

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2508-2509 OF 2005

SHIV SHANKER (D) BY LRS. & ORS. Appellant (s)

VERSUS

DY.DIRECTOR OF CONSOLIDATION & ORS. Respondent(s)

(With appln(s) for ex-parte stay and office report)

Date: 11/03/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) Mr. S.D.Singh,Adv.
Mr. Vijay Kumar,Adv.
Ms. Bharti Tyagi,Adv.
Mr. Rahul Kumar Singh,Adv.for
Mr. Vishwajit Singh,Adv.

For Respondent(s) Mr. Sanjay Visen,Adv.
Mr. Adarsh IUpadhyy,Adv.
Mr. Kamlendra Mishra,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed.
The judgment and order impugned before us are set
aside. No costs.

[SUMAN WADHWA]
COURT MASTER

[M.S. NEGI]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2508-2509 OF 2005

SHIV SHANKER (D) BY LRS. & ORS. .. APPELLANTS

VERSUS

DY. DIRECTOR OF CONSOLIDATON ...RESPONDENTS
GHAZIPUR & ORS.

O R D E R

These appeals have been filed against the judgment and order dated 18.8.1998 in Civil Misc. Writ Petition No. 32101 of 1997 and order dated 1.11.2002 passed in Civil Misc. Review Appln. No. 56615 of 1998 in the said writ petition passed by the High Court of Judicature at Allahabad, dismissing the writ petition as well as the Review Application filed by the appellants.

The facts and circumstance giving rise to these appeals are:

(A) That there has been a dispute in respect of Khasra Nos. 213, 214 and 215 situated at village Suraj Bhan chak, Pargana Khanpur Tehsil Saidpur Distt. Ghazipur U.P. and trees planted on the said land, as the appellants, as well as the other private contesting parties and the Gram Sabha, all claimed title over the said land.

The predecessor-in-interest of the appellant filed an application under Section 229-B of the U.P. Zamindari Abolition Act and Land Reforms Act 1951 (hereinafter referred to as the 'U.P.Z.A.L.R.Act') qua the suit property, claiming bhumidhari rights and in the said suit, the Gram Sabha as well as the State of U. P. were parties, along with other private parties.

The said suit was dismissed by the learned ASDO Saidpur Distt. Ghazipur vide judgment and order dated December 31, 1968. The appellants challenged the said order by filing Appeal No.102 of 1969 and the learned Additional Commissioner Varanasi Division Varanasi vide judgment and order dated June 5, 1969 set aside the order of the ASDO dated December 31, 1968 and remanded the case to the ASDO to decide the same afresh, after conducting the Court inspection himself. The matter was reconsidered in pursuance of the order of the Appellate Authority, and the learned ASDO vide judgment and order dated July 31, 1971, declaring bhumidhari rights of the predecessor in interest of the appellants on the land measuring two bigha and twelve biswa and ten biswansi in Plot No. 213 only. However, the claim rejected in respect of the remaining area was rejected, as the dispute had been in respect of three bighas, seven biswas and seven biswansies.

The order passed by the ASDO had attained finality as none of the parties had challenged the said order. The consolidation proceedings commenced in 1976 in the village therein, and an objection was filed by the Pradhan Gram Sabha/Chairman Land Management Committee in 1982, stating that as the said land had been a Pokhari (Pond), on commencement of the U.P.Z.A.L.R.Act, it had vested in the State. Thus, predecessor in interest of the appellant could not stake any right/claim on the said land inasmuch as the bhumidhari or sealdhari rights. The predecessor in interest of the appellants contested the said objection. However, vide judgment and order dated 25.11.1982 the Consolidation Officer rejected the said objection holding that the appellants and their predecessors in interest had already been declared bhumidars qua the said land vide judgment and order dated December 31, 1971 by the ASDO, which attained finality and thus the case was barred by res-judicata. Therefore it was not permissible for any authority to reopen it.

The Gram Sabha filed an appeal under Section 11 (1) of the U.P. Consolidation of Holdings Act, 1953, before the Settlement Officer, Consolidation Ghazipur (U.P.). The said appeal stood dismissed in default vide order dated 12.5.1988.

The Gram Sabha never moved an application for restoration of the said appeal but at a belated stage i.e. on June 20, 1996 a revision petition was filed against the order dated 12.5.1988 with an application under Section 5 of the Limitation Act. Subsequently an application for interim relief was also filed. However, the Consolidation proceedings stood de-notified on 24.9.1988 by application of Section 52 of the Consolidation Act. Then, Consolidation Authority would become functus officio and had no jurisdiction to entertain any application. However, the revision filed by the Gram Sabha through its Pradhan was allowed by the Dy. Director Consolidation vide order dated June 12, 1997 which has been upheld by the High Court vide impugned judgments and orders.

We have heard Mr. S.D.Singh, learned counsel for the appellants and Mr. Sanjay Visen for the respondents. We have been taken through all the judgments placed on the record as well as the proceedings. Whatever may be the merit of the revision etc. One fact remained admitted that the order passed by the ASDO on 31st July 1971 had attained finality and none of the authorities in any subsequent proceedings has considered the effect therefore.

As the Consolidation Authorities as well as the High Court failed to take note of the effect of the said order dated 31st July, 1971, we find some substance in the submission advanced on behalf of the appellants. The appeals deserve to be allowed and are hereby allowed. The judgment and order impugned before us are set aside. No costs.

.....J.
(Dr. B.S. CHAUHAN)

.....
.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI
MARCH 11, 2013.