

Kailash Vs. State of U P

Kailash Vs. State of U P

SooperKanoon Citation : sooperkanoon.com/1115657

Court : Allahabad

Decided On : Aug-16-2012

Judge : Ran Vijai Singh

Appeal No. : Writ B No. 37333 Of 2012

Appellant : Kailash

Respondent : State of U P

Advocate for Pet/Ap. : Shri. Salil Kumar Rai

Judgement :

1. This writ petition has been filed for issuing a writ of certiorari, quashing the order dated 09.07.2012, passed by Deputy Director of Consolidation, Bijnor Camp, District Jyotiba Phule Nagar in Revision No. 144/262 (Pramod Nagar and others Vs. Kailash and others), under Section 48 of the Consolidation of Holdings Act, by which the Deputy Director of Consolidation (hereinafter referred to as DDC) has allowed the Revision filed by the respondents and set aside the order, passed by the Settlement Officer Consolidation on 17.01.2011, and maintained the order, passed by the Consolidation Officer dated 12.08.2010.

2. The dispute relates to carving out of a nali through Plot No. 261. The only submission made by Shri Salil Kumar Rai, learned counsel for the petitioner is, that the order passed by the DDC is illegal, for the reason that, before him, there were two khataunis, one, with respect to from 1390 F to 1315 F and the other from

1397 F to 1901F. Over an area of .140 hectares in plot No. 261/1, the petitioner was granted lease, and he is in possession over the lease land. This area of .140 hectares had been shown differently in the khatauni of 1319F to 1395F. The DDC has placed reliance upon the Khatauni showing lesser area, which was shown, pursuant to the order of the Sub Divisional Officer, Hasanpur, District Jyotiba Phule Nagar dated 03.01.1987.

Heard Shri Salil Kumar Rai, learned counsel for the petitioner, Shri S.P. Mishra, learned counsel, who has filed caveat on behalf of respondent No. 2 and vakalatnama on behalf of respondents No. 3 to 5. Shri M.N. Singh, learned counsel has accepted notice on behalf of respondent No. 6. In the submissions of Shri Rai, neither the original lease granted in favour of the petitioner, nor the copy of the order dated 03.01.1987, passed by Sub Divisional Officer, was before the DDC., therefore, while relying upon the order, in which, lesser area was recorded, he fell in error. In his submissions, for recording the finding, he must have recorded a definite finding that why he is ignoring the khatauni of 1396F to 1901 F.

3. Shri S.P. Mishra, learned counsel appearing for respondents could not show from the impugned judgment and order of the DDC that, while coming to the conclusion, he has considered the relevant material for relying upon one khatauni and ignoring the other. I do not find any reason for disbelieving the one khatauni and relying on another, on the basis of an entry in the khatauni, in absence of the certified copy of the order of Sub Divisional Officer and the original lease. Taking note of that, I am of the view that the impugned order of the DDC is illegal to that extent. Therefore, the same is being set aside, and the matter is being remitted back before the DDC for recording a definite finding, on the basis of the material on record, by providing adequate opportunity to the parties to lead their evidence with regard to the lease land. The DDC is directed to decide the matter expeditiously, preferably within a period of six months from the date of receipt of certified copy of the order of this Court. With the aforesaid observation/direction, the writ petition is disposed of.