

SURAJ PAL (D) THR. LR.

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v.

RAM MANORATH & ORS.

(Civil Appeal No. 5883 of 2013)

AUGUST 11, 2017

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[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Land laws – U.P. Consolidation of Holdings Act – s.5(c)(ii) – Permission of Settlement Officer (Consolidation) under, if required before sale of the suit property – Held: The intention of introducing s.5(c)(ii) was that if the land holding is subject to consolidation proceedings then permission of Settlement Officer (Consolidation) is required before the same is transferred – This is so because if the land, which is subject matter of consolidation proceedings, is sold or permitted to be transferred during consolidation proceedings, it could affect the entire consolidation scheme – However, admittedly, the suit property was used as ‘Abadi’ land and was declared “Chakout” and thus, outside the purview of the consolidation scheme – Hence, no permission of the Settlement Officer (Consolidation) was required to sell the suit property in question.

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Review – Scope of – Held: If a court finds that it has committed an error which is apparent on the face of record and that error is pointed out to it in a review petition, there is nothing which prevents the court from correcting the error – In the instant case, the Single Judge of High Court did not take into consideration the arguments raised that suit property was ‘chakout’ and therefore, was not part of the consolidation scheme – Therefore, the Single Judge was justified in reconsidering the matter.

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Dismissing the appeal, the Court

HELD: 1. As far as the scope of review is concerned, if a court finds that it has committed an error which is apparent on the face of the record and that error is pointed out to it in a review petition, there is nothing which prevents the court from correcting the error. In the judgment initially passed by the Single Judge of the High Court, the court did not take into consideration the arguments raised that this portion of land was ‘chakout’ and

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A therefore, was not part of the consolidation scheme. Therefore, the Single Judge was justified in reconsidering the matter. [Para 6] [598-B]

2. The purpose of a consolidation scheme is to provide consolidation of agricultural holdings. Abadi land, groves etc. are kept outside the scope of consolidation scheme. They cannot be re-allocated or re-allotted to any other person. Therefore, strictly speaking, they are not subject matter of the consolidation scheme. The intention of introducing Section 5(c)(ii) of the U.P. Consolidation of Holdings Act was that if the land holding is subject to consolidation proceedings then permission of the Settlement Officer (Consolidation) is required before the same is transferred. This is so because if the land, which is subject matter of consolidation proceedings, is sold or permitted to be transferred during consolidation proceedings, it could affect the entire consolidation scheme. However, if the land is not subject matter of the consolidation scheme, though it may be part of the holding of the tenure holder, then no permission is required. Admittedly, the suit property was "Chakout" and outside the purview of the consolidation scheme inasmuch as its value could not be taken into consideration while framing the scheme and it could not be allocated or allotted to any other person. [Para 8] [598-F-H; 599-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5883 of 2013.

F From the Judgment and Order dated 20.03.2007 in Review Application No. 247459 of 2006 in Second Appeal No. 1540 of 1982 of the High Court of Judicature at Allahabad.

Abhishth Kumar, Adv. for the Appellants.

Yash Pal Dhingra, Shibahsish Misra, Ms. Mona K. Rajvanshi, Anurag Kashyap, Tajaswina Sagar, Advs. for the Respondents.

G The Judgment of the Court was delivered by

H DEEPAK GUPTA, J. 1. The appellant is aggrieved by the order passed by a learned Single Judge of the High Court of Allahabad in Civil Misc. Review Application No.247459 of 2006 in Second Appeal No. 1540 of 1982.

2. The main issue which arises for consideration is whether permission of the Settlement Officer (Consolidation) was required to be obtained in terms of Section 5(c)(ii) of the U.P. Consolidation of Holdings Act (for short 'the Act') before sale of the plot No. 386 (re-numbered as plot No. 348) in consolidation proceedings and hereinafter referred to as the suit property.

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3. The admitted facts are that the suit property was land used as 'Abadi' and was declared 'Chakout' (meaning out of the consolidation scheme) after the preliminary survey was conducted. Four brothers were co-tenure holders of the land in dispute. One brother executed a sale deed of his 1/4th share in favour of respondents-defendants. The remaining three brothers filed a suit for permanent injunction against the respondents-defendants alleging that the sale is void since no permission of the Settlement Officer (Consolidation) as envisaged under Section 5(c)(ii) was obtained. They also claimed that they are in possession of the suit property and the respondents-defendants are trying to make construction on the land and had illegally constructed a 'kothari' on the suit property. The respondents-defendants claimed they were in possession but denied that they had raised any structure and submitted that since the land was not subject to the consolidation scheme, no permission of the Settlement Officer (Consolidation) was necessary. The suit was dismissed by the trial court mainly on the ground that no permission of the Settlement Officer (Consolidation) was required since the land was outside the consolidation scheme. The plaintiffs filed an appeal. The first appellate court allowed the appeal holding that Section 5(c)(ii) of the Act was applicable and since no permission in terms thereof had been obtained, the sale deed was void and ineffective. Thereafter, the defendants filed second appeal which was dismissed.

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4. Thereafter, review petition was filed mainly on the ground that since the land in dispute did not form part of the consolidation scheme, permission under Section 5(c)(ii) of the Act was not required. The learned Single Judge elaborately discussed the objects, reasons, scheme and the provisions of the Act and came to the conclusion that no permission was required to sell the land in question. The review petition and appeal were allowed by the impugned order.

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5. The appellants challenge the impugned judgment on two grounds. Firstly, that the learned Single Judge has reopened the matter and gone beyond the scope of review and secondly that though the land

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A may not be allotted under the consolidation scheme, it still is the part of the holding and would be covered by Section 5 of the Act.

B 6. As far as the scope of review is concerned, if a court finds that it has committed an error which is apparent on the face of the record and that error is pointed out to it in a review petition, there is nothing which prevents the court from correcting the error. In the judgment initially passed by the learned Single Judge, the court did not take into consideration the arguments raised that this portion of land was ‘chakout’ and therefore, was not part of the consolidation scheme. Therefore, the learned Single Judge was justified in reconsidering the matter.

C 7. As far as the merits of the case are concerned, we may refer to the provisions of Section 5 (c) of the Act, which read as follows:

D “5(c) notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950, no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall –

- E (i) use his holding or any part thereof for purposes not connected with agriculture, horticulture or animal husbandry including, pisciculture and poultry farming; or
- (ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

Provided that a tenure-holder may continue to use his holding, or any part thereof, for any purpose for which it was in use prior to the date specified in the notification issued under sub-section (2) of Section 4.”

F 8. The purpose of a consolidation scheme is to provide consolidation of agricultural holdings. Abadi land, groves etc. are kept outside the scope of consolidation scheme. They cannot be re-allocated or re-allotted to any other person. Therefore, strictly speaking, they are not subject matter of the consolidation scheme. The intention of introducing Section

G 5(c)(ii) of the Act was that if the land holding is subject to consolidation proceedings then permission of the Settlement Officer (Consolidation) is required before the same is transferred. This is so because if the land, which is subject matter of consolidation proceedings, is sold or permitted to be transferred during consolidation proceedings, it could affect the entire consolidation scheme. However, if the land is not subject matter

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of the consolidation scheme, though it may be part of the holding of the A
tenure holder, then no permission is required. Admittedly, the suit property
was “Chakout” and outside the purview of the consolidation scheme
inasmuch as its value could not be taken into consideration while framing
the scheme and it could not be allocated or allotted to any other person.

9. In view of the above discussion, we find no merit in the appeal B
and the same is dismissed.

10. Status quo, granted vide order dated 07.09.2007 and continued
vide order dated 19.07.2013, stands vacated. Pending application(s), if
any, stand(s) disposed of.

Ankit Gyan

Appeal dismissed.