

Sher Singh and ors. Vs. Dy. Director of Consolidation and ors.

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SooperKanoon Citation : sooperkanoon.com/478708

Court : Allahabad

Decided On : May-08-2009

Reported in : 2009(3)AWC2602

Judge : A.P. Sahi, J.

Appellant : Sher Singh and ors.

Respondent : Dy. Director of Consolidation and ors.

Advocate for Pet/Ap. : Sri. B.K. Solanki, Sri. S. P. Singh

Disposition : Petition allowed

Judgement :

ORDER

A.P. Sahi, J.

1. Heard Sri S.P. Singh and Sri B.K. Solanki learned Counsel for the petitioner and Sri Jai Singh Chandel for the contesting respondent No. 2.

2. In view of the order that is proposed to be passed the learned standing counsel and the learned Counsel for the Gaon Sabha have not proposed to file any counter-affidavit. The parties are agreed that the matter be disposed of at this stage finally without calling for any further affidavits from either of the parties. Accordingly, the matter is being disposed of finally under the rules of the Court.

3. Sri S. P. Singh learned Counsel for the petitioner contended that the allotments which had been made at the stage of the Settlement Officer Consolidation in respect of Plot No. 87/1, the petitioner was not aggrieved. Learned Counsel for the petitioner contends, that in the event there was no grievance on behalf of the petitioner, then there was no occasion for him to have filed any revision against the order of the Settlement Officer Consolidation. It is further submitted that when the petitioner came to know of passing of the order dated 18.8.2008 by the Deputy Director of Consolidation he rushed up to this Court and filed Writ Petition No. 5097 of 2008 questioning the said order on the ground that the petitioner had never filed any revision nor had he sought any relief in respect of the Plot No. 87/1. The said writ petition was dismissed with liberty to the petitioner to approach the Deputy Director of Consolidation for the redressal of his grievances. Accordingly, the petitioner filed restoration application and copy of affidavit filed in support of the said restoration application is appended as Annexure-7 to the writ petition.

4. Learned Counsel for the petitioner contends that a clear stand was taken before the Deputy Director of Consolidation that the petitioner never instituted the revision and nor his signature or thumb impression is endorsed thereon and the same is forged and having attempted by an imposter. Therefore, the order should be recalled and the revision should be dismissed.

5. The Deputy Director of Consolidation has recorded a finding that according to the order-sheet of the said revision, it appears that the petitioner had endorsed his signature and thumb impression and even otherwise on merits since the order had been passed after making a spot inspection, therefore, the restoration application was not maintainable and it was accordingly rejected. Aggrieved the petitioner filed this writ petition, questioning the validity of the said order on the ground that there was no occasion for the petitioner to file the revision, as he was satisfied with the distributions and adjustment at the level of the Settlement Officer Consolidation and secondly, there was no occasion for the Deputy Director of Consolidation to have reversed the said position to the detriment of the petitioner and to the complete advantage of the contesting respondent No. 2.

6. Sri J.C. Chandel has urged that the said findings have been recorded by the Deputy Director of Consolidation after perusing the records and they are findings of fact, which should not be interfered with under Article 226 of the Constitution.

7. It is apparent that the real issue is as to whether the petitioner had endorsed his signature or thumb impression on the order-sheet or on the memo of revision as recorded by the Deputy Director of Consolidation. The said issue could only have been decided after verifying the same and the Deputy Director of Consolidation should not have acted as a handwriting expert. Reference may be had to the decision in the case of Ram Sukh v. Sughara and Ors. 2000 RD (91) 155 para 7. In view of this it was incumbent upon the Deputy Director of Consolidation to have got the signature and the thumb impression at least verified from the handwriting expert. Having not done so, the Deputy Director of Consolidation has committed a patent error by recording his conclusions without completing the formalities of evidence in this regard.

8. Accordingly, the order dated 7.11.2008 is unsustainable and is set aside. The matter stands remitted back to the Deputy Director of Consolidation for decision afresh in the light of the observations made hereinabove. The writ petition is allowed. No order as to costs.