

Gafoora and Another

Vs

Deputy Director of Consolidation, Meerut and Others

Civil Appeals Nos. 1914 to 1917 of 1974

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

21.07.1975

JUDGMENT

GOSWAMI, J. –

1. This order will govern all the above four appeals.
2. The above civil appeals are directed against the common judgment of the Allahabad High Court in Writ Petitions Nos. 2143, 2144, 2145 and 2148 of 1971. One Nathu Masih was the recorded bhoomidar of the lands in dispute. The appellants claim to have purchased for valuable consideration the disputed lands by two registered sale deeds both of July 21, 1959, from Nathu Masih. The appellants, however, did not obtain mutation of their names in the record of rights. Meanwhile consolidation proceedings were commenced under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. V of 1954) (briefly the Act). Appropriate notifications in C.H. Form 5 were issued under Section 9 read with Rule 25(c) of the U.P. Consolidation of Holding Rules, 1954 in November, 1966 inviting objections to the issue of extracts from records and statements and publication of records under section 8A of the Act. Under Section 9(2) objection may be lodged by any person to whom notice has been sent or by any other person interested within 21 days of receipt of the notice or of the publication of the notice under sub-section (1) of Section 9. It is admitted that no objection was preferred under Section 9(2) by the appellants within in prescribed time. However, an objection was lodged on October 19, 1967, purporting to be one under Section 12 of the Act. When objection was raised by the respondents to this application under Section 12 on September 12, 1968, the appellants on the same day applied to the Consolidation Officer to register their application under Section 9 of the Act and also prayed "that the delay, may be condoned". This application was not supported by any affidavit not were any grounds mentioned for condonation of the delay. The Consolidation Officer held that the application under Section 12 was not maintainable nor could he condone the delay in absence of any reasons disclosed by the appellants. The applications were, therefore, rejected. The appellants preferred appeals to the Settlement Officer (Consolidation) against the orders of the Consolidation Officer. The Settlement Officer allowed the appeals and set aside the orders of the consolidation Officer dated September 12, 1968 and September 16, 1969, respectively and remanded the cases to the Consolidation Officer with the direction that he should decide them on merits after registering the same under Section 9 of the Act and also consider the question of limitation. The respondents prefer four revisional applications to the Deputy Director (Consolidation) against the common order of the Settlement Officer of March 7, 1969, under Section 48 of the Act. The Deputy Director (Consolidation) went into the whole matter very carefully and set aside the order of the Settlement Officer and restored the order of the Consolidation Officer of September 12, 1968. The Deputy Director (Consolidation) in substance held that the applications under Section 12 were barred under Section 11A of the Act and were,

therefore, correctly rejected by the Consolidation Officer. He also held that since objections under Section 9(2) were not filed by the appellants within time and no cause whatsoever was shown at any stage of the proceedings explaining the delay for lodging the objections, these were rightly rejected by the Consolidation Officer. Being aggrieved by the orders of the Deputy Director (Consolidation) the appellants preferred writ applications under Article 226 of the Constitution in the Allahabad High Court and these were dismissed. Hence these appeals by special leave.

3. The short question that arises for consideration is whether the High Court is correct in not interfering with the order of the Deputy Director (Consolidation) under Article 226 is well-settled. The High Court will interfere only if some order is passed by an authority in excess of jurisdiction or there is a manifest error of law apparent on the face of the records. The principle question that was canvassed before the Deputy Director (Consolidation) was whether failure to prefer objection within the time limit prescribed under Section 9(2) of the Act would entitle an aggrieved party to agitate the matter beyond the prescribed period without explaining the cause of delay in preferring the objection and obtaining a proper order of condonation of delay from the appropriate authority. It is clear from the records that no objection was preferred within the prescribed time. The Deputy Director (Consolidation) refused, if we may say so, rightly to accept that the appellants had earlier lodged any objection on November 21, 1966. That being the position, there was no material whatsoever before the Settlement officer (Consolidation) for exercising his jurisdiction to condone the delay for lodging objection under Section 9(2) of the Act. Section 11A bars all objections in respect of claim to land, partition of joint holdings and valuation of plots, etc. relating to the consolidation area which have been raised under Section 9 or which might or ought to have been raised under that section but have not been so raised. These questions under Section 11A cannot be raised or heard at any subsequent stage of the consolidation proceedings. That being the position there is no error of law in the order of Deputy Director (Consolidation) nor is there any excess of jurisdiction committed by him in disposing of the matter as he did in exercise of jurisdiction committed by him in disposing of the matter as he did in exercise of his revisional power under Section 48.

4. The learned Counsel for the appellants made an earnest appeal to us in the course of the hearing that their valuable rights which they secured by registered purchases from the recorded proprietor had been defeated resulting in grave injustice. That is a matter which this Court is not seized of in these appeals and we refrain from expressing any opinion on that submission.

5. In the result the appeals are dismissed but in the circumstances of the case there will be no order as to costs.

</html