
(2015) 04 AHC CK 0286
In the Allahabad High Court
Case No : Consolidation No. 135 of 2015

Dinesh Pratap Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 4(2), 6

Citation : (2015) 129 RD 233

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Dinesh Kumar Pushpakar, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Dinesh Kumar Pushpakar, learned Counsel for petitioner, Sri Shaharsh, learned State Counsel and perused the record. Facts in brief of the present case that on 21.8.2008, a notification under section 4(2) of the U.P. Consolidation of Holdings Act, 1953 has been issued. Now, by means of the present writ petition, the petitioner has prayed for cancellation of the same.

2. So far as the controversy involved whether Notification under section 4(2) of the U.P. Consolidation of Holdings Act, 1953 once issued can be cancelled. In this regard, this Court in Civil Misc. Writ Petition No. 21350 of 2010 (Chaman Lal @ Chunni Lal and others v. State of U.P. and others) by judgment and order dated 7.3.2011, held as under:---

"Once such a notification was issued the consolidation operations have to be set into motion. The power to denotify or cancel a notification vests in the State Government under section 6 of the U.P. Consolidation and Land Holdings Act. The same is quoted hereinbelow:

"6. Cancellation of notification under section 4 .--(1) It shall be lawful for the

State Government at any time to cancel the [notification] made under section 4 in respect of the whole or any part of the area specified therein.

[(2) Where a [notification] has been cancelled in respect of any unit under sub-section (1), such area shall, subject to the final orders relating to the correction of land records, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of the cancellation.]

For exercise of the said power certain guidelines have been given under the Rules and Rule 17 of the U.P. Consolidation of Holdings Rules, 1954 is extracted hereinunder:

17. Section 6 .--The [notification] made under section 4 of the Act, may among other reasons, be cancelled in respect of whole or any part of the area on one or more of the following grounds, viz., that-

(a) the area is under a development scheme of such a nature as when completed would render the consolidation operations inequitable to a section of the peasantry;

(b) the holdings of the village are already consolidated for one reason or the other and the tenure-holders are generally satisfied with the present position;

(c) the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult; and

(d) that a co-operative society has been formed for carrying out cultivation in the area after pooling all the land of the area for this purpose."

3. The aforesaid provisions, therefore, clearly empower the State Government to cancel a notification in case any such contingency exists as indicated above. It may be mentioned that the guidelines contained in Rule 17 are not exhaustive. The State Government can in its discretion proceed to cancel a notification.

4. The issue as to whether Courts can enter into any such dispute was considered in the case of Sazid and others Vs. Commissioner of Consolidation and others, and it was held that Courts should not take over the task of examining the validity of a notification issued under section 4 of the U.P.C.H. Act.

5. However, when orders are passed under section 6 a judicial review may be permissible to a limited extent if the action taken is arbitrary or is against the interest of public at large in view of the provisions of the U.P.C.H. Act, 1953.

6. In the instant case the petitioners contend that they have approached the State Government and, therefore, this writ petition be entertained.

7. Unfortunately, in the opinion of the Court, this petition amounts to a premature exercise and is otherwise an abuse of the process of Court as an interim order has been passed staying the proceedings of consolidation operations until further orders of this Court without allowing the State

Government to apply its mind. The stay of a notification under section 4 amounts to staying the operation of law which in my opinion is not permissible. The State Government should be allowed to exercise his discretion before any interference is caused in the exercise of jurisdiction under Article 226 of the Constitution of India." For the foregoing reasons, writ petition lacks merit and is dismissed with the observations that in respect to the grievances which petitioners have raised in the present writ petition, the petitioners shall move fresh representation to O.P. No. 1/Principal Secretary, Board of Revenue, govt. of U.P., Lucknow within two weeks from today in respect to their grievances which they have raised in the present writ petition annexing all relevant documents and materials in support of their case and after receiving the same, O.P. No. 1 shall consider and decide by way of speaking and reasoned order in accordance with law within a further period of eight weeks thereafter.