

Neutral Citation No. - 2025:AHC:110820

Reserved On:12.5.2025

Delivered On:9.7.2025

Court No. - 37

Case :- WRIT - B No. - 19519 of 1998

Petitioner :- Chandrapal

Respondent :- D.D.C. Mathura And Others

Counsel for Petitioner :- Ansar Ahmad, Divakar Rai
Sharma, H.M. Srivastava, J.S. Baghel, P.K. Pathak, Y.D. Sharma

Counsel for Respondent :- Achchhey Lal Tiwari, Ajay
Kumar Pal, Gyanendra Kumar Tripathi, H.N. Sharma, Keshari
Kumar Tiwari, Mahtab Alam, P.K. Pathak, Prateek
Srivastava, S.C., S.C. Dwivedi, Vidit Narayan Mishra

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Divakar Rai Sharma, learned counsel for the petitioners, Sri Lallu Singh, learned counsel for the respondent nos.2 & 3 and learned Standing Counsel for the State-respondent no.1.

2. Brief facts of the case are that dispute relates to plot nos.443/3 area 3 bigha, 445/4 area 2 bigha, 445/5 area 1 bigha, 471/4 area 2 bigha, 441 area 1 biswa, 443/1 area 9 biswa, 442/2 area 2 biswa, 444/2 area 1 biswa, 445/2M area 11 biswa, 471/1 area 12 biswa of Khata no.112 & 105 situated in Village-Manjoorgarhi Pargana & Tahsil- Kol, District- Aligarh. Village in question came under

consolidation operation. C.H. Form 5 was issued to petitioner and father of respondent nos.2 & 3. In Partial dispute arose regarding area of plot no.440/3, 445/3, 445/4, 471 of khata no.112, accordingly case was registered as Case No.835 before Consolidation Officer. Statement of Mohan Lal (father of respondent nos.2 & 3) as well as petitioner/ Chandrapal was recorded . Mohan Lal has stated specifically before Consolidation Officer that share of petitioner/ Chandrapal is 1/2 & share of Mohan Lal is 1/2 in the disputed plots. Consolidation Officer vide order dated 4.9.1986 corrected the area of plot no.444/3 as 18 Biswa, plot no.445/5 as 3 bigha, plot no.471/7 as 1 bigha as well as declared 1/2 share of petitioner/ Chandrapal and 1/2 share of Mohan Lal (father of respondent nos.2 & 3). The order passed by Consolidation Officer dated 4.9.1986 was not challenged by Mohan Lal in his lifetime. Mohan Lal expired on 5.12.1990. Respondent nos.2 & 3 (sons of Mohan Lal) have filed highly time barred appeal in the year 1997 before Settlement Officer of Consolidation under Section 11 (1) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "U.P.C.H. Act"). The aforementioned appeal was registered as Appeal No.1600/583. The Settlement Officer of Consolidation has condoned the delay of 11 years in filing appeal but on merit appeal was dismissed vide order dated 21.1.1998. Respondent nos.2 & 3 filed revision under Section 48 of

U.P.C.H. Act before Deputy Director of Consolidation, which was registered as Revision No.197. The respondent nos.2 & 3 claimed exclusive right in the disputed plots. The Deputy Director of Consolidation vide order dated 7.4.1998 allowed the revision setting aside the order of Consolidation Officer as well as Settlement Officer of Consolidation and expunged the entry of petitioner/ Chandrapal from plot no.443/ 3 area 3 bigha, plot no.445/4 area 3 bigha, plot no.471/4 area 1 bigha total area 7 bigha. Hence this writ petition on behalf of the petitioner/ Chandrapal for the following reliefs:

“i. to issue a writ of certiorari order or direction quashing the order of the Deputy Director of Consolidation dated 7.4.1998 (Annexure No.9 to the writ petition).

ii. to issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere with the peaceful possession of the petitioner over the land in dispute.”

3. This Court entertained the matter on 16.7.1998 and stayed the operation of the impugned revisional order dated 7.4.1998.

4. The aforementioned writ petition was dismissed for non-prosecution but on the restoration application filed on behalf of the petitioner, the writ petition was restored to original number.

5. The parties have exchanged their pleading in the aforementioned writ petition.

6. Learned counsel for the petitioner submitted that the impugned revisional order has been passed in ex-parte manner, as such, the same cannot be sustained in the eye of law. He further submitted that the Consolidation Officer has passed the order on the basis of statement given by Mohan Lal (father of respondent nos.2 & 3) to the effect that petitioner/ Chandrapal and Mohan Lal (father of respondent nos.2 & 3) will be entitled to 1/2 share in the disputed plots, as such, the revisional Court cannot give exclusive right to respondent nos.2 & 3 as Mohan Lal has not taken any steps to challenge the order of Consolidation Officer dated 4.9.1986 in his lifetime. He further submitted that the appeal under Section 11 (1) of U.P.C.H. Act was filed after 11 years by respondent nos.2 & 3 which was dismissed on merit recording finding of fact that there is no evidence on record to give exclusive right to respondent nos.2 & 3 in the disputed plots. He further submitted that certain documentary evidence filed on behalf of respondent nos.2 & 3 for the first time in revision has been taken into consideration in arbitrary manner while allowing the revision. He further submitted that entry of 1356 fasli up to basic year of consolidation operation has not been taken into

consideration by the Deputy Director of Consolidation while granting exclusive right to respondent nos.2 & 3 in respect to plot in dispute. He further submitted that impugned revisional order should be set aside and order of Consolidation Officer is to be affirmed.

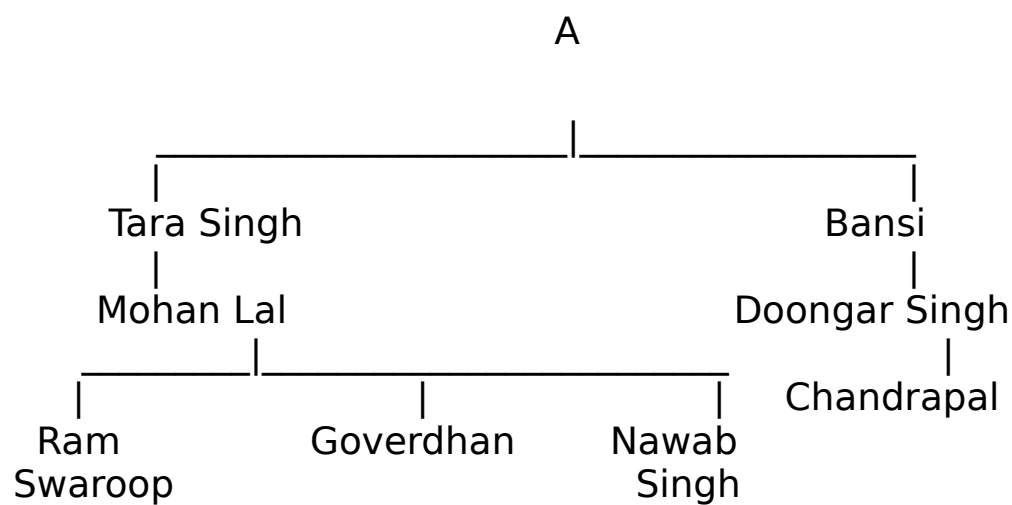
7. On the other hand, learned Counsel for respondent nos.2 & 3 submitted that the Deputy Director of Consolidation has rightly taken into consideration the documentary evidence filed in revision on behalf of respondent nos.2 & 3. He further submitted that the revisional Court has rightly allowed the revision filed by respondent nos.2 & 3 after affording opportunity of hearing to the petitioner, as such, revisional order cannot be treated as ex-parte against the petitioner. He further submitted that order dated 4.9.1986 passed by Consolidation Officer was illegal as no statement of Mohan Lal was recorded before Consolidation Officer for giving 1/2 share to petitioner in the plot in dispute. He further submitted that respondent nos.2 & 3 or their father were not aware about the order of Consolidation Officer dated 4.9.1986, as such, delay has been caused to file appeal against the order of Consolidation Officer. He further submitted that reason has been recorded under the impugned revisional order for granting exclusive right to respondent nos.2 & 3 in the plot in dispute, as such, no

interference is required against the impugned revisional order dated 7.4.1998.

8. I have considered the argument advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that the Consolidation Officer has given 1/2 share to petitioner and father of respondent nos.2 & 3 in the plot in dispute. There is also no dispute about the fact that the title appeal filed by respondent nos.2 & 3 with delay of 11 year was dismissed on merit but revision filed by respondent nos.2 & 3 has been allowed setting aside the order of Consolidation Officer and Settlement Officer of Consolidation as well as respondent nos.2 & 3 have been given exclusive right in the plot in dispute after expunging the entry of petitioner/ Chandrapal.

10. In order to appreciate the controversy involved in the matter, the pedigree of the family of petitioner and respondent nos.2 & 3 will be relevant, which is quoted in paragraph no.3 of the writ petition, the same is as under:



11. The Khatauni of 1373 fasli, 1378 fasli, 1379 fasli, which are annexed as Annexure Nos.2, 3 & 4 to the writ petition fully demonstrates that name of predecessor of petitioner as well as respondent nos.2 & 3 were recorded over plot nos.444/3, 445/4 & 471.

12. In the order of Consolidation Officer dated 4.9.1986, it was mentioned that Mohan Lal (father of respondent nos.2 & 3) has stated that petitioner/ Chandrapal and Mohan Lal (father of respondent nos.2 & 3) will have 1/2 share in the plot in dispute.

13. It is also material to mention that Mohan Lal has not taken any steps in his lifetime against the order dated 4.9.1986 passed by the Consolidation Officer and Mohan Lal has expired on 5.12.1990. It is also material to mention that appeal under Section 11 (1) of U.P.C.H. Act was filed in the year 1997 (after 11 years from the date of the order of Consolidation Officer) which was badly hit by principle of delay and laches although Settlement Officer of Consolidation has condoned the delay in filing appeal but dismissed the appeal on merit.

14. The Deputy Director of Consolidation has allowed the revision filed by respondent nos.2 & 3 granting exclusive right to respondent nos.2 & 3 on misconceived ground.

15. There is no evidence on record to demonstrate that respondent nos.2 & 3 will be entitled to exclusive right in the plot in question rather the family pedigree, revenue entry of the plot in question as well as statement recorded before Consolidation Officer fully demonstrates that the petitioner and respondent nos.2 & 3 were rightly given 1/2 share in the plot in dispute.

16. Considering the entire facts and circumstances of the case, the impugned revisional order dated 7.4.1998 passed by respondent no.1/ Deputy Director of Consolidation is liable to be set aside and the same is hereby set aside.

17. The writ petition is allowed and the order of Consolidation Officer dated 4.9.1986 is hereby affirmed.

18. No order as to costs.

Order Date :- 9.7.2025
Rameez