

SUPREME COURT OF INDIA

Rekh Pal

Vs.

Bhram Pal

C.A.No.5551 of 2009

(B.N.Agrawal and G.S.Singhvi JJ.)

17.08.2009

ORDER

Leave granted.

1. Heard learned counsel for the parties.

2. By an order dated 12th March, 1971, the Consolidation Officer decided objections filed by different chak holders. In the process, chak initially given to the appellant's father, Shri Roop Chand, near his original plot was disturbed. He, therefore, challenged the order of the Consolidation Officer by filing an appeal under Section 11 of the Uttar Pradesh Consolidation of Holdings Act, 1953. The same was allowed by the Settlement Officer (Consolidation) Meerut vide his order dated 25th April, 1971. The appellate order became subject-matter of challenge in three revisions, which were disposed of by Deputy Director of Consolidation, Meerut [for short, "Deputy Director"] by a common order dated 5th December, 1974. The Deputy Director changed the chak of the land of Shri Roop Chand with that of Karan Singh and others. In his order, the Deputy Director recorded that Shri Roop Chand had orally agreed to take the holding as per the determination made by the Consolidation Officer.

3. Aggrieved by the order of the Deputy Director, Shri Roop Chand filed writ petition before the High Court, inter alia, on the ground that he had neither been served with the notice of revision nor he was given opportunity of hearing by the Deputy Director. In the counter affidavit filed by some of the respondents in the writ petition, it was averred that Shri Roop Chand had participated in the proceeding before the Deputy Director and agreed to take the holding in terms of the order passed by the Consolidation Officer. Shri Roop Chand filed rejoinder affidavit. In Paragraph 10 thereof, he stated that he had never agreed to accept the chak allotted to him by the Consolidation Officer, against whose order, appeal had been filed and allowed. He also reiterated that he was not served with the notice of the three revisions and did not participate in the proceeding before the Deputy Director. In Paragraph 13, Shri Roop Chand averred that on 4th and 5th December, 1974, he was in police custody and was

granted bail on 5th December, 1974. In support of this assertion, he placed on record a copy of the extract received from R/S. Masuri, which was marked as Annexure R-1.

4. The High Court dismissed the writ petition by simply relying upon the statement contained in the order of the Deputy Director that Shri Roop Chand had agreed to accept the chak carved out at the stage of the Consolidation Officer. While advertng to the rejoinder affidavit, the learned Single Judge of the High Court observed that the denial is not specific and is vague and the Deputy Director has modified the chak of Shri Roop chand in accordance with the concession given by him. The learned Single Judge did refer to the contents of rejoinder but observed that the same were not specific and vague.

5. From a perusal of the record, it is clear that no notice was served upon the appellant in either of the three revision petitions filed against order dated 25th April, 1971. No doubt, order dated 5th December, 1974, passed by the Deputy Director makes a mention of the presence of Shri Roop Chand and the alleged oral statement made by him that he would abide by the determination made by the Consolidation Officer, if the same is considered in the light of the assertion contained in the rejoinder affidavit filed by him, which have not been controverted by the private respondents, it is extremely doubtful that Shri Roop Chand was present before the Deputy Director on 5th December, 1974. If notice of the revision petition had not been served on Shri Roop Chand, it is not understandable as to how he could, while in police custody, come to know about the date of hearing which was fixed as 5th December, 1974. Therefore, we are convinced that the order passed by the Deputy Director was contrary to the rules of natural justice and the High Court committed an error by declining to set aside the same.

6. Accordingly, the appeal is allowed, impugned order passed by the Deputy Director as well as the High Court are set aside and the matter is remitted to be Deputy Director to consider the matter afresh after giving opportunity of hearing to the parties.