

(2016) 10 AHC CK 0106

In the Allahabad High Court

Case No : Writ B. Nos. 16960 and 13448 of 2015.

Dinesh Singh And 2 Others - Petitioners @HASH State of U.P. And 4 Others

Date of Decision : 19-10-2016

Acts Referred:

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

Citation : (2016) 10 ADJ 568 : (2016) 6 AllWC 6049 : (2016) 133 RD 806

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Dr. Vinod Kumar Rai and Ashok Kumar Singh, Advocates, for the Petitioners (Writ B. Nos. 16960, 13448 of 2015); C.S.C, for the Respondent (Writ B. No. 16960 of 2015); C.S.C. and Vishu Kumar Singh, Advocate, for the Respondent (Writ B. No. 13448 of 2015); S

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J. - This bunch consists of five writ petitions. The issues therein are interconnected. These writ petitions have been heard together and are being decided by a common order.

2. In all these petitions, the parties are represented by Shri V.K. Singh on the one hand and Shri A.K. Singh and Dr. V.K. Rai on the other.

3. Three of the writ petitions, namely the writ petitions of 2006, 2013 and 2014 have been filed by Shri Laxmi Prasad Rai and Shri V.K. Singh has been heard on behalf of petitioner in these writ petitions and Shri Ashok Kumar Singh and Shri V.K. Rai for the respondents therein.

4. The two writ petition of 2015 have been filed by Dr. V.K. Rai and A.K. Singh, who have been heard and Shri V.K. Singh has been heard in opposition.

5. I have also heard learned Standing Counsel appearing for the State-respondents in all the writ petitions.

6. The dispute in all these writ petitions is whether consolidation operations should or should not continue in Village Rahlupur, Pargana Ram Nagar, Tehsil and

District Varanasi. This village was brought under consolidation operations by means of a notification issued under Section 4(1) of the U.P. Consolidation of Holdings Act on 13.02.1997.

7. Writ petition No. 11855 of 2006 was filed by Laxmi Prasad Rai seeking a writ of mandamus commanding the respondent no. 1, the State of U.P. not to issue a notification under Section 6(1) of the Act in pursuance of letter dated 19.12.2005 written by the Deputy Director of Consolidation, Varanasi, recommending that the consolidation operations in the unit being cancelled by means of a notification under Section 6(1) of the Act. The petition was entertained and a counter affidavit was called for. The State filed a counter affidavit. Another counter affidavit was filed on behalf of the respondent no. 2 to 5, namely the Consolidation Commissioner, the Collector and the Deputy Director of Consolidation, Varanasi as also the Settlement Officer Consolidation. Respondent no. 1 in this writ petition is the State of U.P. Rejoinder affidavits were also filed.

8. During the pendency of this writ petition, Laxmi Prasad Rai filed writ petition no. 59364 of 2013 seeking a writ of certiorari for quashing the notification dated 09.09.2013. (Annexure 7 to this writ petition) which was a notification issued under Section 6(1) of the U.P. Consolidation of Holdings Act. Even this writ petition was entertained and an interim order was passed to the following effect; "till the next date of listing final orders passed in the consolidation operation shall not be changed". This interim order was granted on 29.10.2013.

9. Even in this case, the State filed a counter affidavit, which is available on record, however no rejoinder affidavit is available on record.

10. Yet another writ petition being writ petition no. 30322 of 2014 was filed on behalf of Laxmi Prasad Rai seeking a writ of mandamus directing the respondents to take a decision on the recommendation dated 18.12.2013 of the Additional Director of Consolidation seeking permission from the Chief Secretary to withdraw the notification issued under Section 6(1) of the Act in consonance with the interim order granted by the writ court on 29.10.2013 in writ petition no. 59364 of 2013, referred to above.

11. In response to this, letter dated 09.04.2014, regarding which a mandamus is sought, was a letter written by the District Deputy of Consolidation, Varanasi seeking directions from the Consolidation Commissioner in the matter.

12. It appears that thereafter by a notification no. 2255/4-163/69 dated 13.06.2014, the notification dated 09.09.2013 issued under Section 6(1) of the Act was withdrawn. Therefore, writ petition no. 13448 of 2015 was filed by Dinesh Singh and Another challenging the said notification dated 09.09.2013.

13. When this writ petition was filed, it was ordered to be connected with writ petition no. 11855 of 2006 and writ petition no. 59364 of 2013, aforementioned. The operation of the impugned notification dated 13.06.2014 was stayed vide order dated 19.03.2015.

14. Dinesh Singh and another filed yet another writ petition no. 16960 of 2014, wherein they challenge certain orders passed on the representations made by Laxmi Prasad Rai. It is submitted that these representations were allowed and on the basis of the decision taken on such representations, the notification dated 13.06.2016 was issued. It is also contended that since these orders were not within the knowledge of the petitioners when they filed writ petition no. 13448 of 2015, they were constrained to file this subsequent writ petition also.

15. In the context of the above noted facts, it appears proper to deal with the writ petitions serially and in the order they have been filed.

16. As already noted herein above, writ petition no. 11855 of 2006 had been filed seeking a writ of mandamus directing the respondents not to issue a notification under Section 6(1) of the Act. Subsequently and during pendency of the writ petition, the said notification was in fact issued. This writ petition is, therefore, rendered infructuous. Nothing further remains to be decided therein. Therefore, writ petition no. 11855 of 2006 is liable to be dismissed as infructuous.

17. In so far as the writ petition no. 59364 of 2013 filed by Laxmi Prasad Rai challenging the notification under Section 6(1) of the U.P. Consolidation of Holdings Act is concerned, the issue involved is covered by the decision of this Court in a bunch of writ petitions, the leading case wherein was *Raja Ram Ojha v. Consolidation Commissioner, U.P., Lucknow and others*, 2015 (126) RD 124, wherein this Court has held that a notification under Section 6(1) is conditional legislation and that the writ court has no power to compel the State Government or a Legislative Authority to legislate in a particular manner. This means that the notification under Section 6(1) of the U.P. Consolidation of Holdings Act is not justiciable and can be challenged only on the ground that it is ultra vires, or unreasonable or on the ground of lack of competence.

18. None of these grounds have been alleged in this writ petition. A view taken in the case of *Raja Ram (Supra)* finds support from the Division Bench decision in the case of *Dalip Singh and others v. Vikram Singh and others*, 2015 (128) RD 666.

19. Both above noted decisions have relied upon an earlier decision rendered by a Division Bench in the Case of *Agricultural and Industrial Syndicate Limited v. State of U.P.*, 1976 RD 35.

20. In view of the settled legal position, writ petition no. 59364 of 2013 is liable to be dismissed.

21. Writ petition no. 30322 of 2014 was filed by Laxmi Prasad Rai seeking a writ of mandamus directing the respondents to take a decision on letters written by the Consolidation Commissioner to the Chief Secretary and by the Deputy Director of Consolidation to the Consolidation Commissioner. By means of both these letters, directions were sought from the superior authorities. It appears that a final decision was, in fact, taken in the matter and, therefore, again no

justification remains for issuing any mandamus in this regard.

22. This writ petition has also been rendered infructuous by efflux of time and subsequent developments and, therefore, the same also merits dismissal as being infructuous.

23. Writ petition no. 13448 of 2015 seeks a writ of certiorari for quashing a notification issued on 13.06.2014, which recalls an earlier notification dated 09.09.2013 issued under Section 6(1) of the Act.

24. A perusal of this notification indicates that it has been issued in difference of an interim order dated 29.10.2013 passed in writ petition no. 59364 of 2013. It has further been issued, subject to the final orders to be passed in the said writ petition no. 59364 of 2013.

25. The primary ground of challenge in this writ petition is that the U.P. Consolidation of Holdings Act does not empower the State Government to cancel or recall a notification under Section 6(1) of the Act.

26. The contention of learned counsel for the petitioner is that not only can a notification under Section 6(1) of the Act not be recalled, in the instant case, the said notification has been recalled upon a misconstruction of the interim order dated 29.10.2013 passed in writ petition 59364 of 2013. This writ petition challenged the notification issued under Section 6(1) of the Act. This court entertained the writ petition and directed that till the next date of listing the orders passed during consolidation operations would not be changed.

27. In my considered opinion, this interim order did not direct that the notification under Section 6(1) of the Act was liable to be recalled.

28. At best, this interim order could be interpreted to mean that the consequences of issuance of the notification under Section 6(1) as provided under sub-section 2 of said section would not be incorporated in the revenue records.

29. In my considered opinion, this interim order could not have been made the basis of the impugned notification in view of the law lay down in the case of Raja Ram Ojha and Dalip Singh (Supra) as also the Division Bench in Agricultural and Industrial Syndicate Limited, wherein it has been held that the writ court cannot direct a legislative authority to legislate in a particular manner.

30. Although, categorical grounds have been raised on the competence of the authority, issuing the impugned notification, the counter affidavit filed on behalf of State consists only of factual averments. It is absolutely silent on the question of the legislative competence of the authority to issue the notification itself.

31. The U.P. Consolidation of Holdings Act empowers the State Government to issue notification under Section 4 of the Act bringing any area under consolidation operations.

32. Section 6(1) of the said Act empowers the State Government to cancel the notification issued under Section 4(1) of the Act at any time.

33. The following sections of the Act lay down the procedure to be followed for effecting consolidation. Procedure for raising objections at various stages and the forum, as also the right of appeal and revision are provided. Once consolidation operations have been completed, a notification is issued under Section 52 of the Act, bringing the consolidation operations very close.

34. None of the provisions of the Act empower the State Government to recall a notification issued under Section 6(1) of the Act.

35. Even otherwise, it is settled law that the authorities under the U.P. Consolidation of Holdings Act do not possess the power of review. Although, the full Bench decision in this regard in *Shivraji v. DDC*, 1997 RD 562, pertains to the revisional power exercised by the Deputy Director of Consolidation under Section 48 of the Act, yet, there appears no reason why the ratio in the Full Bench decision should not be extended to all the authorities under the said Act. Therefore, the full Bench also applies to the power in so far as the notification under Section 6(1) of the Act is concerned.

36. It therefore, necessarily follows that even the State Government is not empowered by the Act to recall or review a notification issued under Section 6(1) of the Act as has been done in the instant case. It also necessarily follows that once a notification under Section 6(1) of the Act has been issued and the State Government is of the opinion that consolidation operations should in fact take place, it has no other option but to proceed under Section 4 and issue a fresh notification bringing the unit under consolidation operations.

37. Under the circumstances therefore, this court is constrained to hold that the notification dated 30.06.2014 is wholly without jurisdiction and the same is therefore, liable to be quashed. Moreover, this court is competent to cancel this notification, in view of the ratio laid down in the case of *Raja Ram Ojha and Agricultural and Industrial Syndicate Limited* (supra), which hold that a notification under Section 6, can be challenged on the ground of legislative incompetence. Since the authority concerned has no power to recall a notification under Section 6(1) of the Act as has been done by the impugned notification, the same is devoid of legislative competence and must therefore be, set aside.

38. In so far as writ petition no. 16960 of 2015 is concerned, the same challenges certain orders passed on the representations filed by Laxmi Prasad Rai, who was seeking recall of the notification under Section 6(1) of the Act. These representations were allowed and such decision appear to have influenced, the authorities into issuing the notification dated 13.06.2014, impugned in writ petition no. 13448 of 2015.

39. Since I have already held that the notification dated 13.06.2014 is without jurisdiction, no useful purpose is going to be served by quashing the orders

which may or may not have been the basis of the notification dated 13.06.2014, as is alleged in this writ petition.

40. Under the circumstances therefore, in my considered opinion, no orders are required to be passed in writ petition no. 16960 of 2015, which may therefore, be consigned to the record.

41. Accordingly and in view of the above, writ petition nos. 11855 of 2006 and 30322 of 2014 are dismissed as infructuous. Writ petition no. 59364 of 2013 is also dismissed.

42. Writ petition No. 16960 of 2015 be consigned to the record as no orders is required to be passed therein.

43. Writ petition no. 13448 of 2015 is hereby allowed. The impugned notification dated 13.06.2014 is hereby quashed. All action taken in pursuance of this notification is also without jurisdiction and non est.