

Reet Ram and Others Vs. Deputy Director of Consolidation, Bareilly and Others

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Court : Allahabad

Decided On : Apr-25-2011

Judge : A.P. Sahi, J.

Acts : Land Revenue Act, 1901; U.P. Consolidation of Holdings Act, 1953 - Section 9-A, 12

Appeal No. : CIVIL MISC. WRIT PETITION NO. 67439 OF 2008 And CIVIL MISC. WRIT PETITION NO. 16019 OF 2011

Appellant : Reet Ram and Others

Respondent : Deputy Director of Consolidation, Bareilly and Others

Advocate for Def. : Sri. S.S. Sisodiya, Sri. Saini

Judgement :

1. Heard learned counsel for the petitioners and Sri S.S. Sisodiya and Sri Saini, learned counsel for the respondents. Counsel agree that the petitions be disposed of finally at this stage itself.
2. These two writ petitions have been filed by persons claiming themselves to be the Vendees of late Moti Ram. They contend that they had purchased the property through a sale deed dated 9.12.1986. Upon having purchased the land, they claimed to have applied for mutation and the Tahsildar passed an order on

07.08.1987 against which a restoration application was filed by late Moti Ram. The said restoration was allowed against which the petitioners filed an appeal before the Appellate Authority under the Land Revenue Act, 1901. During the pendency of the said appeal, the consolidation operations set in and, therefore, the said proceedings abated.

3. It appears that objections were filed under Section 9-A of the U.P. Consolidation of Holdings Act, 1953 and the matter proceeded. The petitioners also appear to have filed an application under Section 12 of the U.P. Consolidation of Holdings Act, 1953 for mutation. The application under Section 12 was allowed despite the pendency of the objection under Section 9.

4. A restoration application was filed against the order passed in application under Section 12 which was allowed and the appeal filed by the petitioners was dismissed and the revision received the same fate against which Writ Petition No. 67439 of 2008 has been filed.

5. During the pendency of these proceedings, it appears that on the strength of an interim order dated 07.01.2009 passed in Writ Petition No. 67439 of 2008 on an application which was filed to stay the proceedings before the Consolidation Officer under Section 9 of the U.P.C.H. Act, 1953, an order of status quo was passed whereafter an appeal was filed which was rejected by the Consolidation Officer. Against which another appeal was filed, which was allowed. Against that a revision was preferred. The Revisional Authority initially passed an order on 5.8.2010 whereby the revision was allowed and the order of the Appellate authority was set aside directing the Consolidation Officer to decide the objections under Section 9A (2) of the U.P.C.H. Act, 1953. This order came to be reviewed by the impugned order dated 22.02.2011 and the entire dispute appears to have been decided on merits by the Deputy Director of Consolidation without there being any evidence led as directed by the earlier order.

6. The contention raised is that in the aforesaid background, the Deputy Director of Consolidation ought to have maintained the order dated 5.8.2010 in order to resolve the dispute between the parties. It is, therefore, submitted that the impugned order dated 22.2.2011 being an incorrect exercise of jurisdiction

deserves to be set aside.

7. Having heard learned counsel for the parties, the background of the case clearly demonstrates that the proceedings under Section 12, that were undertaken, and reached the High Court in Writ Petition No. 47439 of 2008, in the opinion of the Court, was an absolutely infructuous exercise without adhering to the mandate of sub-section (2) of Section 12 of the Act moreso keeping in view the fact that the objections under Section 9 were still pending. The dispute raised under Section 12 ought³ to have been clubbed with the objection under Section 9 and the same could have been decided simultaneously. The Deputy Director of Consolidation, in the opinion of the Court, was therefore right in passing the order dated 05.08.2010 and remanding the matter back to the Consolidation Officer for deciding the objections afresh after allowing the parties to lead their evidence. In such a situation, the impugned order dated 22.02.2011 cannot be sustained. It is hereby quashed. The consequence of passing of this order is that the order dated 05.08.2010 revives. The revival of the said order renders Writ Petition No. 67439 of 2008 infructuous.

8. Accordingly, the Writ Petition No. 67439 of 2008 is dismissed as infructuous.

9. Writ Petition No. 16019 of 2011 is allowed with a direction to the Consolidation Officer to proceed to decide the objections filed under Section 9 of the U.P.C.H. Act, 1953 after giving an opportunity of hearing to the parties and lead evidence within a period of six months from the date of presentation of a certified copy of this order before him.

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