

Court No. - 37

Case :- WRIT - B No. - 43115 of 2008

Petitioner :- Arvind Kumar Singh

Respondent :- Dy. Director Of Consolidation Pilibhit And
Another

Counsel for Petitioner :- T.S. Dabas, Shyam Singh Sengar

Counsel for Respondent :- C.S.C., Dinesh Pathak, Rakesh
Pathak

Hon'ble Chandra Kumar Rai, J.

1. Heard Shri Ashish Kumar Singh, learned counsel for the petitioner, Shri Sameer Sharma, learned Senior Counsel assisted by Shri Himanshu Agrawal, learned counsel for respondent nos. 2/1 to 2/3 and learned Standing Counsel for the State respondents.

2. Brief facts of the case are that plot No. 151/1 is a big plot having area 0.364 hectare. Out of the aforementioned area of plot No. 151/1 an area of 0.012 hectare was acquired for construction of assam road. The remaining area of plot No. 151/1 area measuring 0.190 hectare has been purchased by the petitioner through two registered sale deeds dated 26.6.2002 and 5.10.1999, plot No. 151/2 area 0.162 hectare was purchased by respondent no.2 on 22.7.2002. Petitioner filed an application before Settlement Officer of Consolidation Pilibheet under Section 5-C (2) of the U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act with the prayer that petitioner be allowed to construct house over the plot. Settlement Officer of Consolidation vide order dated 29.10.2004 allowed the petitioner's application with the condition that plot should be levelled and construction should be completed within two months. Proceeding under Section 9A (2) of the U.P.C.H. Act

was initiated which was registered as case No. 91 of 2004-05 State Vs. Bal Krishna Gupta. Consolidation Officer vide order dated 7.6.2006 decided the aforementioned objection under Section 9A (2) of the U.P.C.H. Act rejecting the claim of petitioner and changed the situated of plot. Against the order of Consolidation Officer dated 7.6.2006, petitioner filed an appeal under Section 11 (1) of the U.P.C.H. Act which was registered as appeal No. 196/ 366. Settlement Officer of Consolidation allowed the appeal, set aside the order dated 7.6.2006 passed by Consolidation Officer and maintained the earlier sub-division of plot No. 151. Against the appellate order dated 27.7.2007, respondent no.2 filed a revision under Section 48 of U.P.C.H. Act which was registered as revision No. 53/238. Deputy Director of Consolidation heard the aforementioned revision and allowed the same setting aside the appellate order dated 27.7.2007 and maintained the order of Consolidation Officer dated 7.6.2006. Hence this writ petition for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari calling for the record of case and quashing the order dated 25.7.2008 of respondent no.1.

(ii) Issue a writ, order or direction in the nature of writ of mandamus commanding the respondent no.1 to proceed the case in accordance with law."

3. This Court entertained the matter on 22.8.2008 and granted interim protection to the effect that parties shall maintain status quo with regard to the possession of the disputed plot.

4. In pursuance of the order dated 22.8.2008, parties have exchanged their pleadings.

5. Counsel for the petitioner submitted that plot No. 151/2 was sold to respondent no.2 which contains a tubewell/ boring while plot No. 151/1 was adjacent to road but does not contain any tubewell/ boring. He further submitted that plot No. 151/2 is away from the road but revisional Court has failed to consider the aforementioned aspect of the matter and passed the impugned order setting aside the appellate order. He further submitted that revisional Court has set

aside the appellate order without assigning sufficient reason. He submitted that Settlement Officer of Consolidation has passed the order after making spot inspection but Deputy Director of Consolidation has set aside the order of Settlement Officer of Consolidation without making any spot inspection in the matter. He submitted that orders passed by Deputy Director of Consolidation and Consolidation Officer are wholly illegal and the appellate order has been passed by Settlement Officer of Consolidation in proper manner, as such, the impugned revisional order should be set aside.

6. On the other hand, learned Senior Counsel for respondent nos. 2/1 to 2/3 submitted that sub-division of plot No. 151 was not rightly made accordingly Consolidation Officer has exercised the jurisdiction under Section 9A(2) of the U.P.C.H Act making sub-division of plot No. 151 which was proper exercise of jurisdiction by Consolidation Officer. He further submitted that Settlement Officer of Consolidation has illegally interfered with the order of Consolidation Officer, as such, revisional Court has rightly set aside the appellate order and maintained the order of Consolidation Officer. He submitted that Consolidation Officer has rightly adjudicated that adjacent to roadside 1/3rd part of plot No. 151 belong to petitioner and remaining 2/3rd plot belong to respondent no.2. He submitted that proper reason was assigned by Consolidation Officer in making sub-division of plot No. 151 taking the interest of petitioner as well as respondent no.2 into consideration. He submitted that the inspection alleged to be made by Settlement Officer of Consolidation in appeal was totally ex-parte, as such, the same cannot be made basis by Appellate Court to allow the appeal filed by petitioner. He further submitted that after the order dated 13.7.2004 passed by Assistant Collector in Stamp case No. 79 of 2004-05, there is no much relevance of recital in the sale deed with respect to situation of plot nearby roadside. He submitted that Deputy Director of Consolidation has considered all the evidence available on record as such, there is no illegality in the impugned revisional order.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that petitioner and respondent no.2 are vendees of plot No. 151 by way of registered sale deed. There is also no dispute about the fact that sale deed of both the parties have not been challenged in any Court of law. There is also no dispute about the fact that in the proceeding under Section 9A(2) of the U.P.C.H. Act, sub-division of plot No. 151 has been made by the Consolidation Officer but in appeal, the order of Consolidation officer has been set aside and earlier sub-division was maintained. There is also no dispute about the fact that Deputy Director of Consolidation has allowed the revision of respondent no.2 setting aside the appellate order and maintained the order of Consolidation Officer regarding sub-division.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed before the Consolidation Officer under Section 9A (2) of the U.P.C.H. Act will be relevant which are as under:-

"1. विवादित गाटा संख्या **151** में बटे किस प्रकार अंकित किये जाने चाहिए?

2. विवादित गाटा संख्या **151** पर वादी-प्रतिवादी श्री बालकृष्ण गुप्ता तथा अरविन्द कुमार सिंह किस किस प्रकार काबिज है?"

10. The perusal of the finding of fact recorded by Consolidation Officer while deciding the aforementioned issues will also be relevant which is as under:-

"दोनों पक्षों के द्वारा पत्रावली पर उपलब्ध कराये साक्ष्यों तथा बहस सुनने के बाद मैं इस निष्कर्ष पर पहुंचा हूँ कि बैनामा रजिस्ट्री संख्या **9053** दिनांक **05.10.99** जो निर्मल सिंह व परमप्रीत सिंह व तस्वीर सिंह पुत्र गण सरदार बाबा सिंह द्वारा गाटा संख्या **151** मि० रकवा **47** डि० का **2/3** भाग अरविन्द कुमार सिंह पुत्र छुटान सिंह को बेचा तथा **0.47** डि० का **1/3** भाग जाहिद अली पुत्र अब्दुल हमीद को बेचा जिसमें रकवा राष्ट्रीय राजमार्ग पर न होना अंकित है। जिसका उल्लेख बैनामों के पृष्ठ संख्या **3** पर अंकित है तथा बैनामा संख्या **5150** दिनांक **26.06.02** को जाहिद अली पुत्र अब्दुल हमीद नि० फील खाना द्वारा गाटा संख्या **151** मि० **0.47** डि० का **1/3** भाग अरविन्द कुमार सिंह पुत्र छुटान सिंह निवासी पीलीभीत के हक में किया है मैं गाटा संख्या **151** मि० रकवा **0.47** डि० के **1/3** भाग को रोड पर होने के कारण **50** प्रतिशत बढ़ाकर स्टाम्प फीस अदा कर दी है का उल्लेख है। श्री बाल कृष्ण गुप्ता द्वारा रजिस्ट्री बैनामा संख्या **6167 / 22.07.02** को कराया गया जिस पर सब रजिस्ट्रार पीलीभीत की रिपोर्ट दिनांक **15.06.04** के आधार पर अपर कलेक्टर (वि०/रा०) पीलीभीत के वाद संख्या **79/04-05** द्वारा पारित आदेश में गाटा संख्या **151** मि० जो श्री बाल कृष्ण गुप्ता द्वारा क्रय की गयी थी, राष्ट्रीय राजमार्ग पर होने के कारण **92450** स्टाम्प कमी जमा करने का आदेश किया गया। जिस पर श्री गुप्ता द्वारा ट्रेजरी चालान से रुपया **10,815.00**

दिनांक **15.07.04** को जमा कर दिया गया। उपरोक्त से यह सिद्ध होता है कि श्री अरबिन्द कुमार सिंह द्वारा जो भूमि निर्मल सिंह आदि से गाटा संख्या **151** मि० रकवा **0.47** डि० का **2/3** भाग क्रय की थी वह बैनामों के अनुसार राष्ट्रीय राजमार्ग पर नहीं थी। श्री बालकृष्ण गुप्ता द्वारा जो भूमि गाटा संख्या **151** मि० **0.40** डि० बैनामा द्वारा क्रय की थी उस पर राष्ट्रीय राजमार्ग का अतिरिक्त स्टाम्प शुल्क अदा किया था जब कि अरबिन्द कुमार सिंह द्वारा जो भूमि गाटा संख्या **151** मि० रकवा **0.47** डि० का **1/3** भाग जाहिद अली से क्रय की थी उस पर ही राष्ट्रीय राजमार्ग पर होने के कारण अतिरिक्त स्टाम्प शुल्क दिया गया। इस प्रकार श्री अरबिन्द कुमार सिंह गाटा संख्या **151** मि० के पूरब में राष्ट्रीय राजमार्ग पर कुल फ्रन्ट का **1/3** भाग के हकदार है शेष **2/3** भाग पिछले भाग में है तथा श्री बाल कृष्ण गुप्ता गाटा संख्या **151** म **0** के राष्ट्रीय राजमार्ग के कुल फ्रन्ट के **2/3** भाग के हिस्सेदार है। उपरोक्त के अनुसार बटा संशोधन किया जाना न्यायोचित प्रतीत होता है।

आदेश

ग्राम पकड़िया नौगवा एत० के गाटा संख्या **151** कुल रकवा **0.364** हे० के स्थान पर राष्ट्रीय राजमार्ग की तरफ **2/3** फ्रन्ट लेते हुए गाटा संख्या **151/1** रकवा **0.170** हे० पश्चिम में अंकित हो, जिस पर खाता संख्या **184** में रकवा **0.162** हे० तथा गाटा संख्या **466** में रकवा **0.008** हे० अंकित हो शेष पूरब में **1/3** फ्रन्ट लेते हुए नवसृजित गाटा संख्या **151/1** के पूरब और दक्षिण ओर गाटा संख्या **151/2** रकवा **0.194** हे० अंकित हो जिसमें खाता संख्या **466** रकवा **0.004** हे० तथा खाता संख्या **149** में रकवा **0.190** हे० अंकित हो। तदनुसार भू चित्र तथा जोत चकबन्दी आकार पत्र **2** क संशोधित किया जाये।

पत्रावली वाद अमलदरामद दाखिल दफतर हो।

दिनांक **07.06.2006**

हस्ताक्षर अपठनीय

चकबन्दी अधिकारी

पीलीभीत"

11. The perusal of the finding of fact recorded by Consolidation Officer as quoted above fully demonstrate that the interest of petitioner as well as private respondents has properly been taken into consideration while making sub-division of plot No. 151 and holding that in what manner petitioner and private respondents are in possession. Consolidation Officer has taken into consideration the evidences adduced by the parties. The mandatory provisions contained under Rule 26(2) of the U.P. Consolidation of Holdings Rules, 1954 hereinafter referred to as U.P.C.H. Rules was complied with by the Consolidation Officer while deciding the proceeding under Section 9A (2) of the U.P.C.H. Act. Settlement Officer of Consolidation in appeal filed by petitioner has set aside the order of Consolidation Officer and maintained the sub-division of plot

No. 151 as mentioned in C.H. Form 2-Ka. The Deputy Director of Consolidation under Section 48 of the U.P.C.H. Act has examined the entire issue and has held that Consolidation Officer has rightly exercised the jurisdiction. Deputy Director of Consolidation has also recorded the finding of fact that bandobasti map of 1366 fasli which is on record demonstrate that plot No. 151 belonging to Baldev Raj is adjacent to road which proves that plot belonging to respondent no.2, Bal Krishna Gupta is situated adjacent to road (National Highway).

12. Considering the finding recorded by consolidation authorities, there is no illegality in the judgement passed by Consolidation Officer which has been maintained in revision.

13. Considering the entire facts and circumstances of the case, no interference is required against the impugned revisional order dated 25.7.2008 passed by respondent no.1, Deputy Director of Consolidation, Pilibhit.

14. The writ petition is **dismissed**.

15. No order as to costs.

Order Date :- 31.7.2025

Vandana Y.