

A MAHANT LALITA SHARANJI

v.

DEOKI DEVI & ANR.

(Civil Appeal No. 394 of 2009)

B FEBRUARY 16, 2018

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

C *U.P. Consolidation of Holdings Act, 1953 – ss. 9(2), 11-A – Consolidation proceedings – Appellant-mahant of a temple, owner of plot bearing no. 212/2 and respondent owner of land bearing no. 319 – Consolidation proceedings – Appellant allotted portion of plot no. 212/2, 215 and 216 – Portion of plot no. 212/2 adjoining the road was treated as bachat land for use by the Gaon Sabha – One P allotted a very small portion of Plot No. 212/2 – Land reserved as bachat land for use by the Gaon Sabha and the land allotted to*

D *P adjoined the main road – Respondent also allotted a portion of Plot No. 215 – Appellant did not challenge the allotment of front portion of land as bachat land to be used by the Gaon Sabha or the allotment of land to P – One B, challenged the allotment of land in favour of respondent – Settlement Officer amended the allotment –*

E *Respondent was allotted land in plot 212/2 adjoining the main road – Bachat land was changed from one plot to another – Share of appellant also changed – Challenge to, by the appellant – High Court held that the appellant had no right to challenge the order of the Settlement Officer – Held: It is clear that the appellant would have had access to the road when the land was allotted to the Gaon*

F *Sabha as bachat land – They could have also used the land and his access to the road would not have been affected, had that portion of the land been not allotted to respondent – This order virtually nullified the earlier order and, thus, the appellant was well within his rights to challenge the order passed by the Settlement Officer in the appeal filed by B – If an order adversely affects any party, he*

G *has a right to challenge it – Appellant was not a party to the appeal filed by B, but by the said order passed by the Settlement Officer, Consolidation, the appellant was virtually denied access to the road – Thus, the Deputy Director, Consolidation was justified in entertaining the revision filed by the appellant and making re-*

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allotments – High Court erred in holding that the appellant had no right to challenge the order of the Settlement Officer because he had not challenged the original order in original proceedings whereby the front portion of the land was treated as bachat land – Later allotment of land to respondent and shifting of the bachat land gave rise to fresh cause of action to the appellant – Thus, the order of the High Court is set aside and the order passed by the Deputy Director, Consolidation is restored.

Allowing the appeal, the Court

HELD: 1.1 Section 9(2) of the U.P. Consolidation of Holdings Act, 1953 provides that any person to whom notice has been sent under Section 9(1) has to file objections before the Assistant Consolidation Officer within a period of 21 days from the date of receipt of the notice. Section 11 A provides that no question in respect of claims to land etc. relating to a consolidation area which might or ought to have been raised under Section 9(2) and were not raised at that stage, can be permitted to be raised or heard at subsequent stage of consolidation proceedings. The purpose of these two provisions is to ensure that when a draft scheme is prepared or notice of allotment of land is issued, then if a person has any objection to the same, he must file his objection at that stage and if he does not file the same, he cannot be permitted to raise these objections at a later stage. [Para 8][473-D-E]

1.2 Each case has to be decided on its own facts. In the instant case, the appellant had not objected to grant of a very small portion of land to ‘P’ and allotment of the front portion of the land as bachat land to be used by the Gaon Sabha. In this case, ‘B’, owner of Plot No. 215 and Plot No.216, filed appeal. Though this appeal was limited to challenging the allotment made to ‘D’, the Settlement Officer, Consolidation, while allowing the appeal, virtually nullified the original consolidation order and took away the land allotted to the appellant in Plot No. 215 and Plot No. 216 and re-allotted him his land in Plot No. 212/2, allotted land to the Gaon Sabha in Plot No. 216 and allotted the front portion of the land in Plot No. 212/2 to ‘P’ and ‘D’. It is clear from the map that the appellant would have had access to the road when the land was allotted to the Gaon Sabha as bachat land. The

A appellant could have also used the land and his access to the
road would not have been affected, had that portion of the land
been not allotted to 'D'. This order virtually nullified the earlier
order and, therefore, the appellant was well within his rights to
challenge the order passed by the Settlement Officer,
B Consolidation in the appeal filed by 'B'. It is well settled position
of law that if an order adversely affects any party, he has a right to
challenge it. The appellant was not a party to the appeal filed by
'B', but by the order passed by the Settlement Officer,
C Consolidation in the appeal filed by 'B', the appellant was virtually
denied access to the road. Therefore, the Deputy Director,
Consolidation was justified in entertaining the revision filed by
the appellant and making re-allotments. [Para 10][473-F-H; 474-
A-C]

1.3 The High Court erred in holding that the appellant had
no right to challenge the order of the Settlement Officer,
D Consolidation in the appeal filed by 'B' because he had not
challenged the original order in original proceedings whereby
the front portion of the land was treated as bachat land. The second
order virtually nullified the earlier order and this gave a fresh
cause of action to the appellant and he could challenge the same.
E As far as 'P' is concerned, she did not challenge the order passed
by the Deputy Director, Consolidation. The writ court did not
take into consideration the averments made wherein 'D' had
prayed that she should be re-allotted Plot No.319 and granted
Rs.20,000/- as compensation for the construction she had raised
in Plot No. 212/2. The order of the High Court is set aside and
F the order passed by the Deputy Director, Consolidation is
restored. The respondent, 'D' is directed to remove the entire
construction at her own cost and hand over vacant and peaceful
possession of the land to the appellant within the stipulated period.
[Paras 11-13][474-E-H; 475-A-B]

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 394 of
2009.

From the Judgment and Order dated 10.03.2006 of the High Court
of Judicature at Allahabad in Civil Misc. Writ Petition No. 12972 of
1984.

H Neeraj Kumar Jain, A. Mariarputham, Sr. Advs., T. N. Singh,

Ms. Aruna Mathur, Ms. Anuradha Arputham, Sanjay Singh, Vikas K. Singh for the Appellant. A

Deeptakirti Verma, Adv. for the Respondent.

The Judgment of the Court was delivered by

DEEPAK GUPTA J. 1. The appellant is the Mahant of Shri Mukunddevacharya Peeth, Topi Kunj, Temple of Thakur Radhemohanji Maharaj at Vrindavan. The temple was owner of plot bearing No. 212/2 measuring 2.48 acres. The contesting respondent no. 1 Deoki Devi was owner of land bearing No. 319 measuring 0.44 acres. One Bansi Ballabh [not a party to these proceedings], was the owner of Plot No. 215 and Plot No. 216. B C

2. Consolidation proceedings took place and during the course of these proceedings, the appellant was allotted a portion of Plot No. 212/2, a portion of Plot No. 215 and a portion of Plot No. 216. A portion of Plot No. 212/2, adjoining the road, was treated as *bachat land* for use by the Gaon Sabha. It is pertinent to mention that one Premwati (not a party to these proceedings), was also allotted a very small portion of Plot No. 212/2. The land reserved as *bachat land* for use by the Gaon Sabha and the land allotted to Premwati adjoined the Vrindavan Chatikara main road. Deoki Devi was also allotted a portion of Plot No. 215 measuring 0.18 acres. The appellant did not challenge the allotment of land to the Gaon Sabha [*bachat land*] or the allotment of land to Premwati. D E

3. Bansi Ballabh, owner of Plot No. 215 and Plot No. 216, filed an appeal challenging the allotment of 0.18 acres of land in Plot No. 215 in favour of Deoki Devi. It would be pertinent to mention that the present appellant was not a party to those proceedings. The Settlement Officer, Consolidation allowed the appeal filed by Bansi Ballabh on 27.08.1981. However, the Settlement Officer, Consolidation did not limit the appeal to the claim against Deoki Devi only. He ordered amendment of the holding table and now Deoki Devi, who had been allotted land in Plot No. 215, was allotted 0.17 acres of land in Plot No. 212/2, adjoining the Vrindavan Chatikara main road. The holding of the appellant [though he was not a party to the proceedings] was also changed and 0.39 acres of land allotted to him in Plot No. 215 and 0.36 acres of land in Plot No. 216, were taken away and he was again granted 0.66 acres of land in Plot No. 212/2 in addition to what was already allotted to him. As far as the *bachat land* was concerned, that was changed from Plot No. 212/2 F G H

A to the north-east corner of Plot No. 216 measuring 0.62 acre. The appellant claims that he was unaware of this order since he was not a party to the appeal filed by Bansi Ballabh.

4. The appellant filed a restoration application before the Settlement Officer, Consolidation and, at the same time, filed a revision petition before the Deputy Director, Consolidation against the order dated 27.08.1981. The restoration application was dismissed by the Settlement Officer, Consolidation mainly on the ground that since the appellant had not challenged the reduction of his holding in Plot No. 212/2 in the first round of consolidation proceedings wherein the front portion of his plot had been reserved as *bachat land* for use by the Gaon Sabha, he was not entitled to challenge the same in the second round. However, the Deputy Director, Consolidation allowed the revision filed by the appellant on 13.12.1983. Before the Deputy Director, Consolidation, Bansi Ballabh, Hari Vallabh, Deoki Devi and the Gaon Sabha were all parties. Premwati was also made a party to the proceedings subsequently. Notices were sent but the respondent Deoki Devi and Premwati were proceeded ex parte and the revision was allowed. By the amended table of holding, the appellant was allotted Plot No. 212/2, which was his original holding and both Premwati and Deoki Devi were allotted land in Plot No. 216.

5. Thereafter, Premwati and Deoki Devi both filed restoration application before the Deputy Director, Consolidation, who rejected the same on the ground that both of them had been duly served. The Deputy Director, Consolidation also noted that Deoki Devi was not ready to take back her original plot i.e. Plot No. 319 and he upheld the allotment of land to her in Plot No. 216. Aggrieved, Deoki Devi filed a writ petition in the Allahabad High Court, which was allowed by the impugned judgment mainly on the ground that since the appellant herein had accepted the allotment of front portion of Plot No. 212/2 to the Gaon Sabha and Premwati, he having lost title to the property could not object to the grant of the same to Deoki Devi especially since he has not filed an appeal against the original order.

6. We have heard learned counsel for the parties. The main contention urged on behalf of the appellant is that since the main portion of Plot No. 212/2 was reserved as *bachat land*, to be allotted to the Gaon Sabha, which the appellant could have also utilised, he had not objected to the same. It is submitted that in the appeal filed by Bansi Ballabh, the original order of allotment was virtually set aside and even

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the lands allotted to the appellant in Plot No. 215 and Plot No. 216 were taken back from him and thereafter, the Respondent No. 1, Deoki Devi was allotted the front portion of Plot No. 212/2 adjoining the road and this gave the appellant a fresh cause of action. It is also urged that in the writ petition filed by Deoki Devi she had made an averment on affidavit that she wants her original holding [obviously Plot No. 319] provided she is given compensation of Rs.20,000/-. Therefore, the writ court could not have granted relief to her beyond what she had prayed.

7. On the other hand, learned counsel for Respondent No.1, Deoki Devi, after referring to Section 9(2) and 11-A of the U.P. Consolidation of Holdings Act, 1953 (for short 'the Consolidation Act'), submits that once the appellant had accepted the original order, he was no longer the owner of the land and he could not challenge the subsequent order.

8. Section 9(2) of the Consolidation Act provides that any person to whom notice has been sent under Section 9(1), has to file objections before the Assistant Consolidation Officer within a period of 21 days from the date of receipt of the notice. Section 11-A of the Consolidation Act provides that no question in respect of claims to land etc. relating to a consolidation area which might or ought to have been raised under Section 9(2) and were not raised at that stage, can be permitted to be raised or heard at subsequent stage of consolidation proceedings. The purpose of these two provisions is to ensure that when a draft scheme is prepared or notice of allotment of land is issued, then if a person has any objection to the same, he must file his objection at that stage and if he does not file the same, he cannot be permitted to raise these objections at a later stage. This is a well settled position of law.

9. Each case has to be decided on its own facts. In the present case, the appellant had not objected to grant of a very small portion of land to Premwati and allotment of the front portion of the land as *bachat land* to be used by the Gaon Sabha. In this case, Bansi Ballabh, owner of Plot No. 215 and Plot No.216, filed appeal. Though this appeal was limited to challenging the allotment made to Deoki Devi, the Settlement Officer, Consolidation, while allowing the appeal, virtually nullified the original consolidation order and took away the land allotted to the appellant in Plot No. 215 and Plot No. 216 and re-allotted him his land in Plot No. 212/2, allotted land to the Gaon Sabha in Plot No. 216 and allotted the front portion of the land in Plot No. 212/2 to Premwati and Deoki Devi. We have perused the map [Annexure P-6] and from this it is clear that

A the appellant would have had access to the road when the land was
allotted to the Gaon Sabha as *bachat land*. The appellant could have
also used the land and his access to the road would not have been affected,
had that portion of the land been not allotted to Deoki Devi. This order
virtually nullified the earlier order and, therefore, the appellant was well
within his rights to challenge the order passed by the Settlement Officer,
B Consolidation in the appeal filed by Bansilal Ballabh. It is well settled
position of law that if an order adversely affects any party, he has a right
to challenge it. The appellant was not a party to the appeal filed by
Bansilal Ballabh, but by the order passed by the Settlement Officer,
C Consolidation in the appeal filed by Bansilal Ballabh, the appellant was
virtually denied access to the road. Therefore, the Deputy Director,
Consolidation was justified in entertaining the revision filed by the
appellant herein and making re-allotments, as indicated hereinabove.

10. It has been contended by the appellant that the original holding
of Deoki Devi in Plot No. 319 was almost 2 kilometres away. It may be
D true that she has been allotted a smaller portion of land but the purpose
of the Consolidation Act is to prevent fragmentation of a holding and to
have one common holding. The Deputy Director, Consolidation rightly
allowed the revision.

11. We are of the considered view that the High Court erred in
E holding that the appellant had no right to challenge the order of the
Settlement Officer, Consolidation in the appeal filed by Bansilal Ballabh
because he had not challenged the original order in original proceedings
whereby the front portion of the land was treated as *bachat land*. As
we have pointed out above, the second order virtually nullified the earlier
order and this gave a fresh cause of action to the appellant and he could
F challenge the same. As far as Premwati is concerned, she did not
challenge the order passed by the Deputy Director, Consolidation. We
also find that the writ court did not take into consideration the averments
made in Para 23 of the writ petition wherein Deoki Devi had prayed that
she should be re-allotted Plot No. 319 and granted Rs.20,000/- as
G compensation for the construction she had raised in Plot No. 212/2.

12. In view of the above discussion, we set aside the order of the
High Court and restore the order passed by the Deputy Director,
Consolidation.

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MAHANT LALITA SHARANJI v. DEOKI DEVI & ANR. 475
[DEEPAK GUPTA, J.]

13. The respondent, Deoki Devi is directed to remove the entire construction at her own cost and hand over vacant and peaceful possession of the land to the appellant within 30 days from today failing which the appellant can take assistance of the Court to take possession of the land and building in which event, Deoki Devi will not be entitled to the cost of the structure or any other damages. A

14. The appeal is allowed in the aforesaid terms. B

Nidhi Jain

Appeal allowed.