

Devendra Mohan and Others Vs. Dy. Director of Consolidation, Varanasi and Others

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Court : Allahabad

Decided On : Mar-23-2011

Judge : Amreshwar Pratap Sahi,J.

Acts : U.P. Consolidation of Holdings Act - Section 5 (C)

Appeal No. : WRIT - B No. - 57901 of 2010

Appellant : Devendra Mohan and Others

Respondent : Dy. Director of Consolidation, Varanasi and Others

Advocate for Def. : C.S.C.; H.N. Shukla; Manvendra Nath Singh; R.R. Shukla, Advs

Advocate for Pet/Ap. : Jeevan Prakash Sharma, Adv

Judgement :

1. Heard Sri Jeevan Prakash Sharma learned counsel for the petitioner and Sri H.N.Shukla for the respondent no.4 and the learned standing counsel for the respondent nos. 1,2 and 3. Learned standing counsel inspite of time having been granted has not filed any counter affidavit.

2. Learned counsel for the parties agree that the writ petition be disposed of finally at this stage

3. The issue raised before this Court is that the proceedings before the Settlement Officer Consolidation under Section 5-C of the U.P.C.H.Act were without jurisdiction and as such the Deputy Director of Consolidation has committed a manifest error by upholding the order dated 24.9.2009.

4. Learned counsel for the petitioner submits that the order impugned is erroneous in law inasmuch the Settlement Officer Consolidation could not have assumed the jurisdiction of the Civil Court for granting an interim injunction of the nature as prayed for. He further submits that the construction which was existing was not disputed as such the same could not be a subject matter of proceedings under the U.P.C.H.Act, inasmuch as the construction exists prior to the notification under Section 5 of the Act. For this he has invited the attention of the Court to C.H.Form 18 to contend that at the time of survey it was indicated that the disputed land was Abadi and besides the road where a market is held. Therefore the respondents are trying to dispossess the petitioner on the strength of the order which was obtained from the Settlement Officer Consolidation on 24.9.2009. In the proceedings under Section 5 (c) the Settlement Officer Consolidation pass an order which has been maintained by the Deputy Director of Consolidation by the impugned order dated 31.8.2010 which deserves to be set aside.

5. Sri H.N.Shukla learned counsel for the respondent contends that it is the petitioner who is trying to dispossess the answering respondent from the property. He further submits that the consolidation proceedings are still pending and therefore in order to protect the status of the property, it was necessary to pass the order.

6. Learned standing counsel also supports the impugned order.

7. Having heard learned counsel for the parties it is evident that no new constructions have been raised and which fact was not disputed. The real dispute is with regard to the possession of the constructions over the plot. The Settlement Officer Consolidation had no authority to pass an interim order on 24.9.2009 in relation to the constructions that were already in existence prior to the commencement of the consolidation operations. The Deputy Director of Consolidation has completely over looked this aspect of the matter and the facts

existing on record. In such a situation it was a clear case with regard to a dispute relating to the possession of the constructions over the plot in question. The respondent is claiming possession and therefore it is open to the respondent to file a civil suit and pray for an injunction. The proceedings before the Settlement Officer Consolidation are without jurisdiction being coram non judice. Learned counsel for the respondent has been unable to point out any provision contained in Section 5(c) of the 1953 Act to support the authority of the Settlement Officer Consolidation to assume jurisdiction for the relief actually claimed. The writ petition deserves to be allowed.

8. Accordingly the order dated 24.9.2009 as well as the impugned order dated 31.8.2010 are quashed. All proceedings before the Settlement Officer Consolidation alleged to have been filed under provisions of Section 5 (c) also stands annulled. It is the respondent to approach the Civil Court for claiming any such rights as raised before the Settlement Officer Consolidation.

9. The writ petition is allowed. No order as to costs.

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