

**Ram Anjore Vs. Additional District Magistrate (Finance and Revenue)/Deputy Director of Consolidation and ors.**

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**Court :** Allahabad

**Decided On :** Sep-26-2008

**Reported in :** 2009(1)AWC1052

**Judge :** Narayan Shukla, J.

**Appellant :** Ram Anjore

**Respondent :** Additional District Magistrate (Finance and Revenue)/Deputy Director of Consolidation and ors.

**Advocate for Pet/Ap. :** Mr. Balram Yadav

**Judgement :**

**Narayan Shukla, J.**

1. Heard Mr. Balram Yadav, learned Counsel for the petitioner and learned standing counsel for opposite party No. 1 as well as Mr. Umesh Kumar Srivastava, learned Counsel for opposite party No. 2.

2. Brief facts of the case are that Gata No. 3184, which was initially recorded as abadi and banjar was shown in the revenue records as Gata No. 3184/1 to 3184/6 and accordingly C. H. Form No. 5 was issued. Nobody including the opposite

parties raised objection against the entry of the said Gatas. Since no objection was raised, the statement of principle was confirmed and accordingly plot No. 3184/2 bearing area 13 bighas and 18 biswas was mentioned as abadi, plot No. 3184/3, bearing area 16 biswa and plot No. 3184/4 bearing area 18 biswas were mentioned in the name of the opposite party No. 2 and fathers of opposite party Nos. 4 to 6 and 8 to 12 as agricultural land, containing few trees, as they were granted pattas over the banjar land for agricultural purposes, and accordingly their chaks were carved out over their original holding. Nobody including the opposite parties raised any objection claiming therein to record the said land as grove land. Thus, in the said manner the consolidation operation was de-notified on 26th of February, 1988. However, after some time the petitioner came to know that the said Gata was entered in the revenue record in the name of opposite party No. 2 and opposite parties 2 to 13 as grove land. The petitioner filed an objection stating therein that the said land was never grove land as there were no trees except 2-3 trees of the opposite parties standing in the abadi land. Subsequently he came to know that the map of the said land was got changed by the opposite parties 2 to 13 with the collusion of the consolidation officials. Then the petitioner preferred a miscellaneous application before the Deputy Director of Consolidation stating therein that over the land in dispute the petitioner's house is constructed and the appurtenant land is being used for convenient living inasmuch as the land was recorded as abadi land in the revenue record, as Gata No. 3184/9 bearing area 13 bighas and 18 btswas, and it was never changed through the report of the consolidator. The error in the map was accepted and the same was recommended for correction. Accordingly the Assistant Consolidation Officer prepared a reference with recommendation to correct the error according to actual spot position. More so the Consolidation Officer as well as the Settlement Officer of Consolidation also recommended for modification of the map in accordance with the proposal made by the Assistant Consolidation Officer. Further the spot inspection was made by the consolidator and a report was submitted on 20th of May, 2006, which mentions that plot No. 3184/9/2 was in the form of abadi over which the house of the petitioner is situated. The report further discloses that there was only two trees of the opposite parties 2 to 13. Thereafter the Deputy Director of Consolidation decided the reference by means of order dated 29th of July, 2006

and held that there is an error in the map, which is liable to be corrected and accordingly issued direction to the Assistant Consolidation Officer to correct the map. Thereafter the opposite parties 2 to 13 filed a time barred restoration application before the opposite party No. 1 on 16.6.2007 stating therein that after 15th of September, 2003 they were not given any information about the case and also no opportunity of hearing was given to them. The petitioner contested the said application by filing objection with the averments that opposite parties 2 to 13 had been attending the Court of opposite party No. 1 and since they failed to attend the Court on the date of hearing, which was within their knowledge, knowingly, they are not entitled for any relief. The opposite party No. 1 allowed the application for restoration with the findings that the map of plot No. 3184/9/1 and 3184/9/2 has been corrected on the basis of the report dated 12.3.2006 submitted by the Assistant Consolidation Officer, whereas the village was de-notified from consolidation operation in the month of July, 1988. An objection under Section 9 of the U.P.C.H. Act was already pending relating to the instant dispute.

3. The learned Counsel for the petitioner has challenged the order impugned inter alia that the application for restoration was barred by time and the same has not been considered by the opposite party No. 1, rather he proceeded to decide the case on merit without considering the objection of the petitioner. He has further raised the question on the jurisdiction of the Additional District Magistrate (Finance and Revenue), Ambedkar Nagar to entertain and decide the case in question as it was the Deputy Director of Consolidation, Ambedkar Nagar who was competent to decide the same and the said power was not delegated to the Additional District Magistrate (Finance and Revenue), Ambedkar Nagar in any manner, therefore, the order passed by him is wholly without jurisdiction and void ab Initio. He submitted that the Deputy Director of Consolidation, Faizabad is holding the charge of Deputy Director of Consolidation, Ambedkar Nagar as no independent Deputy Director of Consolidation, Ambedkar Nagar has been appointed. So far as the jurisdiction of the Additional District Magistrate (Finance and Revenue), Ambedkar Nagar to exercise the power of Deputy Director of Consolidation, Ambedkar Nagar is concerned, the same has not been entrusted upon him, therefore, the order is without jurisdiction.

4. Through the short counter-affidavit the learned Counsel for the opposite party No. 2 submitted that the title objection preferred by the petitioner under Section 9A (2) of the U.P.C.H. Act in respect of plot No. 3184/9/1 has already been rejected by Consolidation Officer by means of order dated 13.4.2004 and against the said order no appeal or revision has been filed by the petitioner. It has further been submitted that the opposite party No. 1 has observed that plot No. 3184/9/2 is recorded as grove from the time of ancestors of opposite party No. 2 and the petitioner wanted to get it recorded as abadi, which is beyond the jurisdiction of the Consolidation Court. It has further been submitted that the consolidation operation was de-notified under Section 52 of the U.P.C.H. Act in the year 1988 and the present proceeding has been initiated on the petitioner's application moved in 2002 after the lapse of 14 years, which is highly time barred and before entertaining the said application the opposite parties should have been given opportunity of hearing. Accordingly he has submitted that there is no error in the order impugned as it satisfies the compliance of the natural justice.

5. On the point of jurisdiction the learned Counsel for the petitioner has cited a case, i.e., Lallu and Anr. v. Joint Director of Consolidation and Ors. 1965 RD 289, in which the question for consideration was that whether Shri Syed Husain had been authorised within the meaning of Section 11(2) to hear the appeal. Only the Director of Consolidation could authorise him and nobody else such as the Commissioner of Consolidation. It was held that he was authorised by Sri I. D. N. Sahi, who was Commissioner of Consolidation. In the order authorising him, he rightly did not claim to be Director ; instead he claimed to be Commissioner of Consolidation. He had been conferred under Section 44 the powers of Director of Consolidation by the State Government but that did not convert him into Director. The Court held that the Director means only the person appointed as Director by the State Government, i.e., appointment in exercise of the powers conferred upon the State Government by Section 42. A person upon whom the State Government confers powers of Director under Section 44 is not a Director because he is not appointed as such. The Commissioner of Consolidation upon whom Director's powers are conferred by the State Government under Section 44, remains Commissioner of Consolidation, though he also becomes competent to exercise Director's power. Merely because Director's powers are conferred upon him, he

does not become Director because he has not been appointed as such in exercise of the powers conferred by Section 42.

6. He further submitted that since the Additional District Magistrate was not appointed as Deputy Director of Consolidation he had no jurisdiction to entertain the revision in question.

7. On the other hand the learned Counsel for the opposite party No. 2 Mr. U. K. Srivastava, in support of his contentions relied upon a decision of this Court in the case of Kailash Shanker v. Upper Zila Adhikari/D.D.C, Jalaun and Ors. 1993 RD 68 : 1993 (1) AWC 128, in which the question for consideration was that whether Upper Zila Adhikari has jurisdiction to decide the revision under Section 48 of the U.P. Consolidation of Holdings Act, 1953 and which out of two provisions added to a statutory provision shall prevail. The Hon'ble Judge of this Court held that suffice it to say that Director and Dy. Director of Consolidation are defined terms under Section 3 (4) of the Act. Director of Consolidation means a person appointed as such by the State Government who exercises the power, performs the duty as Director of Consolidation and would include Additional Director of Consolidation/Joint Director of Consolidation. Deputy Director of Consolidation is also defined under Section 3 (4) of the Act. It means person appointed as such by the State Government, who exercise such powers, perform such duties as Director of Consolidation as may be delegated to him by the State Government and shall include District Dy. Director of Consolidation, Director of Consolidation. The District Dy. Director is also a defined term under Section 3 (4B) which means a person for the time being Collector of the District. The revisions were filed before the Collector of the District. The petitioners earlier filed a writ petition before the High Court and the Court directed that the District Dy. Director of Consolidation would pass appropriate orders so that the revisions are decided by a competent authority. As a consequences of which the revisions were transferred to the Court of Upper Zila Adhikart (Finance and Revenue) who was authorised to decide the revision. There is, accordingly no irregularity if the revisions were decided by the Upper Zila Adhikari as Dy. Director of Consolidation. The power to decide the revisions under Section 48 was conferred on the Addl. District Magistrate in view of G.O. No. 113/74-Revenue-8 (868)-Rev.-8 dated 21.11.1974 and other relevant

G.Os.

8. Mr. Srivastava, learned Counsel for the opposite party also placed a Notification dated 23.11.74, whereby the Additional Collectors of all the districts in consolidation have been authorised to exercise the power of Director of Consolidation under Section 48 of the Act and accordingly he submitted that the Additional District Magistrate has exercised the power and passed the order. There is no infirmity in the order and the same does not warrant interference by this Court.

9. Rule 111 of U.P. Consolidation of Holdings Rules, 1954 speaks that an application under Section 48 of the Act shall be presented by applicant or his duly authorised agent to the Joint/Deputy/ Assistant Director of Consolidation, nominated by the Director of Consolidation, Uttar Pradesh for the District or Settlement Officer of Consolidation unit concerned or failing posting of any such Joint/Deputy/Assistant Director of Consolidation in the district, to the District Deputy Director of Consolidation.

10. Section 48 provides that 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.

11. So far as the contentions of the learned Counsel for the petitioner that the Additional District Magistrate was not appointed under Section 42 is concerned, I am of the view that Section 42 relates to the appointment of authorities and officials to give effect to the provisions of this Act, whereas under Section 44, the State Government is empowered to delegate to any officer or authority any of the powers conferred upon it by this Act. Section 44 of the U.P. Consolidation of Holdings Act, 1953 is quoted hereunder:

44. Delegation.-The State Government may by notification in the Official Gazette, and subject to such restrictions and conditions as may be specified in the notification:

(i) delegate to any officer or authority any of the powers conferred upon it by this Act ; and

(ii) confer powers of the Director of Consolidation, Deputy Director of Consolidation, the Settlement Officer of Consolidation, and the Consolidation Officer under this Act or the Rules made thereunder, on any officer or authority.

12. As is evident from the aforesaid Section, under Section 44 the State Government may confer power of the Director of Consolidation, Deputy Director of Consolidation, Settlement Officer of Consolidation and the Consolidation Officer under this Act and the Rules made thereunder to any officer or authority in exercise of powers provided under the aforesaid Section.

13. The State Government has issued the aforesaid notification authorising the Additional Collector to exercise the power under Section 48 of the Act. Section 3 (4B) speaks that the Collector of the district is for the time being District Deputy Director of Consolidation. Under Sub-section (3) of Section 14A of the U.P. Land Revenue Act, 1901, it is provided that the Additional Collector shall exercise such powers and discharge such duties of a Collector in such cases or classes of cases as the Collector concerned may direct. Sub-section (4) speaks that this Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under Sub-section (3), as if they were the Collector of the district.

14. Thus, it is apparent that the Additional Collector is authorised to exercise the power of Collector of the District and the Collector of the District is, for the time being, District Deputy Director of Consolidation. Taking care of these provisions of the Act, the State Government has issued Notification in exercise of power provided under Section 44 (2) of the U.P.C.H. Act authorising the Additional Collector to discharge the duties of the Collector as District Deputy Director of Consolidation and since under Sub-section (4A) of Section 3 of U.P.C.H. Act the Deputy Director of Consolidation includes the District Deputy Director of Consolidation. The Additional Collector is fully empowered to discharge the functions of the Deputy Director of Consolidation under Section 48 of the Act as it is not the case of the appointment, but it is the case of authorisation to function as

Deputy Director of Consolidation. Thus, I am of the view that the Additional Collector has rightly exercised his power and on this point the impugned order does not warrant interference by this Court.

15. So far as the argument of the learned Counsel for the petitioner that on the question of delay the revisional authority has failed to appreciate the question of delay is concerned, after perusal of the order dated 29th of July, 2006, passed by the Deputy Director of Consolidation, which has been brought on record, I find that the map was amended on the basis of the report dated 12.9.2003 of the Assistant Consolidation Officer without providing opportunity of hearing to the opposite parties, whereby their rights are prejudiced. As such there is no such serious irregularity committed by the Deputy Director of Consolidation as to draw the attention of this Court to interfere in the matter. Moreover the petitioner's application moved after 14 years was entertained and order was passed without providing opportunity of hearing to the opposite parties. Further from perusal of the orders impugned I find that the matter requires to be heard substantially on merit after providing opportunity of hearing to the parties. Therefore, I am not inclined to interfere in the order impugned. However, it is observed that if any finding is there in the order impugned, which affects the merit of the case, the Deputy Director of Consolidation shall proceed to decide the case, without being prejudiced with the findings given therein, on merit of the case.

16. The writ petition is dismissed.