

Reserved On:17.4.2025

Delivered On:12.5.2025

Court No. - 50

Case :- WRIT - B No. - 4680 of 2024

Petitioner :- Naveen And 2 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Manu Khare

Counsel for Respondent :- C.S.C.,Nipun Singh,Parijat Srivastava

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Manu Khare, learned counsel for the petitioners, Mr. Nipun Singh, learned counsel for respondent no.7 and Mr. Ashish Kumar Yadav, learned Standing Counsel for the State-respondents.

2. With the consent of learned counsel for the parties, the instant petition is heard finally without inviting counter affidavit.

3. Brief facts of the case are that Khasra No.1178, 1182 etc. situated in Villaget- Kulsath, Pargana and Tahsil- Deoband, District- Saharanpur were recorded in the name of one Dushyant who executed a Will-deed dated 15.2.2003 in favour of the petitioners' father-Rajbal. After death of Dushyant, petitioners' father initiated proceeding under Section 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "U.P.C.H. Act"). Respondent no.5/ Kamla wife of Dushyant also claimed her right on the basis of succession. Consolidation Officer in the aforementioned proceeding under Section 12 of U.P.C.H. Act passed an order dated 22.12.2006 for recording the name of Kamla wife of Dushyant and rejected

the claim of petitioners' father-Rajbal. Against the order dated 22.12.2006, a restoration application was filed on behalf of petitioners' father which was allowed vide order dated 12.1.2007 and proceeding under Section 12 of U.P.C.H. Act was restored. Consolidation Officer ultimately vide order dated 13.7.2011 maintained the order dated 22.12.2006 for recording the name of Kamla over the plot in question. Against the order dated 13.7.2011 again recall application was filed on 20.7.2011, which remained pending. During pendency of the recall application dated 20.7.2011 village was notified under Section 6 (1) of U.P.C.H. Act vide notification dated 28.3.2013 cancelling the notification under Section 4 of U.P.C.H. Act. In view of the notification dated 28.3.2013 issued under Section 6 (1) of U.P.C.H. Act, Consolidation Officer stayed the pending proceeding vide order dated 29.5.2013. Against the orders dated 13.7.2011 & 29.5.2013, petitioners filed an appeal under Section 11 (1) of U.P.C.H. Act before Settlement Officer of Consolidation, which was registered as Appeal No.341. Settlement Officer of Consolidation vide order dated 26.8.2019 set aside the order dated 13.7.2011 and 29.5.2013 as well as stayed the of further proceedings. The order dated 26.8.2019 was corrected vide subsequent order dated 2.9.2019 replacing the word stayed by the word abated. Against the order dated 26.8.2019, respondent no.5/ Kamla filed a revision before Deputy Director of Consolidation which was registered as Revision No.285/2020. Respondent no.7/ Garima (vendee of respondent no.5/ Kamla) also filed a revision against the orders dated 26.8.2019 & 2.9.2019, which was

registered as Revision No.1516 of 2022. In the aforementioned Revision No.285, old no.263, application was filed on behalf of revisionist-Kamla to dismiss the revision as not pressed, accordingly, Deputy Director of Consolidation vide order dated 4.2.2021 dismissed the revision filed by Respondent no.5 / Kamla as not pressed. Against the order dated 4.2.2021, respondent no.7/ Garima Garg filed a restoration application on 29.11.2022, which was allowed on 17.2.2023 setting aside the order dated 4.2.2021. Revision filed by respondent no.5/ Kamla and revision filed by respondent no.7/ Garima Garg were clubbed. Deputy Director of Consolidation vide order dated 17.6.2023 held that revision under Section 48 of of U.P.C.H. Act is maintainable. The order dated 17.6.2023 was challenged by the petitioners before this Court by way of Writ-B No.1198 of 2023 (Navin and two others vs. State of U.P. and seven others). This Court vide order dated 21.4.2023 dismissed the writ petition and permitting the petitioners to raise the objections before the Deputy Director of Consolidation. During pendency of the aforementioned proceedings a fresh notification dated 29.8.2023 under Section 4 of of U.P.C.H. Act has been issued in the village in question, accordingly, petitioners' filed an application dated 24.4.2024 stating that due to issuance of the notification under Section 4 of U.P.C.H. Act on 29.8.2023 pending proceeding of Revision No.473/ 285 should be abated. Deputy Director of Consolidation vide order dated 2.5.2024 rejected the petitioners' application stating that the pending proceeding cannot abated due to issuance of notification under Section 4 (2) of U.P.C.H. Act.

Additional Commissioner / Deputy Direction of Consolidation, Saharanpur vide order dated 8.10.2024 allowed the revision filed by respondent no.5/ Kamla as well as respondent no.7/ Garima Garg and rejected the claim of the petitioners/ Navin and others setup on the basis of unregistered Will deed. The orders dated 26.8.2019 & 2.9.2019 passed by Settlement Officer of Consolidation were set aside and the order dated 13.7.2011, 29.5.2013 & 22.12.2006 by which the name of the Kamla was ordered to be recorded as heir of deceased Dushyant was maintained. Hence, this writ petition for the following relief:

"issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 2.5.2024 and 8.10.2024 passed by respondent no.2/ Deputy Director of Consolidation, Saharanpur (Annexure Nos.1 & 2 to this writ petition)."

4. Learned counsel for the petitioners submitted that after issuance of the notification under Section 6 (1) of U.P.C.H. Act, the consolidation authorities have no jurisdiction to interfere with the order dated 26.8.2019/ 2.9.2019. He further submitted that the appellate Court had rightly exercised the jurisdiction abating the proceedings of the case. He further submitted that under the impugned order, Deputy Director of Consolidation has failed to appreciate the consequences of Sections 4 & 6 of U.P.C.H. Act. He further submitted that in view of the fresh notification issued on 2.5.2024, the order passed by the consolidation authorities in pursuance of the earlier notification issued under Section 4 of U.P.C.H. Act cannot be

maintained by the consolidation authorities. He further submitted that the order dated 13.7.2011 has not attained finality on account of pendency of recall / restoration application filed by the petitioners on 20.7.2011, as such, Consolidation Officer cannot pass the order dated 29.5.2013. He further submitted that the petitioners have rightly filed an application dated 24.4.2024 in the pending proceeding in view of the fresh notification issued under Section 4 of U.P.C.H. Act but Deputy Director of Consolidation has illegally rejected the petitioners' application dated 24.4.2024 and decided the pending revision on merit, which is wholly illegal. He further submitted that the impugned revisional order should be set aside and the proceeding of revision should be abated with liberty to the parties to initiate fresh proceeding in view of the fresh notification issued under Section 4 of U.P.C.H Act in respect to the village in question.

5. On the other hand, Mr. Nipun Singh, learned counsel for respondent no.7 submitted that the Deputy Director of Consolidation has rightly exercised the revisional jurisdiction under Section 48 of U.P.C.H. Act considering the provisions of Sections 4 & 6 of U.P.C.H. Act. He further submitted that the orders passed by the Consolidation Officer dated 13.7.2011, 29.5.2013 & 22.12.2006 for recording the name of respondent no.5/ Kamla in place of deceased-Dushyant was rightly affirmed. He submitted that respondent no.7 is vendee of respondent no.5 on the basis of registered sale-deed. He further submitted that no interference is required against the order

impugned and writ petition is liable to be dismissed. He placed reliance upon the following judgment of this court in support of his argument :-

(i) 2007 (103) RD 426 Jangi Lal (Dead) Through LRS and others Versus Deputy Director of Consolidation Azamgarh Camp Allahabad and other.

(ii) Writ- B No. 1107 of 2023, Phool Singh And Another Versus State of U.P. And 3 others.

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

7. There is no dispute about the fact that the village in question was first notified under Section 4 of U.P.C.H. Act in the year 2003. There is also no dispute about the fact that vide notification dated 28.3.2013 issued under Section 6 (1) of U.P.C.H. Act, notification under Section 4 of U.P.C.H. Act was cancelled. There is also no dispute about the fact that village has been again notified under Section 4 of U.P.C.H. Act on 29.8.2023. There is also no dispute about the fact that in pursuance of the earlier notification issued under Section 4 of U.P.C.H. Act, an order dated 22.12.2006 was passed by the Consolidation Officer under Section 12 of U.P.C.H. Act for recording the name of respondent no.5/ Kamla in place of deceased- Dushyant. The order dated 22.12.2006 has been ultimately maintained by Deputy Director of Consolidation under the impugned revisional order dated 8.10.2024 rejecting the petitioners' application dated 24.4.2024 to abate the entire proceeding in view of the fresh notification issued under Section 4 of U.P.C.H. Act.

8. In order to appreciate the controversy involved in the matter, perusal of Sections 4 & 6 of U.P.C.H. Act will be relevant, which are as under:

"4. Declaration and notification regarding consolidation. (1)(a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, made a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation -

(i) to enter upon any survey, in connection with rectangulation or otherwise and to take levels of any land in such area;

(ii) to fix pillars in connection with rectangulation; and

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under clause (a) to be given at convenient places in the said district or part thereof.

(2)(a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under sub-section (1) or in any other area, it may issue a notification to this effect.

(b) Every such notification shall be published in the Gazette and in a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such manner as may be considered appropriate.

6. Cancellation of notification under Section 4 . (1) *It shall be lawful for the State Government at any time to cancel the notification made under Section 4 in respect of the whole or any part of the area specified therein.*

(2) *Where a notification has been cancelled in respect of any unit under sub-section (1), such area shall, subject to the final order relating to the correction of land records, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of the cancellation."*

9. In the instant matter, village in question was first notified under Section 4 of U.P.C.H. Act in the year 2003 but in the year 2011, village was de-notified under Section 6 of U.P.C.H. Act and at the time of issuance of notification under Section 6 (1) of U.P.C.H. Act, recall application dated 20.7.2011 filed by the petitioners were pending before the Consolidation Officer in respect to the proceeding under Section 12 of U.P.C.H. Act.

10. It is material to mention that appellate Court vide order dated 26.8.2019/ 2.9.2019 abated the entire proceeding in view of the issuance of notification under Section 6 of U.P.C.H. Act and the order of appellate Court was challenged in revision before Deputy Director of Consolidation but during pendency of the revisional proceeding, the village has been again notified under Section 4 of U.P.C.H. Act which is very peculiar situation in the present matter. Petitioners have rightly filed an application in the pending revision that revisional proceedings should be abated due to fresh notification of the village under Section 4 of U.P.C.H. Act but revisional

Court has rejected the application and decided the revision on merit maintaining the order of Consolidation Officer dated 22.12.2006 which is not proper exercise of revisional jurisdiction.

11. In case, there is no fresh notification under Section 4 of U.P.C.H. Act, the provisions contained under Section 6 (2) of U.P.C.H. Act will be followed giving finality to the proceedings which has attained finality before issuance of the notification under Section 6 (1) of U.P.C.H. Act but in the instant matter there was no finality to any proceeding rather the petitioners as well as private respondents are contesting the proceeding and Government is issuing notification one after the other.

12. Since, the fresh notification under Section 4 of U.P.C.H. Act has been issued, as such, no finality can be given to the order passed under Section 12 of U.P.C.H. Act rather fresh proceeding should be initiated by the parties in pursuance of the fresh notification dated 29.8.2023 issued under Section 4 of U.P.C.H. Act.

13. Considering the entire facts and circumstances of the case, the impugned orders dated 8.10.2024 & 2.5.2024 passed by respondent no.2/ Deputy Director of Consolidation are liable to be set aside and the same are hereby set aside.

14. The petitioners' application dated 24.4.2024 is allowed and the proceedings of revision is abated in view of the fresh notification dated

29.8.2023 issued under Section 4 of U.P.C.H. Act in respect to the village in question. It is further directed that fresh proceeding shall be initiated by the petitioners as well as private contesting respondents for recording of their names in place of deceased- Dushyant in accordance with the provisions of U.P.C.H. Act.

15. The writ petition is accordingly **allowed**.

16. No order as to costs.

Order Date :- 12.5.2025/Rameez