preferred by the respondent no. 8 was allowed by the order dated 26.12.2012.

17. On being asked from the learned counsel for petitioner, the decision in objection preferred under Section 9A(2) of the Act, 1953 would not amount to deciding the objection against Form C.H.-4, he has very fairly replied that it amounts that the objection against Form C.H.-4 is decided.

18. The second query put by this Court from learned counsel for petitioner whether against the order dated 26.12.2012 passed under Section 9A(2) any appeal was preferred by petitioner under Section 11 of the Act, 1953, he has very fairly submitted that to the best of his knowledge and as per the record, no appeal appears to be filed by the petitioners against the said order.

19. The names of the petitioners along with respondent no. 3 to 7 was entered in the Khatauni in compliance of the order passed under Rule 109A(1) of the Rules, 1954, which empowers the Assistant Collector/Incharge of the Sub-Division, the Tehsildar, the Naib Tehsildar, the Supervisor and the Lekhpal of the area to which the case relates shall, respectively, perform the functions and discharge the duties of the Settlement Officer of the Consolidation for the purposes of giving effect to the orders aforesaid, so the authorities cannot either modify or amend the orders passed by the Consolidation Officer dated 26.12.2012.

20. On being asked specific query from learned counsel for the petitioner whether while deciding the objection under Section 9A(2) of the Act, 1953 by the Consolidation Officer, the names of the petitioners along with respondent nos.3 to 7 were also allowed to be continued in the record or whether the names of the petitioners along with respondent nos. 3 to 7 were entered in Form- C.H.45 in pursuance of the order passed under Rule 109 A(1) of the Consolidation and holding Rules, 1954. He has submitted that from the perusal of the record it appears that the names of the petitioners along with respondent nos.3 to 7 were entered in form C.H.45 by order passed under Rule 109A (1) of Rules, 1954 and not disputed the fact that the names of the petitioners along with respondent nos. 3 to 7 were not in the order dated 26.12.2012 passed by the Consolidation Officer as against the objections preferred by respondent no.8.

21. From the above, it cannot be said that orders have been passed without jurisdiction after the notification under Section 52 of the Act, 1953 for the reason it is the continuation of the proceedings even after the notification under Section 52 of the Act, 1953. It is also noticeable that once the name of the petitioners along with respondent nos. 3 to 7 were deleted by order dated 26.12.2012 by the Consolidation Officer while deciding the matter under

Section 9A(2) and against which the petitioners along with respondent nos. 3 to 7 had never ever preferred any appeal or revision now again come with a case that after Section 52, their names cannot be deleted when it is admitted by the learned counsel for the petitioners that the names of the petitioners and respondent nos. 3 and 7 were entered in compliance of the order passed under Rule 109A(1) and not in pursuance of the order dated 26.12.2012. Apart from that the father of respondent nos. 3 to 5 had already sold the complete share in favour of grand mother of respondent no. 8 and the said fact is admitted in paragraph no. 23 of the Writ Petition.

22. Against the said appellate order, the revision was preferred and the Revisional court affirmed the appellate order and rejected the revision preferred by the petitioners.

23. The tenure holders got an opportunity in the Consolidation proceedings to make objections at various stages and with an availability of remedy of appeal and revision almost at every stage, firstly at the stage of Form C.H. 4, i.e. objection under Section 9A, then appeal under Section 11 and Revision under Section 48. Thereafter, at the second stage when the provisional consolidation scheme is prepared by the Assistant Consolidation Officer, under Section 19 of the Act, 1953. Then there is a third stage when the confirmation of the provisional consolidation scheme and issuance of the allotment orders under Section 23, the tenure holder has a right to file objections under Section 20 of the Act, 1953, but as per the admitted case of the respondent no. 8 and 9, they had never ever challenged the order passed under Section 9A(2) dated 26.12.2012 nor filed any revision or appeal as per the stages mentioned above.

24. In given circumstances, the question before this Court is as to whether in exercise of its extraordinary discretionary jurisdiction this court should interfere or not. The law in this regard is very well settled. In a catena of judgments, both this Court and Supreme Court have emphasised that while exercising discretionary jurisdiction under Article 226, the High Court must ensure that substantial justice is done, equity be upheld and injustice is eliminated.

25. In ***Jodhey vs State, reported as AIR 1952 All 788***, this Court considered the discretionary and equitable jurisdiction of the High Court and the manner in which the same ought to be exercised. Relevant portion of the same reads:-

"There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be

wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. "(emphasis supplied)"

26. In **Gadde Venkateswara Rao v. Govt. of A.P.; AIR 1966 SC 828**, a three judges Bench of the Supreme Court affirmed the judgment of the Andhra Pradesh High Court where it refused to interfere into a matter on merit even when the appellant alleged violation of principles of natural justice. The Supreme Court observed that if the impugned order passed by the Government would have been set aside by the High Court, it would have restored an illegal order. Paragraph 19 of the judgment reads:-

"19. The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingopalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

27. In **Commissioner of Income Tax, Madras and Ors. vs. Vinod Kumar Didwania and Ors.; AIR 1987 SC 1260**, Supreme Court deprecated the conduct of the private respondent who first got the interim injunction and then withdrew the petition. It was held that the respondent has abused the process of law and therefore he could not be allowed to retain undue benefits received by him under the garb of interim injunction. Relevant portion of paragraph 3 of the said judgment is quoted hereafter:-

"3. The learned Attorney General appearing on behalf of the Deputy Director of Inspection submitted before us that the amount representing the value of the goods removed from the three godowns should be restituted by the 1st Respondent since the goods were removed by him under an ex parte order of injunction obtained from the High Court of Calcutta in the Writ Petition filed by him and the

nefarious purpose of filing the Writ Petition having been accomplished by removal of the goods, the writ petition was withdrawn. There is great force in his submission of the learned Attorney General. There is no doubt that the 1st Respondent has abused the process of the Court for securing removal of the goods from the three godowns and he cannot be allowed to retain that advantage....."

28. In **Mohammad Swalleh v. Third Additonal District Judge, Meerut; (1988) 1 SCC 40** the Supreme Court dismissed an appeal against an order passed by the High Court wherein the High Court refused to interfere with the order of the District Court which had no jurisdiction to entertain an appeal from the Prescribed Authority under the scheme of the Act on the ground that setting aside District Court's order would mean restoring the erroneous order of the Prescribed Authority. Paragraph 7 of the above referred judgment of the Supreme Court reads:-

"7. It was contended before the High Court that no appeal lay from the decision of the prescribed authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid (sic no appeal lay) before the District Judge, the order of the prescribed authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the prescribed authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the prescribed authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the prescribed authority has been set aside, no objection can be taken." (emphasis supplied)

29. In **Shangrila Food Products Ltd. v. LIC, (1996) 5 SCC 54** the Supreme Court reiterated that while exercising jurisdiction under Article 226 and 227 of the Constitution, a duty is casted upon the High Courts to see to it that equity is upheld. High Court must ensure that any undue advantage gained by a party prior to invoking discretionary jurisdiction of the High Court ought to be taken into account before granting it any relief. Relevant paragraph 11 of the same reads:-

"11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. What precisely has been done by the learned Single Judge, is clear from the above emphasised words which may be reread with advantage. The question of claim to damages and their ascertainment would only arise in the event of the Life Insurance Corporation, respondent, succeeding to prove that the appellant Company was an unlawful sub-tenant and therefore in unauthorised occupation of public premises. If the findings were to go in favour of the appellant Company and it is proved to be a lawful sub-tenant and hence not an unauthorised occupant, the direction to adjudge the claim for damages would be rendered sterile and otiose. It is only in the event of the appellant Company being held to be an unlawful sub-tenant and hence an unauthorised occupant that the claim for damages would be determinable. We see therefore no fault in the High Court adopting such course in order to balance the equities between the contestants especially when it otherwise had power of superintendence under Article 227 of the Constitution in addition. We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation of the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed interdependently. For those who seek equity must bow to equity." (emphasis supplied)"

30. In **Roshan Deen vs. Preeti Lal; (2002) 1 SCC 100**, the Supreme Court while setting aside an order passed by the High Court observed that the High Courts while exercising power of superintendence under Article 226 and 227 should ensure that such exercise must ensure that justice is done and at the same time injustice is eliminated. Paragraph 12 of the same reads:-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded

that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law,"

31. A Division Bench of the Supreme Court in the case of **Ramesh Chandra Sankla and Others vs. Vikram Cement and Others and other connected matters, reported as (2008) 14 SCC 58** has considered, affirmed, and reiterated all the aforesaid judgments and held in paragraphs 98 that:-

"98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana, (1980) 1 SCR 1170, Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience."(emphasis supplied)"

32. The law repeatedly settled by the Supreme Court is that the High Court should exercise its discretionary jurisdiction in such a manner which would advance the ends of justice and uproot injustice. It should exercise power conferred under Article 226 and 227 of the Constitution of India in a manner that provides complete and substantial justice to parties. The Supreme Court in Shangrila (supra) has held that "One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief." From the law settled by the Supreme Court it is clear that while exercising power under Article 226 and 227 of Constitution of India, the Court must give and refuse relief.

33. As such, in the present case, as per the submission of learned counsel for petitioner that after the denotification of Consolidation proceedings by issuing the notification

under Section 52 of the Act, 1953, the change of entries is not permissible as the authorities have become *functus officio*, is not tenable in the light of the facts of this case, reason being, in the consolidation proceedings, the Consolidation Officer while deciding the objections had entered the name of respondent no. 8 and 9 only and at the stage of Form C.H.-45, the names of the petitioners were added by the order dated 02.02.2015 passed in pursuance of order passed under Rule 109A(1) of the Rules, 1954, at the time when respondent no. 8 moved an application for implementation/execution of the order dated 26.12.12. The authority while exercising its power under Rule 109A(1) is not empowered either to amend or modify the order passed by the Consolidation Officer at the stage of deciding the objections under Section 9A(2) of the Act, 1953. It cannot be said that it is a fresh proceedings initiated by the respondent no. 8 for deletion of the names of the petitioners and respondent nos. 3 to 7 or their ancestors from the revenue records, rather it is a correction in pursuance of the order dated 26.12.12 passed during the consolidation proceedings. Only error has been rectified in pursuance of the order dated 26.12.2012, so it is a continuation of the proceedings and not a fresh proceedings, particularly when it is an admitted case of the petitioners that their names were not in the order dated 26.12.2012 and it was added in Form C.H. 45 in compliance of the order passed under Rule 109A(1) of the Rules, 1954.

34. In view of the facts, circumstances and discussion made herein above, the orders passed by the Appellate Authority and the Revisional Authority does not call for any interference. The writ petition is devoid of merit and is liable to be dismissed.

35. Accordingly, the present writ petition is hereby ***dismissed.***

Order Date :- 15.5.2024/DiVYa