

**SUPREME COURT OF INDIA**

Guljar Singh

Vs.

Deputy Director Consolidation

C.A.No.2578 of 2009

(Arijit Pasayat and Tarun Chatterjee JJ.)

15.04.2009

**JUDGEMENT**

**Tarun Chatterjee, J.**

1. Leave granted.
2. This appeals are directed against the judgment and final order dated 19th of November, 2004 of the High Court of Uttaranchal at Nainital in W.P.Nos. 1231 (M/S), 1083(M/S) and 1084(M/S) of 2004 whereby, the High Court had dismissed the writ petitions and affirmed the order dated 20th of October, 2004 passed by the Deputy Director of Consolidation (in short D.D.C.), Udham Singh Nagar.
3. The relevant facts, which would assist us in appreciating the controversy involved are narrated in a nutshell, which are as follows:

“Mohan Singh, Bhan Singh and Ram Singh jointly purchased an area of 302 Bighas in the village of Jagannathpur, Tehsil Kashipur, and District Udham Singh Nagar (hereinafter referred to as `the property in dispute'), out of which the share of Mohan Singh was recorded as 101 Bighas. Thereafter, all these persons together with three other persons, namely, Saudagar Singh, Sohan Singh and Atma Singh acquired 1486 Bighas and 6 Biswas by a lease deed executed by Zaminder Radhey Shayam in their favour. In the said deed, share of Mohan Singh was specified as 464 Bighas. Therefore, in total, Mohan Singh claimed his share in the property in dispute as 565 Bighas in respect of the aforesaid lands. Various objections and counter objections were filed by other co-sharers disputing the claim of Mohan Singh. In the Khatauni of 1359 F, the names of 14 persons were recorded as tenure holders. The tenure holders moved an application in the year 1959 before the Sub-Divisional Officer, stating therein that 17 tenure holders divided the property in dispute in 1951 and from that time, they were in possession according to their division, but their names had not been recorded in the revenue records according to their divisions and possession. It was alleged that they prayed for correction of their names in the revenue records

according to amicable arrangement. The Sub-Divisional Officer allowed their application, but in spite of that, it was claimed that their names were not entered in the relevant revenue records. Thereafter, correction proceedings started in the concerned village and the matter came up before the Asstt. Recording Officer, and Mohan Singh (the father of the appellants) filed an application on 11th of January, 1963 before the Asstt. Recording Officer to give effect to the order passed by the Sub- Divisional Officer on the basis of the amicable arrangement arrived at between the parties. The Assistant Recording Officer passed an order directing to make entries in accordance with the order of the Sub- Divisional Officer. In spite of that, according to the appellants, the revenue records were not corrected and the property in dispute was kept as separate Khata in the name of different tenure holders.

Thereafter, Ram Singh and others also filed an application before the Consolidation Officer praying that the Khata be divided in pursuance of the order passed by the Sub-Divisional Officer. Mohan Singh, however, alleged that the present entries in the revenue record must be maintained. It was the claim of Mohan Singh that he was ignorant about the order of the Sub-Divisional Officer, which was passed on the basis of the alleged amicable arrangement entered into by the parties and also claimed ignorance about the application which was alleged to have been filed by him before the Assistant Recording Officer, thus refuting the claim of the Respondents that he was a party to the proceedings before the Assistant Recording Officer. The Consolidation Officer allowed the claim of Mohan Singh to the effect that his total share in the aforesaid land was 564 Bighas, but he directed that since Mohan Singh had co-opted his son, nephews, brothers, and widow of his brother as co-tenants in his share, his share was reduced. The appellants thereafter filed two appeals against the order of the Consolidation Officer. The appeal filed by the appellants was dismissed by the Settlement Officer (Consolidation), whereas the appeal filed by Hari Singh and others was allowed. The Settlement Officer (Consolidation) while allowing the appeal of Hari Singh and others had set aside the order of the Consolidation Officer and directed that the entries in the record of rights may be prepared in accordance with the order of the Sub-Divisional Officer dated 31st of August, 1959. The appellants thereafter had filed two revision petitions against the order of the Settlement Officer (Consolidation) and both the said petitions were rejected by the DDC on 7th of July, 1975. Mohan Singh, the father of the appellants then challenged the aforesaid orders before the High Court of Allahabad by way of Writ Petition No. 7625 of 1975. While disposing of the writ petition setting aside the order of DDC and remanding the case back to DDC, the High Court made the following observations:- "This effect is apparent from the order of the Settlement Officer (Consolidation) which has been affirmed by the DDC, that the order of the Consolidation Officer has been set aside and without recording his own finding on the point indicated above, he has directed to implement the order of the Sub-Divisional Officer on 31.8.1959.

This, on the face of it, is illegal. The order passed in a mutation proceeding has no evidentiary value in Court or Authority, deciding the title of the partition merit. It was necessary for the Settlement Officer (Consolidation) and the DDC to consider and

decide the case on merit and to pass the specific order. The orders of the Settlement Officer (Consolidation) and the DDC and manifestly erroneous in law and are not liable to be maintained.

Although the order of the Settlement Officer (Consolidation) is also illegal, but the justice will be met if the case is decided by the Director of Consolidation has the jurisdiction to consider the case of the parties on the facts as well as law."

4. After remand by the High Court at Allahabad, the DDC allowed the revision petition of the appellants by his order dated 20th of October, 2004 and the entries of Bandobast and consolidation were cancelled and the shares of the parties were decided in the manner indicated in the said order. From a bare reading of this order of DDC, it would be evident that the DDC while deciding the matter afresh, all the questions directed to be considered by the Allahabad High Court in the writ petition were duly considered after appreciating the evidence and the respective cases made out by the parties and the DDC finally came to the conclusion that the order of Consolidation Officer and the Assistant Settlement Officer (Consolidation) must be set aside and the entries of Bandobast and consolidation must be cancelled. This is seen from the above order that all questions were duly decided and evidence, oral and documentary, were duly considered and after that the aforesaid findings were arrived at by the DDC. A thorough examination of the findings arrived at by the DDC would show that there was no question to be left out and for any reason whatsoever, the findings were not arrived at in a perverse manner or the findings were arbitrary in nature. The appellants thereafter filed a writ petition being aggrieved by the order of the DDC before the High Court of Uttaranchal, at Nainital. It may be mentioned that when the order of DDC was passed, after remand, in view of the U.P. Re-organisation Act, 2000 the writ petition then could only be filed before the High Court at Uttaranchal and accordingly the appellants, feeling aggrieved, filed a writ application impugning the order of DDC before the High Court of Uttaranchal at Nainital. The High Court by the impugned judgment had affirmed the order of the DDC and feeling aggrieved, the appellants have filed this appeal by way of a special leave in this Court under Article 136 of the Constitution, which on grant of leave, was heard in the presence of the learned counsel appearing on behalf of the parties.

5. We have heard the arguments of the parties and perused the materials on record. We have also examined the impugned order of the High Court and also the orders passed by the authorities in respect of which challenge was made before the High Court in the Writ Petitions. After going through the judgment of the High Court, it is imperative to note that all the facts leading to the dispute of this case have been extensively deliberated in the High Court and the same had reiterated in its judgment that the DDC had complied with the judgment of the High Court of Allahabad in its order after following the observations and directions made by it. It is well settled that we are entitled to interfere with the judgment of the High Court under Article 136 of the Constitution only when there is gross irregularity in the judgment of the High Court or any substantial grounds of law which are of public importance have been raised in such a petition. If these conditions are not satisfied, it would not be open to this Court to interfere with the concurrent findings of the High Court as well

as of the DDC in the exercise of our discretionary power under Article 136 of the Constitution.

6. In our view, the concurrent findings of fact arrived at by the authorities and affirmed by the High Court would clearly show that such findings were arrived at on consideration of all materials placed before the court and after giving proper hearing to the parties. Such findings of fact, in our view, cannot be interfered with in the exercise of our power under Article 136 of the Constitution. Therefore, the instant appeal is liable to be dismissed for the reasons given hereinunder.

7. From the record, it appears that the DDC, after remand, by the High Court of Allahabad in a writ application to decide the dispute between the parties afresh had considered all the evidence of the present case and evidence on record by following such directions of the High Court, and other materials on record and accordingly, had set aside the order of the Consolidation Officer and the Assistant Settlement Officer, Consolidation, Kashipur, and thereby cancelled the entries of Bandobast and consolidation. Keeping the findings arrived at by the DDC which was affirmed by the High Court and while doing so, the High Court made the following observations:

"This Court is of opinion that every time in such a old case it is not just and proper to quash the orders on technical grounds and force the litigants to go back again and again to litigate on the same point. In other words now in this round of litigation, after 25 years of the order passed by the Allahabad High Court, this Court should not go beyond examining if the directions of the Allahabad High Court were complied with by the DDC in disposing of the revision afresh or not."

8. Thus being so observed, the Uttaranchal High Court went on to note that the perusal of the order dated 20th of October, 2004, showed that the DDC had then recorded the findings as to the claims of the parties keeping in view of the directions of the Allahabad High Court.

Therefore, the High Court was correct to observe that the DDC had complied with the order of the Allahabad High Court and dismissed the petition of the appellants. It is very important for the disposal of this case to refer again to the relevant portion of the judgment of the High Court to elaborate this observation made by the Court.

"Learned counsel for the appellants of all the three writ petitions argued before me that share of one or the other is being shown to be less than what they had claimed. It is further argued by all the appellants that as to their share, claims were not properly considered. I may remind it here that this Court is exercising its jurisdiction in supervisory-cum-revisional power and cannot decide the intricate questions of facts relating to shares. Rather, from the perusal of the impugned order, it is clear that in a detailed judgment of 14 pages learned Dy. Director of Consolidation has given reasons for its findings on shares of each one of the parties. In the circumstances, it cannot be said that the Dy. Director of Consolidation has not complied with the directions of Allahabd High Court while disposing of the writ petition."

9. It has been rightly pointed out by the High Court that the High Court in the exercise of its revisional-cum-supervisory power cannot go into the intricate details of facts and decide the questions raised therein. We are in agreement with these views of the High Court, except that in exceptional cases such orders which are based on perversity and arbitrariness could be interfered with by the High Court. After a long period of litigation ranging for almost 50 years, the DDC had decided according to the shares of the parties after complying with the observations made by the Allahabad High Court as had been noted by the High Court in its impugned judgment and it is not proper to set aside the orders on technical grounds and force the litigants to go back again and again to litigate on the same point. In any view of the matter, we are not in a position to observe that there was anything for the High Court to interfere with the order of the DDC, as it appears from the observations made by the Allahabad High Court that the DDC will decide the dispute and consider all aspects of the matter and the entire materials including the oral and documentary evidence on record.

10. From the order dated 20th of October, 2004, passed by the DDC, it is clear to us as to how the parties had got the shares given to them by the DDC. Learned counsel for the appellants argued that the DDC had wrongly shown some of the plots being submerged into the river bed. This Court is not in a position to disbelieve what the DDC had stated unless firm evidence to the contrary is on record. The appellants had not been able to produce any evidence to satisfy this contention.

11. The Learned Counsel for the appellants also raised a contention that after the creation of the separate State of Uttaranchal, Additional District Magistrate, Udham Singh Nagar had no jurisdiction to exercise power of the DDC. We do not agree to this contention as well. This is because all the notifications issued by the Govt. of Uttar Pradesh are applicable to the state of Uttaranchal under Section 86 of *UP Reorganization Act, 2000* read with Section 88 of the said Act.

Sections 86 and 88 which are necessary for our purpose are reproduced below:

"86. Territorial extent of laws:- The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling on *Land Holdings Act, 1961* (U.P. Act 1 of 1961) and any other law in force immediately before the appointed day, extends or applies, and territorial references of any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing state of Uttar Pradesh before the appointed day.

88. Power to construe laws:- Notwithstanding that no provision or insufficient provision has been made under Section 87 for adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority."

12. From the reading of the aforesaid two provisions, it would not be possible for us to hold that the Additional District Magistrate, Udham Singh Nagar had no jurisdiction to exercise power of the DDC.

13. It was next contended that the order of the DDC, Udham Singh Nagar dated 20th of October, 2004 was passed in contravention of the directions issued by the High Court of Allahabad as stated herein earlier. As has been already mentioned above, the High Court at Uttaranchal correctly noted that the order passed by the DDC was not in contravention of the directions of the Allahabad High Court. The DDC had taken into consideration the observations made by the Allahabad High Court and after perusing all the material documents and contentions of the parties, passed the order dated 20th of October, 2004. Thus the contention that the DDC had not taken into consideration the order of the Allahabad High Court cannot be accepted and accordingly rejected.

14. It was next contended that the order of the Sub-Divisional Officer, Kashipur, passed on 31st of August, 1959 under Sections 33 and 39 of the UP Land Revenue Act, could not be relied on and form the basis of the order passed by the DDC and the same cannot modify and disturb the basic year entries as recorded in the Khata of the appellants. We do not find any ground to uphold this contention. It has to be noted that the proceedings started under the UP Consolidation of Holdings Act, and the allocation of Chaks were made pursuant to the orders passed by the Consolidation Officer and the DDC, after duly considering the claims of the parties. It is well settled that the DDC is conferred with wide powers under the Act to adjudicate the issue posed before him. In order to elaborate this point, it is essential to refer to the case of *Sheo Nand & Ors vs. Deputy Consolidation Allahabad and Ors.*<sup>1</sup>. In the said case, this Court, referring to Section 48 of the Act had noted that:

"The Section gives very wide powers to the Deputy Director. It enables him suo motu on his own motion or on the (application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the Revenue Records may be prepared accordingly.

Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinize the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the Revenue record are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to re- appraise or re-evaluate the evidence on record so as

to finally determine the rights of the parties by excluding forged or fictitious revenue entries or entries not made in accordance with law.

If, therefore, during the course of the hearing of the revision filed by the appellant under Section 48 of the Act, the Deputy Director reopened the whole case and scrutinized the claim of the appellants in respect, of two other villages, it could not be said that the Deputy Director exceeded his jurisdiction in any manner. It will be noticed that while scrutinizing the evidence on record, the Deputy Director had noticed that the entries were fictitious and in recording some of the entries in the revenue record in favour of the appellants, statutory provisions including those contained in U.P. Land Records Manual were not followed. In that situation, the Deputy Director was wholly justified in looking into the legality of the entire proceedings and disposing of the revision in the manner in which he has done."

15. From the above-quoted observations of this Court, it is clear that the DDC has wide range of discretionary powers mandated under the Act by which he could proceed to modify even the basic year entries if found to be wrongly derived at. Therefore, the contention that the DDC could not have modified the basic year entries was not correct. It appears to us that the Khatuani prepared in the Bandobast was incorrectly made and the courts below including the DDC had been duly conferred with power under the Act to correct the same. In fact, the Assistant Recording Officer, Kashipur had passed an order in 1963 to correct the entries as per the order of the Sub-Divisional Officer, Kashipur dated 31st of August, 1959 but the same was not complied with.

16. The learned counsel for the appellants also contended that relying on Section 11A of the Act, any objection for the first time could not be entertained by the authorities. We do not agree with this submission of the learned counsel for the appellants. We have already observed that the respondents had not accepted the order passed by the Settlement Officer, Consolidation, Kashipur and they had filed their separate objections to this regard, hence, the contention could not be said to be correct and, therefore, it should be rejected. Furthermore, a reading of the application dated 6th of July, 1959 would clearly show that the parties had appeared before the authorities below before the remand of the case to the DDC which would be evident from Annexure R2.

17. It is evident from the perusal of the order of the Allahabad High Court while passing the order of remand that the several issues which were raised by the parties were fully considered and finally directed the DDC to follow the procedures for coming to a proper conclusion afresh on merits. Since the High Court at Allahabad clearly directed the DDC to decide the matter on merits and in compliance with the said direction, the DDC considered all the entire materials, oral and documentary, on record to decide the matter, we do not find any excess jurisdiction exercised either by the DDC or by the High Court in coming to a finding arrived at by them.

18. The DDC after complying with the observations made by the Allahabad High Court had taken all steps to determine whether the consolidation process was proper or not. On this

count also, we are unable to agree with the contentions of the learned counsel for the appellants. It may be noted that many of the original parties to the consolidation proceedings had died over the period of time. At this stage on consideration of the impugned judgment of the High Court as well as of the DDC, we find that there is no evidence or material on record to contradict or upset the findings of the High Court which affirmed the findings of the DDC. In this connection, reliance can be placed to a decision of this Court in the case of *Vishnu Kamath vs. Ahmad Syed Ishaque*<sup>2</sup> in which this Court observed that:

"The finality given to the decision of the Settlement Officer (Consolidation) does not follow that it cannot be questioned in the writ jurisdiction of the High Court where there is an error apparent on the face of the record"

19. The observations made by this Court as above that there must be an error apparent on the face of the record affirms our observation that for an appeal to be allowed in such a situation such as this, a high standard must be met in the way of evidence produced to support the case of the appellants as noted herein earlier. All the materials and issues discussed in their petition were elaborately discussed and argued before the High Court of Uttaranchal which had affirmed the findings of the DDC and found no infirmity therein.

20. Lastly it was contended that the DDC exceeded his jurisdiction contrary to the decision of the Allahabad High Court. The Allahabad High Court, as has been mentioned above, directed the DDC to decide the case on merits. It has not come to our notice that the Allahabad High Court, in any way, specified the way the merits of the case should be determined. We, therefore, believe, based on the review of his findings that he did the best he could do in performing his duty as had been mandated by the Allahabad High Court.

21. Based on the reasons mentioned above, we do not find any infirmity in the impugned judgment of the Uttaranchal High Court and thus feel it unnecessary to interfere with the same.

22. The appeals are thus dismissed. There will be no order as to costs.

<sup>1</sup>2000 (3) SCC 103

<sup>2</sup>AIR 1955 SC 283