
(2016) 01 AHC CK 0107
In the Allahabad High Court
Case No : Service Bench No. 1074 of 2015

Doodh Nath Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Forest Act, 1927 — Section 4
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, Section 20, Section 23, Section 27, Section 4 (2), Section 4-A, Section 4-A (2), Section 52, Section 52 (1), Section 52 (2), Section 9
Uttar P

Citation : (2016) 01 AHC CK 0107

Hon'ble Judges : S.N. Shukla and Ram Surat Ram (Maurya), JJ.

Bench : Division Bench

Advocate : Deep Narayan Tripathi and Vivek Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—1. Heard Sri Vivek Tripathi, for the petitioner and Standing Counsel, for the respondents.

2. The writ petition has been filed against the order of Principal Secretary, Revenue, Civil Secretariat, Uttar Pradesh Government, Lucknow, dated 15.07.2015, imposing punishment of reversal in rank i.e. from Settlement Officer Consolidation to Consolidation Officer, to the petitioner, in disciplinary proceeding, initiated against him.

3. The petitioner was initially appointed as Assistant Consolidation Officer, on 20.04.1994. He was promoted as Consolidation Officer on 17.02.1997, as Assistant Settlement Officer Consolidation on 09.01.2001 and as Settlement Officer Consolidation on 20.02.2008. He was posted as Settlement Officer Consolidation, Lakhimpur Kheri on 22.05.2012, for which period, impugned disciplinary proceeding was taken against him.

4. Divisional Forest Officer, Forest Division South, Kheri, through Letter No.

1187/33-1 dated 24.08.2013 made a complaint to Consolidation Commissioner, U.P. that State of U.P. through Notification No. 1737/xiv-48-54 dated 29.03.1954, issued under Section 4 of Forest Act, 1927, declared an area of 4499.69 acre land as "Reserved Forest" at village Grant No. 3, pargana Kukra, tahsil Gola, district Kheri. State of U.P. through Forest Department filed an objection for recording aforesaid land as "Forest Land", which was dismissed by order of Consolidation Officer dated 16.12.1977. State of U.P. through Forest Department filed 65 appeals from the order of Consolidation Officer, which were consolidated and allowed by order of Settlement Officer Consolidation dated 27.03.1985 and plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were directed to be recorded as "Forest Land". Private persons filed 21 revisions, from the aforesaid order, which were consolidated and dismissed by order of Deputy Director of Consolidation dated 04.08.1993. However, private persons filed writ petitions (registered as Consolidation No. 851 of 1993, Consolidation No. 964 of 1993 and Consolidation No. 967 of 1993) in which interim order dated 10.12.1993 was granted as such orders of Settlement Officer Consolidation and Deputy Director of Consolidation were not given effect to in revenue records. In the meantime fresh consolidation was started. Forest Officer Mailani wrote Letter No. 11/33-1 dated 08.07.2009 to Assistant Consolidation Officer, Kanke Ganj and in continuation of that Assistant Consolidation Officer through Letter No. 3218/33-1 dated 20.11.2009 to Consolidation Officer (copy whereof was endorsed to Deputy Director of Consolidation) for keeping disputed land as "chak-out". Forest Officer Mailani again through Letter No. 598/33-1 dated 27.03.2010 to Assistant Consolidation Officer requested to keep disputed land as "chak-out. Divisional Forest Officer, Kheri wrote Letters No. 6912/33-1 dated 19.04.2010, No. 8185/33-1 dated 22.06.2011 and No. 1038/33-1 dated 18.08.2010 to keep aforesaid land as "chak out". Settlement Officer Consolidation, through Letter No. 259/Aa.Li./2011 dated 25.02.2011 directed Consolidation Officer Gola to demarcate Forest Land. Thereafter, by order, Letter No. 282/Aa.Li./2011 dated 20.08.2011 directed to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) as "chak-out". In compliance thereof Consolidation Officer vide order dated 26.03.2012 kept aforesaid plots as "chak-out". However, Consolidation Officer recalled his order dated 26.03.2012 on 19.07.2012, which was challenged by Forest Department in appeal, which was pending. It was prayed that direction be issued to subordinate authorities to keep aforesaid land as "chak out".

5. On the aforesaid complaint, Consolidation Commissioner U.P. vide Letter No. 202/P.L.-81/2013-14 dated 29.08.2013 recommended to State Government to take disciplinary proceedings against Doodh Nath Pandey, Settlement Officer Consolidation, Sanjai Bajpai, Consolidation Officer, Aditya Narain Jha, Assistant Consolidation Officer, Jawahar Lal, Consolidator and Ram Pal, Consolidation Lekhpal, who were at that time posted at that place, finding them as prima facie guilty in including Forest Land into consolidation operation.

6. State of U.P. issued Charge Sheet through Letter No. 1307 (2)/1-8-2013/Ra.-8, Lucknow dated 02.09.2013 to the petitioner, stating therein that consolidation operation was started in village Grant No. 3 on 10.05.2008, for which, khatauni of year 1416 F-1421 F was obtained from Tahsil Gola, in which, khata 1117, [consisting plots 2 (area 282.445 hectare), 93 (area 19.829 hectare), 94 (area 231.268 hectare), 442 (area 8.300 hectare), 452 (area 5.751 hectare), 755 (area 0.895 hectare), 601 (area 0.918 hectare) and 604 (area 0.061 hectare) (total area 549.446 hectare)] were recorded as Forest Land. There was another matrook khata, consisting 550.620 hectare land, as Forest land from last settlement to CH Form-23 of present consolidation. In basic consolidation year this land was illegally got recorded in the names of private persons in khatauni of Tahsil. At the time of verification of record, private persons also raised objections claiming their right. However, Settlement Officer Consolidation and Deputy Director of Consolidation directed for recording these land as Forest land. Private persons obtained stay order from High Court as such this land ought to have been left out of consolidation operation. In spite of pendency of objection of Forest Department, in this respect, chak carving proceedings have been completed in violation of the provisions of Paragraphs-226 to 228 of U.P. Consolidation Manual. Thus the petitioner and other sub-ordinate officers were guilty for misconduct. State Government appointed Additional District Magistrate (F&R) Lakhimpur Kheri as Inquiry Officer. The petitioner was given 15 days time to submit his reply of the charge sheet.

7. Consolidation Commissioner, U.P. wrote Letter No. 214/P.F.-81/2013-14 dated 19.9.2013, stating therein that in his Letter dated 29.08.2013, plots 2 (area 282.445 hectare), 93 (area 19.829 hectare), 94 (area 231.268 hectare), 442 (area 8.300 hectare), 452 (area 5.751 hectare), 755 (area 0.895 hectare), 601 (area 0.918 hectare) and 604 (area 0.061 hectare) (total area 549.446 hectare) were mentioned but these plots were out of consolidation operation. In its place, plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were included into consolidation operation and chaks were carved out in the names of private persons, although these plots were Forest Land as such charge sheet be amended accordingly. On its basis, State of U.P. issued corrigendum through Letter No. 1428/1-8-2013-Ra.-8 Lucknow dated 25.09.2013 to the petitioner to this effect.

8. The petitioner submitted his reply dated 16.12.2013 to the charge sheet. The petitioner stated that first round of consolidation was started through notification under Section 4 (2) of U.P. Consolidation of Holdings Act, 1953 dated 07.08.1966. In basic consolidation year records, Plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were not recorded as Forest Land, rather it were recorded in the names of private persons, who claimed their title over it. Forest Department filed objections for recording these land as Forest Land, which were dismissed by order of Consolidation Officer dated 16.12.1977. State of U.P. through Forest Department filed 65 appeals from the order of Consolidation Officer, which were

consolidated and allowed by order of Settlement Officer Consolidation dated 27.03.1985 and plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were directed to be recorded as "Forest Land". Various persons filed 21 revisions from the aforesaid order, which were consolidated and dismissed by order of Deputy Director of Consolidation dated 04.08.1993. However, private persons filed writ petitions (registered as Consolidation No. 851 of 1993, Consolidation No. 964 of 1993 and Consolidation No. 967 of 1993) in which interim orders dated 10.12.1993 were granted as such orders of Settlement Officer Consolidation and Deputy Director of Consolidation were not given effect to in revenue records. Names of private persons remained recorded in CH Form- 23, 41 and 45 of first consolidation record and aforesaid four plots were allotted 250 new plot numbers, in final consolidation record. Second round consolidation was started through notification under Section 4-A (2) of U.P. Consolidation of Holdings Act, 1953 dated 10.05.2008. On the basis of khtatuni 1416 F-1421 F, made available by Tahsil Gola, consolidation operation in village Grant No. 3 was started. Plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were not recorded as Forest Land, in basic consolidation year khatauni rather it were recorded in the names of private persons. The village was notified under Section 9 of the Act on 18.02.2010. Forest Officer Mailani through Letter No. 598/33-1 dated 27.03.2010 to Assistant Consolidation Officer requested to keep disputed land as "chak-out". Divisional Forest Officer, Kheri wrote Letter No. 6912/33-1 dated 19.04.2010, Letter No. 1038/33-1 dated 18.08.2010 and Letter No. 8185/33-1 dated 22.06.2011 to keep aforesaid land as "chak out". Settlement Officer Consolidation, through Letter No. 259/Aa.Li./2011 dated 25.02.2011 directed Consolidation Officer Gola to demarcate Forest Land. Thereafter, by order, Letter No. 282/Aa.Li./2011 dated 20.08.2011 directed to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) as "chak-out". In compliance thereof Consolidation Officer vide order dated 26.03.2012 made aforesaid plots as "chak-out". However, Consolidation Officer recalled his order dated 26.03.2012 on 19.07.2012, which was challenged by Forest Department in appeal, which was allowed by him by order dated 30.08.2013. Till 19.05.2012, Sri Santosh Kumar Singh was posted as Settlement Officer Consolidation, Kheri. The petitioner took charge of this post on 22.05.2012. Notification under Section 9 was made on 18.02.2010 and under Section 10 of the Act was made on 17.12.2011. However, notification under Section 20 and 23 were not made. The other allegations were denied. After corrigendum, a supplementary reply was submitted.

9. Additional District Magistrate conducted inquiry and submitted his Inquiry Report dated 03.02.2014, holding that as the dispute relating to Forest Land was pending in High Court in writ petitions filed by private tenure holders as such in view of Section 52 (2) of U.P. Consolidation of Holdings Act, 1953, first consolidation operation shall be deemed to continue and second consolidation

operation could not have been started. Proceedings of second consolidation operation up to stage of demarcation of chak and delivery of possession was illegal. In second consolidation operation, valuation of plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) were determined and notification under Section 9 was made. On the objection of Forest Department, Consolidation Officer by an ex-parte order dated 26.03.2012, deleted valuation of aforesaid plots. Private tenure holders filed recall applications, which were got transferred by Settlement Officer Consolidation by order dated 16.04.2012 and Consolidation Officer (Final Record) Kheri recalled the order dated 26.03.2012, on 19.07.2012. Settlement Officer Consolidation allowed the appeal of Forest Department on 30.08.2013, when the complaint in this respect was made to Consolidation Commissioner, U.P. The petitioner was guilty for confirming Provisional Consolidation Scheme on 30.03.2013 during pendency of chak appeals. Charge against the petitioner was found to be proved.

10. State of U.P. issued show cause notice dated 25.02.2014 to the petitioner to submit his reply to Inquiry Report. The petitioner submitted his reply dated 07.04.2014, in which previous statements have been reiterated. Thereafter State Government by the impugned order held the petitioner as guilty of the charge and imposed penalty of reduction of rank i.e. the petitioner was reverted on the post of Consolidation Officer from Settlement Officer Consolidation. Hence this writ petition has been filed.

11. We have considered the arguments of the counsel for the parties and examined the record. Following facts are admitted between the parties:--

"(a) Dispute between State of U.P. through Forest Department and private tenure holders were in respect of old plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) of village Grant No. 3, pargana Kukra, tahsil Gola, district Kheri. Forest Department was claiming that State of U.P. through Notification No. 1737/xiv-48-54 dated 29.03.1954, issued under Section 4 of Forest Act, 1927, declared an area of 4499.69 acre land as "Reserved Forest" at village Grant No. 3, pargana Kukra, tahsil Gola, district Kheri, including aforesaid plots, while private tenure holders were claiming their title and possession over it.

(b) First round of consolidation was started in village through notification under Section 4 (2) of U.P. Consolidation of Holdings Act, 1953 dated 07.08.1966. State of U.P. through Forest Department filed objections for recording aforesaid land as "Forest Land", which were contested by private tenure holders. Consolidation Officer, dismissed objections of Forest Department by dated 16.12.1977. State of U.P. through Forest Department filed 65 appeals from the orders of Consolidation Officer, which were consolidated and allowed by order of Settlement Officer Consolidation dated 27.03.1985 and plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) were directed to be recorded as "Forest Land". Private tenure holders filed 21 revisions, from the aforesaid orders, which were consolidated

and dismissed by order of Deputy Director of Consolidation dated 04.08.1993. However, private persons filed writ petitions (registered as Consolidation No. 851 of 1993, Consolidation No. 964 of 1993 and Consolidation No. 967 of 1993) in which interim orders 10.12.1993 were granted as such orders of Settlement Officer Consolidation and Deputy Director of Consolidation were not given effect to in revenue records.

(c) The village was notified under Section 52 of the Act, on 25.11.1978. Due to order of Consolidation Officer and thereafter interim order of High Court, land in dispute remained recorded in CH Form-23, 41, 45 and new khatauni, in the names of private tenure holders. Order of Settlement Officer Consolidation dated 27.03.1985 was not given effect to in revenue record till today. On the basis of chak carving, in previous consolidation, 250 new plot numbers were allotted to aforesaid four plots and were recorded in different khatauni.

(d) The village Grant No. 3 was again placed under consolidation operation by notification under Section 4-A (2) of the Act, dated 10.05.2008. Basic consolidation year khatauni was 1416 F, which was supplied from Tahsil to consolidation staff, in which names of private tenure holders were recorded, over new plots. As such land was included in consolidation operation and its valuation was determined. The village was notified under Section 9 on 18.02.2010 and under Section 10 on 17.12.2011, of the Act and chaks were carved out on its basis.

(e) For the first time, Forest Officer Mailani through Letter No. 598/33-1 dated 27.03.2010 wrote to Assistant Consolidation Officer requested to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) as "chak-out". Divisional Forest Officer, Kheri wrote Letter No. 6912/33-1 dated 19.04.2010, Letter No. 1038/33-1 dated 18.08.2010 and Letter No. 8185/33-1 dated 22.06.2011 to keep aforesaid land as "chak out". As in these letters, old plot numbers were mentioned as such then Settlement Officer Consolidation, through Letter No. 259/Aa.Li./2011 dated 25.02.2011 directed Consolidation Officer Gola to demarcate Forest Land. Thereafter, by order, Letter No. 282/Aa.Li./2011 dated 20.08.2011 directed to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) as "chak-out". In compliance thereof, demarcation was made and Consolidation Officer vide order dated 26.03.2012 deleted valuation of disputed land and made aforesaid plots as "chak-out".

(f) Private tenure holders filed applications for recall of order of Consolidation Office dated 26.03.2012. Later on they filed transfer application under Rule 65 before Settlement Officer Consolidation for transferring the cases from Consolidation Officer Gola to other Court. On which then Settlement Officer Consolidation by order dated 16.04.2012 transferred the cases to Consolidation Officer (Final Record) Kheri, who recalled order dated 26.03.2012 on 19.07.2012, which was challenged by Forest Department in appeals, which were allowed by the petitioner by order dated 30.08.2013.

(g) Till 19.05.2012, Sri Santosh Kumar Singh was posted as Settlement Officer Consolidation, Kheri. The petitioner took charge of this post on 22.05.2012. Only allegation against the petitioner was that he had confirmed Provisional Consolidation Scheme of the village on 30.03.2013. But there is nothing on record to prove that the petitioner was given notice of the dispute raised by Forest Department as his posting at this place was from 22.05.2012."

12. Thus charge that the dispute relating to Forest Land was pending in High Court in writ petitions filed by private tenure holders as such in view of Section 52 (2) of U.P. Consolidation of Holdings Act, 1953, first consolidation operation shall be deemed to continue and second consolidation operation could not have been started, cannot be levelled against the petitioner as second consolidation operation was started on 10.05.2008 while the petitioner came to be posted at this place for the first time on 22.05.2012. In basic consolidation record, land in dispute was recorded in the names of private tenure holders as such deliberate violation of Paragraphs-225 to 228 of U.P. Consolidation Manual is not inferred/proved.

13. The respondents held that dispute relating to Forest Land was pending in High Court in writ petitions filed by private tenure holders as such in view of Section 52 (2) of U.P. Consolidation of Holdings Act, 1953, first consolidation operation shall be deemed to continue and second consolidation operation could not have been started. Section 52 of the Act is quoted below:--

"Section 52 Close of consolidation operations- (1) As soon as may be, after fresh maps and records have been prepared under sub-section (1) of Section 27, the State Government shall issue a notification in the Official Gazette that the consolidation operations have been closed in the unit and the village or villages forming a part of the unit shall then cease to be under consolidation operations:

Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix, distribute and record the cost of operation under this Act.

(1-A) The notification issued under sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.

(2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities, as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have not been closed.

(3) Where the allotment or lease of any land made before the Consolidation Scheme becomes final under Section 23, is cancelled by an order under sub-section (4) of Section 198 of the Uttar Pradesh Zamindari Abolition and Land

Reforms Act, 1950 and such order becomes final, then notwithstanding anything contained in the provisions of this act, such order shall be given effect to by such authorities, as may be prescribed, in the following manner, and the consolidation operation shall, for that purpose, be deemed to have not closed namely-

- (a) the value of the land which was the subject matter of such allotment or lease shall first be ascertained in the manner prescribed;
- (b) the value referred to in clause (a) shall be deducted from the total value of the land allotted to the tenure holder concerned during consolidation proceeding;
- (c) the tenure holder shall be entitled, during consolidation proceeding, to land equivalent in valuation to the said land."

14. A bare perusal of Section 52 (1) shows that on notification under this Section, consolidation operations in the unit and the village or villages forming a part of the unit is closed and after notification the village shall cease to be under consolidation operation. Under Section 52 (2) of the Act, a legal fiction has been created for giving effect to any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the date of issue of the notification under sub-section (1). Thus scope of Section 52 (2) of the Act is limited and does not affect the jurisdiction of State Government to issue fresh notification under Section 4-A. In any case, the petitioner has no role in issuance of fresh notification and no charge is made out against him in this respect.

15. Now the question arises as to whether by confirming Provisional Consolidation Scheme of the village on 30.03.2013, the petitioner has committed misconduct? For the first time, Forest Officer Mailani through Letter No. 598/33-1 dated 27.03.2010 wrote to Assistant Consolidation Officer requested to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) as "chak-out. Divisional Forest Officer, Kheri wrote Letter No. 6912/33-1 dated 19.04.2010, Letter No. 1038/33-1 dated 18.08.2010 and Letter No. 8185/33-1 dated 22.06.2011 to keep aforesaid land as "chak out". As in these letters, old plot numbers were mentioned as such then Settlement Officer Consolidation, through Letter No. 259/Aa.Li./2011 dated 25.02.2011 directed Consolidation Officer Gola to demarcate Forest Land. Thereafter, by order, Letter No. 282/Aa.Li./2011 dated 20.08.2011 directed to keep plots 1 (area 638.76 acre), 106 (area 390.13 acre), 347 (area 238.00 acre) and 362 (area 74.38 acre) (total area 1341.27 acre) as "chak-out". In compliance thereof, demarcation was made and Consolidation Officer vide order dated 26.03.2012 deleted valuation of disputed land and made aforesaid plots as "chak-out". The petitioner was posted on 22.05.2012. Apart from recall applications filed before Consolidation Officer by private tenure holders, which was also got transferred from Consolidation Officer Gola to Consolidation Officer (Final Record) Kheri, nothing was pending before the petitioner so as to say that he had knowledge of dispute of Forest Land at the time of confirmation of Provisional

Consolidation Scheme, which was otherwise has to be confirmed by him under Law in discharge of his statutory duties. Thus charge is not proved, against the petitioner.

16. In view of the aforesaid discussions, the writ petition succeeds and is allowed. Order of Principal Secretary, Revenue, Civil Secretariat, Uttar Pradesh Government, Lucknow, dated 15.07.2015, imposing punishment of reversal in rank to the petitioner i.e. from post of Settlement Officer Consolidation to Consolidation Officer, is set aside. The petitioner shall be entitled to all consequential benefits, including continuity of service and salary.