

Court No. - 4

Case :- WRIT - B No. - 640 of 2024

Petitioner :- Thakur Prasad Mishra And Others

Respondent :- Deputy Director Of Consolidation, Sultanpur And Others

Counsel for Petitioner :- Uma Shankar Sahai

Counsel for Respondent :- C.S.C.

Hon'ble Syed Qamar Hasan Rizvi,J.

Heard Shri Uma Shankar Sahai, learned counsel for the petitioners and Shri Rajeev Srivastava, learned Additional Chief Standing Counsel appearing for respondent nos.1 to 3.

By means of the present writ petition the petitioners have prayed for the following reliefs:

- i. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16-05-2024 passed by the Deputy Director of Consolidation, Sultanpur on an application for substitution moved by the opposite parties No.4 to 11, in respect of the deceased Raghubir Prasad Mishra after a delay of more than 11 years; Annexed as Annexure no.1
- ii. issue a writ, order or direction in the nature of certiorari quashing the impugned order 26-04-2024 passed by the Deputy Director of Consolidation, Sultanpur on an application for substitution moved by the opposite parties No.4 to 11, in respect of the deceased Eish Narayan, predecessor in interest of the opposite parties No.6 to 11 after a delay of more than 3 years. Annexed as Annexure no.2
- iii. issue a writ, order or direction in the nature of certiorari quashing the impugned order 01-04-2024 passed by the Deputy Director of Consolidation, Sultanpur on an application dated 01-04-2024 for Recall of Order dated 27-12-1989 which has been moved after an inordinate delay of 25 years and 21 years after issuance of notification de notifying the village under section 52 of the CH Act. Annexed as Annexure no.3
- iv. issue any other order or direction in favour of the petitioners which this Hon'ble may deem just and proper in the facts and circumstances of the case.

The case of the petitioners are that one Raghubir Prasad Mishra was the recorded bhoomidhar and in possession of chak no.639 comprising of plot nos.1578/0-3-3, 1576/0-2-18, 1575/0-1-16, 1574/0-0-7, 1577/0-1-16; total 5

plots in umber having total area of plot in question as 10 biswa situate at Village Gopalpur Newajgarh (New number Plot No.1705/0.1260 hectares).

The submission of the learned counsel for the petitioners is that during the consolidation operation an application under Section 5(1)(c)(ii) of the Consolidation of Holdings Act was said to have been moved by Raghubir Prasad Mishra. The said application was moved impersonation by the opposite parties before the Settlement Officer of Consolidation, Sultanpur. It has categorically been submitted by the learned counsel that the said Raghubir Prasad Mishra never filed any such application, the said application was neither signed by Raghubir Prasad Mishra nor did he put his thumb impression over the same. However, the Settlement Officer of Consolidation, Sultanpur by means of the order dated 13.12.1989 granted permission for transfer of chak no.639 with the condition that the said permission shall be valid only for a period of one month from the date of the order. The said Raghubir Prasad Mishra after coming to know about the aforesaid order dated 13.12.1989 filed Revision No.2541 before the Deputy Director of Consolidation-respondent no.1. The said revision was allowed vide order dated 27.12.1989 by setting the order dated 13.12.1989.

The contention of the learned counsel for the petitioners is that after the order dated 27.12.1989 having been passed by the Deputy Director of Consolidation-respondent no.1 the permission under Section 5(1)(c)(ii) of the Consolidation of Holdings Act granted by the Settlement Officer of Consolidation lost its existence and any sale deed, if any, executed by Raghubir Prasad Mishra after the passing of the order dated 27.12.1989 is a void document for the reason that the transfer of the land without permission of the Settlement Officer of Consolidation during the consolidation operation is not valid or recognised transfer as per Section 45-A(2) of the Consolidation of Holdings Act. It has further been submitted by the learned counsel for the petitioners that the name of Raghubir Prasad Mishra continued in the revenue records in respect of chak no.639/0-10-0 (new number 1705/0.1260 hectares) uninterruptedly and after his death on 17.6.2008 the names of his heirs and legal representatives were recorded in his place. It has also been submitted that his two sons, Prabhakar Mishra and Sudhakar Mishra also died on 7.3.2017 and 16.6.2019 respectively. On being asked about the status of the consolidation proceeding the learned counsel made statement that Notification under Section 52 of the Consolidation of Holdings Act in respect of the land in question was issued on 13.3.2003.

Learned counsel has very emphatically submitted that on the basis of the void sale deed dated 1.1.1990 (registered on 19.1.1990) Eish Narayan the father of the opposite parties nos.4 to 11 moved an application before the Consolidation Officer under Section 12 of the Consolidation of Holdings Act for mutation of names. However, the said application was dismissed on 16.8.1996 for want of prosecution but after the lapse of about 25 years the aforesaid Eish Narayan Shukla along with others moved an application for recall of the order dated 16.8.1996 before the Consolidation Officer.

The submission of the learned counsel for the petitioners is that the said application dated 26.11.2021 for recall of the order dated 16.8.1996 was not

only highly belated but was also moved against the dead person, namely, Raghubir Prasad Mishra, who died on 17.6.2008. Subsequently, on 10.2.2022 / 15.2.2022 opposite party nos.4 to 11 moved an application for substitution of Raghubir Prasad Mishra and the Consolidation Officer without even issuing any notice allowed the said substitution application vide order dated 1.4.2022. The Consolidation Officer not only allowed the substitution vide ex parte order dated 1.4.2022 but passed an ex parte interim order dated 15.3.2022 restraining the petitioners from transferring and alienating the land in question. Finally, the aforesaid recall application by opposite party nos.4 to 11 was allowed by the Consolidation Officer.

The petitioners moved an application dated 8.9.2022 for recall of the aforesaid order dated 1.9.2022 and the Consolidation Officer without disposing of the said application dated 8.9.2022 dismissed the application moved earlier by the petitioners by means of the order dated 30.1.2023. The petitioners also challenged before the Deputy Director of Consolidation the order dated 1.4.2022 by means of which the aforesaid applications were allowed; by means of revision without any notice, which was, however, dismissed on the ground of maintainability, being against an interlocutory order. The said order passed by the Deputy Director of Consolidation is dated 12.7.2022.

The petitioners being aggrieved by the aforesaid orders dated 12.7.2022 passed by the Deputy Director of Consolidation and 1.4.2022 and 30.1.2023 passed by the Consolidation Officer preferred Writ-B No.131 of 2023 before this Court. The said writ petition was finally allowed vide order dated 13.4.2023 by setting aside the impugned orders dated 12.7.2022, 1.4.2022 and 30.1.2023 and the matter was remanded to the Consolidation Officer, Kadipur, Sultanpur to decide the case on merits.

Precisely, the argument of the learned counsel for the petitioners is that once this Court has vide order dated 13.4.2023 has set aside the order dated 12.7.2022 passed by the Deputy Director of Consolidation in respect of same chak no.639, the Deputy Director of Consolidation has no occasion for it to continue with a parallel proceeding in respect of the same chak no.639, which is being contested before the Consolidation Officer under the aforesaid order of the Writ Court as the same has been remanded by this Court by setting aside the order dated 12.7.2022 passed by the Deputy Director of Consolidation. He submits that it is against the judicial propriety to entertain such application after the lapse of 25 years. He further submits that the Deputy Director of Consolidation has entertained the application for recall of order dated 27.12.1989 despite having been moved after an inordinate delay of 11 years, 7 years and so on even without any application for condonation of delay having been filed or without issuing any notice to the heirs and legal representatives of the deceased person.

Per contra, learned Standing Counsel has opposed the writ petition. He submits that in the proceeding pending before the Deputy Director of Consolidation-respondent no.1 the next date fixed is 11.6.2024 and the petitioner has already filed a detailed objection therein and as such he has every right and opportunity to contest the case before the Deputy Director of Consolidation concerned by

raising all legal and factual objections therein.

Learned counsel for the petitioners after arguing the matter at some length has submitted that the petitioners have received notice in respect of the aforesaid case from the office of the Deputy Director of Consolidation in which it is indicated that the next date fixed is 11.6.2024.

In view of the order proposed to be passed in the present writ petition, notices to the private respondent nos.4 to 11 are dispensed with.

Taking into consideration the factual matrix of the case that the petitioners have already filed an objection dated 31.5.2024 before the Deputy Director of Consolidation and the next date fixed in the case is 11.6.2024, it would be appropriate that the petitioners may press their objection raising all factual and legal grounds before the Deputy Director of Consolidation concerned before whom the matter is pending.

Accordingly, the present writ petition is finally disposed of at this stage with a direction to the Deputy Director of Consolidation-respondent no.1 to pass a reasoned and speaking order after taking into consideration the pleas and objections raised by the petitioners in accordance with law by noticing all the factual and legal aspects of the matter strictly in accordance with the statutory provisions and the law already settled by the Apex Court as well as by this Court on the subject. It is provided that the said decision shall be taken within a maximum period of three months from the date a certified copy of this order is produced before it, after affording due opportunity of hearing to the concerned parties.

With the aforesaid observations the writ petition stands finally **disposed of**.

Order Date :- 7.6.2024

Anupam