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Court : Allahabad

Decided On : Jan-28-2002

Reported in : 2002(2)AWC1059

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 48

Appeal No. : Writ Petition No. 542 of 2001

Appellant : Rajit Ram Singh and ors.

Respondent : Mahadev Singh and ors.

Advocate for Def. : C.S.C., ;P.L. Misra and ;V.C. Misra, Advs.

Advocate for Pet/Ap. : S.K. Mehrotra and ;I.D. Shukla, Advs.

Disposition : Petition allowed

Judgement :

R.H. Zaidi, J.

1. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 30.6.2001 passed by the Deputy Director of Consolidation.

2. The relevant facts of the case giving rise to the present petition as stated in the writ petition, in brief, are that the land in dispute was originally owned by one Sri Ram Singh, who died on 28.8.1990 leaving behind his three sons, namely. Surya Bux Singh, Basdeo Singh and Mahadeo Singh. It was on 17.9.1990 Mahadeo Singh, Basdeo Singh and Surya Bux Singh, respondent Nos. 1 to 3 applied for mutation of their names in place of Ram Singh as his heirs and legal representatives before the Assistant Consolidation Officer. On 16.10.1990, Sant Ram Das, father of respondent No. 6 also applied for mutation of his name in place of Ram Singh on the basis of a Will alleged to have been executed by him in his favour. The Assistant Consolidation Officer referred above-noted cases to the Consolidation Officer for decision. Consolidation Officer passed order dated 18.12.1990 and allowed the mutation application filed by respondent Nos. 1 to 3. Thereafter it was on 22.1.1991 that Consolidation Officer also directed mutation of the name of Sant Ram Das over the property in dispute on the basis of the said Will. On 27.4.1991 Ashok Kumar Singh and others claiming themselves to be vendees from respondent Nos. 1 to 3 applied for mutation of their names on the property in dispute. The Consolidation Officer allowed their application and ordered mutation of the names of the said vendees, i.e., Ashok Kumar Singh and Bhim Singh. The Assistant Consolidation Officer also ordered mutation in favour of the petitioners as vendees from Sant Ram Das with respect to the same property. Challenging the validity of the orders passed by the Assistant Consolidation Officer and Consolidation Officer appeals were filed by the parties before the Settlement Officer. Consolidation. The Settlement Officer Consolidation after hearing the parties allowed the appeals and remanded the case to the Consolidation Officer for decision afresh after hearing both the parties without recording any findings on the question involved in the case by his order dated 9.12.1998. Challenging the validity of the said order, four revisions were filed before the Deputy Director of Consolidation. The Deputy Director of Consolidation allowed the said revisions by his order dated 30.6.2001, set aside the order passed by the Settlement Officer Consolidation and upheld the mutation orders passed by the Consolidation Officer by different orders in favour of the opposite parties. The petitioners thereafter filed the present petition challenging the validity of the order dated 30.6.2001.

3. Learned counsel for the petitioners vehemently urged that the order passed by the Deputy Director of Consolidation is without jurisdiction as the order passed by the Settlement Officer Consolidation was an interlocutory order within the meaning of the terms used in Section 48 of the U. P. Consolidation of Holdings Act, (for short 'the Act'). Therefore, the revisions filed against the said order by the parties were illegal and not maintainable. The Deputy Director of Consolidation has acted illegally in entertaining the said revisions and in allowing the same. The order passed by the Deputy Director of Consolidation was thus, according to him, liable to be quashed. It was also urged that the effect of the order passed by the Settlement Officer Consolidation will be that the parties will have full opportunity of hearing and to produce evidence in their favour and the case shall be decided on merits after hearing the parties. Therefore, it would be in the interest of justice to allow this petition and to direct the Consolidation Officer to decide the case in terms of the order passed by the Settlement Officer Consolidation.

4. On the other hand learned counsel appearing for the contesting respondents supported the validity of the order passed by the Deputy Director of Consolidation. It was urged that the Deputy Director of Consolidation after hearing the parties decided the cases. It was also urged that before the Deputy Director of Consolidation the question of jurisdiction was not raised by the petitioners and they cannot raise this question before this Court as they have themselves filed revisions against the order passed by the Settlement Officer Consolidation before the Deputy Director of Consolidation. The writ petition, according to him, has got no merit and the same is. therefore, liable to be dismissed.

5. I have considered the submissions made by the learned counsel for the parties and also perused the record.

6. Section 48 of the Act provides as under :

(Only relevant quoted)

'48. Revision and reference.--(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the

proceedings ; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.'

7. A reading of the aforesaid statutory provision reveals that no revision can be filed against an interlocutory order. The question arises as to what is the meaning of the words 'interlocutory order'. The words 'interlocutory order' came for interpretation before this Court in the case of Ram Bhajan and others v. Deputy Director of Consolidation, Allahabad and Anr., 2001 (19) LCD 906. In the said case it was held by this Court that the remand orders would be interlocutory orders if they were simpliciter remand orders. However, if the Court remanding matter has recorded finding of facts or even finding of law which would be binding after remand upon the Court to which matter has been remanded, the remand order would not be interlocutory order, as in respect of those issues it has finally decided the controversy. It was also held that revision against an order of remand simpliciter is not maintainable under Section 48 of the Act.

8. From the other side, reliance has been placed upon a decision of this Court in the case of Ram Pujan and others v. Deputy Director of Consoiidation, Ghazipur, 2000 (91) HC 433. The said case is apparently distinguishable on facts of this case. In the said case it was observed by this Court that the order passed in appeal under Rule 109A was revisable against any order passed by the Settlement Officer, Consolidation. The question, as to whether the order of remand is an interlocutory order or not, was not considered by this Court in the said decision and no advantage can be taken by the learned counsel for the respondents of the said decision.

9. In view of the aforesaid facts and discussion, it is evident that the order passed by the Settlement Officer Consolidation in the present case is simpliciter an order of remand and against the said order no revision was maintainable as the Settlement Officer Consolidation did not record any findings which has got binding effect on the Consolidation Officer or parties. Simply because the parties who have filed revisions against the said order, may be petitioners or respondents, the

same will not confer jurisdiction upon the Deputy Director of Consolidation as he had no jurisdiction to entertain the revisions against interlocutory orders. It is also well-settled in law that the jurisdiction where there is none cannot be conferred by agreement of parties. It is also well-settled in law that an order passed without jurisdiction is liable to be ignored even in execution or collateral proceedings if the same is set up by the other side in defence. Reliance in this regard may be placed upon a decision of the Apex Court in the case of Kiran Singh and others v. Chaman Paswan and others, AIR 1954 SC 340, wherein it was ruled by the Apex Court as under :

'It Is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it Is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.'

10. In view of the aforesaid discussion and the decisions referred to above, this petition succeeds and is allowed. The impugned order dated 30.6.2001, passed by the Deputy Director of Consolidation is hereby quashed. It is, however, observed that the case shall be decided by the Consolidation Officer expeditiously, preferably within a period of three months from the date a certified copy of this order is produced before him after following the procedure prescribed under the law and after affording full opportunity to the parties concerned to produce evidence and of hearing.

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