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Court : Allahabad

Decided On : Aug-26-1977

Reported in : AIR1978All243

Judge : D.N. Jha, J.

Acts : Uttar Pradesh Consolidation of Holdings Act, 1954 - Sections 48; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 20; [Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 1022 of 1971

Appellant : Babu Ram

Respondent : Arjun Lal and ors.

Disposition : Petition allowed

Judgement :

ORDER

D.N. Jha, J.

1. Babu Ram has filed this petition under Article 226 of the Constitution praying for quashing of the order dated 16-3-71 passed by the Deputy Director of Consolidation.

2. I have heard learned counsel for the parties at some length and perused the material brought on the record. The dispute between the petitioner and opp. parties 1 to 3, Arjun Lal, Balgovind and Bisheshwar, related to Khata No. 3 which in the basic year was recorded in the name of the petitioner. These opp. parties filed objections before the Asstt. Consolidation Officer claiming to be sole occupants and that they should be recorded as tenure-holders and that the name of the petitioner be expunged. The matter was referred to the Consolidation Officer, who accepted the petitioner's claim vide his order dated 14-12-1969, which is Annexure 1 to the writ petition. Arjun Lal alone filed appeal arraying Balgovind and Bisheshwar as respondents and the Settlement Officer (Consolidation) allowed the appeal after allocating shares to various parties. This order was passed on 20-7-70 and is Annexure 2. The petitioner went up in revision before the Deputy Director of Consolidation and in this revision on 21-1-1971 an application was moved by the petitioner praying for impleadment of Bisheshwar, Balgovind and Smt. Harbansa, wife of Swami Dayal but, the same was rejected by the Deputy Director of Consolidation vide his order dated 21-1-71 contained in Annexure A-5. When the revision came up for final hearing before the Deputy Director of Consolidation he dismissed the same on 16-3-71 on the ground that the necessary parties had not been impleaded. This order is Annexure 4.

3. The sole contention canvassed before the Court by learned counsel for the parties is whether the order passed by the Deputy Director of Consolidation could be sustained in the eyes of law. Learned counsel for the petitioner placed reliance over the various provisions of the U. P. Consolidation of Holdings Act in order to show that under the said Act and the Rules framed thereunder (hereinafter referred to as the Act and the Rules) there was no mandatory requirement of law regarding the impleadment of parties. This proposition of law on fact has not been challenged. The question that arises for consideration is whether the Dy. Director of Consolidation can exercise his discretion for impleadment of all the necessary parties at the time when the record has been received by him or he is competent to dismiss the revision on the ground that necessary parties had not been impleaded. Learned counsel for the petitioner has placed reliance on the case of Abdul Jamil v. Deputy Director of Consolidation (1975 Revenue Judgments 161). N. D. Ojha, J. speaking for the Court observed:--

'Where a person recorded in the basic year was not arrayed as respondent in an appeal Under Section 11 and the appeal was allowed the revisional court commits a manifest error in setting aside the order on this score alone. The proper course was to remand the case for hearing afresh after notice to the necessary party concerned'.

It may be stated that in that case one Azizullah, who was recorded in the basic year, had not been impleaded in the appeal and the appeal had been allowed in his absence. The Deputy Director of Consolidation allowed the revision and quashed the orders on the ground that necessary party had not been impleaded. It was in these circumstances that the above view had been expressed by N. D. Ojha, J. The ancillary question to the main question argued by learned counsel for the petitioner is that the powers Under Section 48 of the Act are wide enough empowering the Deputy Director of Consolidation even to act suo motu in case he is satisfied about the illegality and impropriety of the orders passed by the subordinate authorities. If an error had been committed by an authority, the Deputy Director of consolidation ought to have applied his mind to the record of the case and decided it whether it was a fit case in which he should proceed to act in exercise of suo motu powers. If the Deputy Director of Consolidation was satisfied then there was no impediment for him to proceed by taking action in exercise of suo motu powers and issue notice to the respective parties. The question of exercise of suo moto powers has come up for decision before this Court from time to time. The matter came up for consideration before a Division Bench of this Court in Abdul Junaid v. Deputy Director of Consolidation (1972 All LJ 435), S. N. Dwivedi, J. speaking for the Court while dealing with a similar proposition of certified copy not accompanying the revision observed:--

'S. 48 of the U. P. Consolidation of Holdings Act does not confer any right on a party to file an application in revision. It confers a power on the specified authority for the sake of keeping the inferior authorities within bounds. For that purpose he may call for the record of an inferior authority and examine it and pass an appropriate order. Having regard to the object underlying Section 48 it appears that once the record has been called for by the specified authority, he should not ordinarily refuse to examine the record and to check whether the inferior authority

has gone wrong. So long as the record has not been called for, a person who makes an application Under Section 48 may be said to be an actor on the scene. But when the record has been called for it appears that he ceased to be an actor on the scene. The specified authority who has called for the record becomes the actor on the scene. Accordingly, he should examine the record and pass such an order which will advance justice and should not dismiss the revision on a mere technical ground that the applicant failed to file a copy of the order of the Consolidation Officer'.

Similar view was expressed by another Division Bench of this Court in Kunahi v. Roop Ram (1972 All LJ 1047) where Satish Chandra, J. speaking for the Court observed that even though the copy of the Consolidation Officer's judgment was not filed till then, after having called for the record, it was incumbent upon the Deputy Director to proceed to decide the case on merits. Learned counsel for the opposite parties urged that the application for impleadment having been rejected on 21-1-71 on the ground that it was belated the subsequent order passed on 16-3-1971 cannot be said to be without jurisdiction. If the petitioner was aggrieved he should have taken appropriate legal proceedings for setting aside of the order dated 21-1-1971 and in support of his contention learned counsel has placed reliance on the case of Jagardeo Singh v. Bir Singh (1951R. D. 40) wherein the Hon'ble Board of Revenue expressed the view:--

'In an appeal it is not necessary to implead every individual party to the suit, but it is necessary to implead those parties who are likely to lose or to suffer prejudicially by the success of the appeal. If a necessary party has not been impleaded within the period of limitation prescribed for the appeal the success of the appeal would mean a decision in conflict with the rights secured by the non-impleaded party under the decree of the trial court, the appeal cannot be proceeded with and is liable to be dismissed'.

In Maqsood Khan v. Sarda Narain Singh (1948 R. D. 424) the learned Member, Board of Revenue, expressed the view:--

'A respondent cannot be added under Order 41 Rule 20 C. P. C. merely in order to suit the convenience of a party or to enable it to get round limitation'.

4. The last case relied upon is Sukhdin v. Deputy Director of Consolidation (AIR 1974 All 450). Order P. Trivedi, J., speaking for the Court observed while dealing with a petition under Article 226 of the Constitution:--(At p. 451).

'If the petition is allowed against opposite parties 3, 4, 6 to 8, as urged, it will clearly lead to two contradictory orders being made: There is the order of the Deputy Director of Consolidation in favour of Ram Shankar by which the order of the Settlement Officer (Consolidation) has been set aside and the order of the Assistant Consolidation Officer has been restored. If the writ petition is allowed there will be another order by the Court by which the order of the Settlement Officer (Consolidation) will be maintained and the order of the Assistant Consolidation Officer will be set aside. This court will clearly refuse to proceed with a writ petition under Article 226 of the Constitution which, if allowed, will lead to such conflict of decisions'.

I have given my anxious consideration to the various decisions referred to at the Bar and I have no hesitation in observing that although the Civil Procedure Code in its strict sense is not applicable but the analogy laid down in Order 41 Rule 20 of the Civil P. C. would clearly be applicable in view of the settled principles of natural justice. It has to be kept in mind that so far as the Consolidation matters are concerned the authorities appointed under the Act are vested with the Supreme power and it is not open to question those powers in any other Court except by means of a writ petition in this Court. It, therefore, follows that a finality is attached to these orders and a party losing there is rendered without any remedy. It is in this background that the powers vested with the respective authorities under the Consolidation of Holdings Act have to be viewed. In the instant case the order of the Consolidation Officer was in favour of the petitioner. The appellate order was in favour of the opp. parties. It may further be recollected that the appeal had only been filed by Arjun Lal and others had only been arrayed as respondents, The Settlement Officer (Consolidation), however, while setting aside the order passed by the Consolidation Officer allowed respective shares not only to the appellant but also to the respondents who had been arrayed and for whom the appellant had prayed in the appeal for allocation of shares. This being the position, in my opinion, the Deputy Director of Consolidation in a most arbitrary manner rejected

the application for impleadment of parties as prayed by the petitioner, I find myself fully in agreement with the observations made by S. N. Dwivedi, J. that once the record is before the Deputy Director of Consolidation he should not adopt a short-cut in adjudicating the dispute that has been brought before him by the respective parties. The duty of the superior authority is to keep the inferior authorities within bound and, therefore, once it has called for the record he ought to examine it and pass an appropriate order. Here It appears that the Deputy Director of Consolidation for reasons best known to him adopted a line of least resistance lest a strain might be caused to his judicial sense for adjudicating the dispute. Learned counsel for the opposite parties vehemently argued that there was no averment made by the petitioner to the effect that the record was before the Deputy Director of Consolidation. It may be mentioned that there is no averment of this in the counter affidavit that the record was not before the Deputy Director of Consolidation on 16-3-1971 when he proceeded to dispose of the revision filed by the petitioner. If the Deputy Director of Consolidation proceeded to hear the revision in the absence of the record he perpetrated further illegality in hearing the revision. The commencement of the hearing by the Deputy Director of Consolidation pre-supposes that there was compliance with the rules inasmuch as the record had been received by him and thereafter, finding that the revision suffered from an inherent defect inasmuch as, necessary parties, whose rights were to be affected, were not before him, he proceeded to dismiss the revision. The law, howsoever rigid it may be, has to be interpreted in a flexible manner so as to see that the rule of law is not abrogated and merely on technical grounds a party is not deprived of being heard as regards the merits of the case. In this view of The matter, I have no hesitation in holding that, when there were no provisions relating to impleadment of a party in the U. P. Consolidation of Holdings Act or the rules framed thereunder, the Deputy Director of Consolidation acted in a most arbitrary and capricious manner in rejecting the prayer for impleadment of necessary parties and then to use the same stick in crushing the revision preferred by the petitioner, when it came up for final hearing. The order, therefore, in my opinion clearly violated the procedure of natural justice resulting in substantial failure of justice and hence it is necessary to set at rest the order passed by the Deputy Director of Consolidation.

5. It is not necessary for this Court to substitute its own finding while exercising powers under Article 226 of the Constitution which are supervisory in nature and this Court cannot convert itself as a court of appeal. Moreover I find that the entire record is not before this Court, hence it would not be proper for it to record a finding regarding the rights of the parties. That being so, I have no option but, to remand the case to the Deputy Director of Consolidation to dispose it of on merits and in accordance with law.

6. The result is that the writ petition succeeds in view of the observations made above and is allowed. The order passed by the Deputy Director of Consolidation dated 16-3-1971 contained in Annexure 4 and the order dated 21-1-1971 contained in Annexure A-5 are quashed. Let certiorari issue accordingly. I further direct that the revision preferred by the petitioner shall be restored to its original number and the Deputy Director of Consolidation shall proceed to dispose of the same in the light of observations made above and in accordance with law. Let mandamus issue accordingly, J. however make no order as to costs.

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