
(2016) 02 AHC CK 0173

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 660 of 2016.

Arwind Kumar Tiwari

APPELLANT

Vs

State of U.P. & 4 Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4-A(1), 52

Citation : (2016) 4 ADJ 587 : (2016) 131 RD 501 : (2016) 1 RJ 835 : (2016) 2 UPLBEC 1190

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Yashwant Varma, J.

Bench : Division Bench

Advocate : Ajay Kumar Upadhyay, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. The instant public interest litigation sought quashing of a notification dated 21 February 2014 issued under Section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953 Act. The petitioner asserted that consolidation operations in the village had been undertaken earlier and had concluded with the issuance of a notification on 5 June 1999 under Section 52 of the 1953 Act. Referring to the proviso appended to sub section (1) of Section 4A, it was contended that the impugned notification would fall foul of the said provision. It was submitted that no "special circumstances" existed justifying the invocation of powers conferred by section 4A of the 1953 Act. To appreciate the submission it may be noted that in terms of the proviso to sub section (1) of section 4A, a fresh declaration for commencement of consolidation operations cannot be issued within twenty years from the date of the earlier notification issued under Section 52. The exception to the above is a case where in "special circumstances" the State Government may in public interest exercise the power 10 years after the issuance of the final notification under section 52. It was contended that only fifteen 1953 Act years had elapsed from the publication of the notification under Section 52 and no

special circumstances existed. Bearing in mind the contentions so advanced, this Court on 29 January 2016 passed the following order:

"The learned Standing Counsel in pursuance of the previous order dated 8 January 2016 has placed the instructions received by him from the Consolidation Officer.

Having duly perused the instructions, more particularly, the order dated 5 October 2015 passed by the Consolidation Commissioner, we are of the view that it would be appropriate if a direction is issued for the filing of a short counter affidavit explaining the special circumstances on the basis of which the impugned notification was issued under the U.P. Consolidation of Holdings Act. The counter affidavit shall be filed within a period of three weeks from today.

List under the same caption on 23 February 2016."

2. In pursuance of the aforesaid order, the learned Standing Counsel has filed a Short Counter Affidavit bringing on record material in justification of the notification impugned herein.

3. Section 4A being relevant for consideration of the contention advanced before us is extracted herein below:

"4-A. (1) Where the State Government is of the opinion that in the case of a district or part thereof in respect of which a notification has already been issued under Section 52, it is expedient in public interest so to do, it may make a declaration by notification in the Gazette that such district or part thereof may again be brought under consolidation operation:

[Provided that no such declaration shall be issued within twenty years from the date of the notification referred to in the said section, but in special circumstances the State Government may, in public interest, issue such declaration after ten years from the said date.]

(2) The provisions of this Act shall mutatis mutandis apply to every notification issued under sub-section (1) as they apply to a notification under Section 4."

4. A reading of the provision made in Section 4A establishes the conferment of a power upon the State Government to bring an area or unit in respect of which a final notification under section 52 has been issued to again be brought under consolidation. The rider placed on the exercise of this power stands enshrined in the proviso which mandates that no fresh declaration shall be issued within twenty years from the date of the notification issued under Section 52 except on account of "special circumstances" in which case the State is empowered in public interest to invoke its powers upon expiry of 10 years from the date of issuance of the final notification. The prohibition against recommencement of consolidation operations operates only during the window of 10 years from the date of issuance of the final notification. Thereafter and upon expiry of 10 years the State may in special circumstances exercise its powers. In the absence of

"special circumstances" the power is available to be invoked after 20 years. Admittedly, in the facts of the present case, the notification under Section 52 was issued on 5 June 1999. The notification impugned in this petition dated 21 February 2014 is evidently therefore after ten years from the date of the notification issued under Section 52 but before 20 years from the date of the final notification.

5. Two learned Judges of this Court in *Agricultural and Industrial Syndicate Ltd. v. State of U.P.* [1976 RD 35] have already held that the issuance of a notification either under section 4 or 6 is an exercise of legislative power and described the said provision as an instance of conditional legislation. The notification consequently like all other pieces of legislation would be liable to be tested primarily on the ground of (a) whether it violates the Constitution or (b) is ultra vires the parent statute or arbitrary. There is no constitutional challenge to section 4 or 4A. The issue which would therefore survive for consideration is whether the notification is ultra vires the 1953 Act or arbitrary. The sine qua non for invocation of the powers conferred by section 4A in a case covered by its proviso is the existence of "special circumstances" warranting a fresh consolidation exercise being undertaken after the expiry of 10 years and not before the expiry of 20 years from the date of the final notification. As noted above, the impugned notification has come to be issued 15 years after the issuance of the final consolidation notification. The issue for consideration stands narrowed down therefore to whether there were in existence "special circumstances" which justified the invocation of section 4A.

6. From the Short Counter Affidavit filed in these proceedings, we find that on 22 September 2013 a resolution was passed by the Land Management Committee recording that allotment of chaks under the previous consolidation scheme had taken place almost thirty-five years ago. The resolution further noted the unavailability of land for establishment of public utilities and the insufficiency of chak margs and chak nalis thus causing inconvenience to the villagers and tenure holders. These issues stood reiterated in a report dated 30 December 2013 of the Assistant Consolidation Officer as well as the reports dated 22 November 2013 and 9 December 2013 of the Additional District Magistrate, Jaunpur and the District Magistrate, Jaunpur respectively addressed to the Commissioner of Consolidation, U.P. The report of the Additional District Magistrate referred to above, was in the following terms:-

"dk;kZy; miftykf/kdkjh] eNyh"kgj] tkSuiqj

i=kad 2162@vkj0ds0 (e0"kgj) fnukad 18-11-2013

lsok esa]

milapkyd pdcUnh]

tkSuiqjA

egksn;]

d`i;k vius i= fnukad 31-10-2013 dk lUnHkZ xzg.k djus dk d"V djsa ftlds }kjk xzke rjgVh ijxuk eqWaxjk] rglhy and eNyh"kgj] ftyk tkSuiqj dks pdcUnh izfdz;k esa fy, tkus ds lECU/k esa vk[;k pkgh x;h gSA bl lECU/k esa rglhynkj eNyh"kgj ls vk[;k izkIr dh x;hA rglhynkj dh vk[;k fnukad 18-11-2013 ds vuqlkj xzke rjgVh ijxuk eqWaxjk rglhy eNyh"kgj] ftyk tkSuiqj dh /kkjk 52 dk izdk"ku fnukad 05-06-1999 dks gqv k gSA orZeku esa xkWao esa ukyh o pdekxZ i;kZIr ek= esa miyC/k ugha gSA rFkk lkoZtfud mi;ksx dh Hkwfe Hkh i;kZIr ek= esa ugha gSA vr% xzkeokfl;ksa dh lqfo/kk dsk ns[krs gq, xkWao esa iqu% pdcUnh dj;k tkuk mfpr gksxkA

vr% rnuqlkj iqu% pdcUnh fd;k tkuk mfpr gksxkA vk[;k lsos esa izsf"kr gSA

miftykf/kdkjh

eNyh"kgj

tkSuiqjA"

7. It was on the basis of the aforesaid material that the District Magistrate and the Collector proceeded to recommend a recommencement of consolidation operations in the area. The District Magistrate and the Collector in his communication dated 1 December 2013 addressed to the Consolidation Commissioner observed as follows:-

izs"kd]

ftykf/kdkjh@ftyk mi lapkyd pdcUnh tkSuiqjA

lsok esa]

pdcUnh vk;qDr

mRrj izns"k

y[kumA

i= la0 5836@ih0ds0

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fo"k; % and xzke rjgVh ijxu eWaxjk rglhy eNyh"kgj ftyk tkSuiqj dks f}rh; pdz dh pdcUnh ;kstuk esa lEEefyr djus gsrq tks p0 vf/kfu;e dh /kkjk 4(d)1 ds vUrxZr izdk"ku ds lECU/k esaA

egksn;]

mijksDr fo"k;d Jh lqjs"k pUnz ik.Ms; iq= ikjlukFk ik.Ms; o fxfjtk "kadj ;kno iq= Lo0 egknso vkfn fuoklh xzke rjgVh ijxuk eWaxjk rglhy eNyh"kgj ftyk tkSuiqj ftuds leFkZu esa Jherh vatw ;kno] lnL; ftyk iapk;r o Jherh gseyrk flag] izeq[k {ks= iapk;r rFkk Jh fouksn dgekj flag] iwoZ fo/kk;d us Hkh i= izLrq fd;k gS] ftlesa xzke rjgVh dks pdcUnh ;kstuk esa lEEefyr fd;s tkus dk mYys[k fd;k gSA mDr i= ij canksclr vf/kdkjh pdcUnh] mi lapkyd pdcUnh tkSuiqj] miftykf/kdkjh eNyh"kgj]

vij ftykf/kdkjh (foRr ,oa jktLo) tkSuiqj ls tkWap vk[;k izkIr dh xbZ gSA tkWap vk[;k esa mfYyf[kr gS dh xzke dh /kkjk 52 dk izdk"ku fnukad 05-06-1999 (izFke pdz) dk gqv k gS fdUrq fo"ks"k ifjfLFkfr;ksa esa 10 o"kZ i"pkr~ Hkh /kkjk 4d(1) dk izdk"ku fd;k tk ldrk gS] xzke esa fo"ks"k ifjfLFkfr;kWa gSa] ftlesa pdcUnh izfdz;k dk iqu% ykxw fd;k tkuk mfpr gSA

vLrq xzke rjgVh ijxuk eqWaxjk rglhy eNyh"kgj ftyk tkSuiqj dks pdcUnh ;kstuk esa lfEefyr fd;s tkus gsrq vk[;k vko";d dk;Zokgh gsrq lsok esa izsf"krA

(tkWa vk[;k layxz)

mi lapkyd pdcUnh tkSuiqj

ftykf/kdkjh@ftyk

mi lapkyd pdcUnh tkSuiqj"

8. From the material referred to above, it is apparent that the following aspects were taken into consideration by the authorities while recommending the case for fresh consolidation operations being undertaken:

(a) Demarcation and allotment of chaks having taken place almost thirty five years ago;

(b) Lack of availability of land for public utility purposes and

(c) Insufficient number of chak margis and chak nalis.

9. We find that the material on the basis of which the State proceeded to exercise its powers under section 4A was clearly germane to the exercise of power and clearly evidences the element of public interest having been borne in mind. The reasons assigned for invocation of the said provision cannot be said to be irrelevant or arbitrary. The factors taken into consideration while invoking the said provision were clearly in accord with the underlying legislative policy and objects of the 1953 Act. We are, therefore, of the opinion that the aforesaid reasons did constitute "special circumstances" which justified the invocation of the provisions of Section 4 A and recommencement of consolidation operations.

10. For the aforesaid reasons, we find no merit in the present petition which shall consequently stand dismissed.