

Shanti Prasad Gupta

Vs

Deputy Director of Consolidation, Camp at Meerut and Others

Civil Appeal No. 639 of 1980

(O. Chinnappa Reddy, R. S. Sarkaria JJ)

27.02.1980

JUDGMENT

SARKARIA, J. -

1. We have heard learned counsel for the parties. Counsel for the appellant has raised two contentions :

(1) That the order of the Consolidation Officer was appealable under Section 11 of the Act.

(2) In any case, the Director of Consolidation had exceeded his jurisdiction under Section 48, inasmuch as he allowed additional evidence to be produced before him in revision, which the revision-petitioner could have produced before the Consolidation Officer, but neglected to do so.

2. Learned counsel for the respondents strenuously opposed these contentions.

3. We find that contention (1) is not correct. The order against which Gian Chand Bansari went in revision before the Director did not fall within the purview of Section 9-A of the U.P. Consolidation of Holdings Act and, as such, was not appealable under Section 11 of that Act. We however find a good deal of force in the second contention of the appellant. Whether or not there is sufficient cause for condonation of delay, is a question of fact dependent upon the facts and circumstances of a particular case, and the proposition is well-settled that when order has been made under Section 5, Limitation Act by the lower court in the exercise of its discretion allowing or refusing an application to extend time, it cannot be interfered with in revision, unless the lower court has acted with material irregularity or contrary to law or has come to that conclusion on no evidence. We are aware that the powers of the Director under Section 48 of the Act are wider than those mentioned in Section 115 of the Code of Civil Procedure. Even so, the Director cannot lightly interfere with the discretion of the Consolidation Officer, unless the order sought to be revised is clearly erroneous or is likely to cause gross miscarriage of justice. Such was not the case here. The Consolidation Officer had in condoning the delay exercised his discretion judicially on the basis of evidence produced before him by the parties. The Deputy Director of Consolidation (exercising the powers of the Director) had without assigning any reason allowed the revision-petitioner to produce additional evidence (letter) before him, which the revision-petitioner could with due diligence, produce before the Consolidation Officer, but failed to do so. Then, it is not apparent from the impugned order whether the appellant before us, was also given by the Deputy Director an opportunity to produce evidence in rebuttal of the additional evidence, although a bold mention is there that "the opposite

party has not any documentary evidence in rebuttal of this".

4. We are of opinion that since the order of the Consolidation Officer holding that there was sufficient cause for condoning the delay and extending time under Section 5, Limitation Act, did not suffer from any material irregularity, or impropriety or illegality, the Deputy Director was not justified in overturning the same in the exercise of his powers under Section 48 of the Act.

5. We therefore, allow this appeal, set aside the impugned orders of the High Court and of the Deputy Director of Consolidation, and restore the Order, dated July 22, 1975, of the Consolidation Officer. There will be no order as to the costs of this appeal.

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