
(2015) 07 AHC CK 0045

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 451 of 2001 (Cons.)

Jagdev

APPELLANT

Vs

Deputy Director of Consolidation, Pratapgarh and Others

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 48, 48(3), 52, 9-A (2)

Citation : (2015) 7 ADJ 389

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : Nagendra Singh, for the Appellant

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J—Heard Mr. Dhruvad Upadhyaya holding brief of Mr. Nagendra Singh, learned counsel for the petitioner and learned Standing Counsel and perused the record. Through the present writ petition under Article 226 of the Constitution of India, the petitioner is challenging the legality and correctness of the order dated 19.2.2001 passed by the Deputy Director of Consolidation, Pratapgarh on a reference made by the Consolidation Officer under Section 48(3) of the U.P. Consolidation of Holdings Act, 1953 contained in Annexure No. 1A to the writ petition.

2. According to the petitioner, an objection was filed under Section 9-A (2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act") for correcting the area of Plot No. 2259. It was alleged that the disputed plot was wrongly shown as "Talab" whereas the said plot i.e. 2259/2 is under the tenancy of the petitioner and it was prayed that the entry showing the said plot as "Talab" may be expunged and same may be recorded in the name of the petitioner showing the area of 1-13-0. The Consolidation Officer rejected the objection partly and allowed only 0-19-0 to be recorded in the name of the petitioner and

rest of the area was directed to be recorded in the name of Gaon Sabha showing as "Talab".

3. Feeling aggrieved, the petitioner had preferred an appeal under Section 11(1) of the Act, which was registered as Appeal No. 4582, before the Settlement Officer Consolidation, Pratapgarh.

It has been stated that the Assistant Settlement Officer Consolidation, Pratapgarh, after perusing the record, allowed the appeal No. 4582, vide order dated 12.11.1979. Against the order dated 12.11.1979, no revision was preferred. However, the order dated 12.11.1979 could not be implemented and by that time, village was denotified under Section 52 of the Act. Thereafter, the petitioner had preferred an application under Rule 109-A of U.P. Consolidation of Holdings Rules for the execution of the order dated 22.11.1979 before the Consolidation Officer, who, vide order dated 14.9.1989, expunged the entry shown as Talab and corrected Form-45 showing the name of Jagdev.

4. According to the petitioner, the order dated 14.9.1989 could not be given effect to by successor and instead, a reference was made to the Deputy Director of Consolidation, seeking direction for implementation of the order without issuing any notice to the petitioner as provided under Section 48(3) of the Act. On reference, the Deputy Director of Consolidation, while exercising its power, without issuing any notice to the petitioner, passed the ex parte order dated 19.2.2001, which is impugned in the present writ petition.

5. Submission of the learned counsel for the petitioner is two folds; firstly, there is no valid reference as the Consolidation Officer was required to hear the petitioner before making reference and sent it to the Deputy Director of Consolidation; and secondly, the Deputy Director of Consolidation, without issuing any notice and in utter disregard to the principal of natural justice and statutory provisions, passed the impugned orders. In support of his submission, he has relied upon the judgment of this Court in Brij Lal and Another Vs. Deputy Director of Consolidation and Another, (1996) AWC 512 Supp : (1996) RD 115 .

6. Learned Standing Counsel, while defending the impugned order, has fairly admitted that no opportunity has been given to the petitioner before passing the impugned order.

7. Before proceeding further, it is relevant to clarify that while entertaining the present writ petition, this Court, vide order dated 6.7.2001, stayed the operation and enforcement of the impugned order dated 19.2.2001 passed by the Deputy Director of Consolidation till further orders of this Court.

8. I have heard learned counsel for the parties and perused the record.

9. For proper adjudication of the case, it would be relevant to reproduce Section 48 of the Act, which is as under :

"48. Revision and reference.-(1) The Director of Consolidation may call for and

examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than interlocutory order passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.

(emphasis supplied)

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1). (e.s.)

[Explanation [(1)].--For the purposes of this Section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation]

[Explanation (2).--For the purposes of this Section the expression "interlocutory order" in relation to a case or proceedings, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect of finally disposing of such case or proceeding].

[Explanation (3).--The power under this Section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence.]"

10. From bare perusal of sub-section (3) of Section 48 of the Act, it comes out that any authority subordinate to the Director of Consolidation i.e. Settlement Officer Consolidation, Consolidation Authority, may refer the record of any case or proceeding to the Director of Consolidation for action under Sub-section (1) but in doing so, an opportunity of being heard is to be provided to the parties. Sub-section (1) of Section 48 of the Act also provides that the Deputy Director of Consolidation, may call for and examine the record of any decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. Meaning thereby, it is incumbent upon the subordinate authority after finding any defect in any proceeding to issue the notice to the parties concerned to the proceeding or person affected inviting their version and only after hearing them, the authority concerned is obliged to prepare the term of the reference or its report

and send the same along with the record to the Deputy Director of Consolidation. The Deputy Director of Consolidation, in turn, is obliged to decide the same under sub-section (1) of Section 48 after due notice and hearing to the affected parties. The notice and hearing at both the stage (i.e. before making reference and while deciding reference) are the condition precedent.

11. In the instant case, neither the Consolidation Officer has afforded opportunity of hearing to the parties while making reference to the Deputy Director of Consolidation nor the Deputy Director of Consolidation has afforded opportunity of hearing to the parties prior to passing the impugned order. This shows that both the authorities i.e. Consolidation Officer and Deputy Director of Consolidation have completely overlooked the provisions of Section 48 of the Act and passed the impugned orders. Therefore, the impugned order is not only contrary to the provisions of Section 48 of the Act but also in breach of the settled principle of natural justice.

12. In *Brij Lal (Supra)*, this Court has held that the proceedings under Section 48(3) of the Act are judicial proceedings and the orders in the case are to be passed after hearing the concerned parties. The Deputy Director of Consolidation exercises jurisdiction to pass an order under Section 48(3) of the Act only upon a valid reference made by subordinate authority which is a condition precedent to the exercise of that power.

13. It is well settled that where a statute requires to do certain thing in a particular method, then, that thing must be done in that very method and other methods or mode of performance are impliedly and necessarily forbidden. Herein, it has been specifically provided under the statute i.e. Section 48(3) of the Act, as stated hereinabove, that prior to making reference, the Consolidation Authority is to afford opportunity of hearing and further, on receipt of reference, the Deputy Director of Consolidation is also under a legal obligation to afford opportunity of hearing to the parties prior to passing any order on reference. But surprisingly, both the authorities have overlooked the aforesaid provisions of the Act. For the reasons aforesaid, the writ petition is allowed. The order dated 19.2.2001 passed by the Deputy Director of Consolidation, Pratapgarh is hereby quashed and the order dated 14.9.1989 passed by the Consolidation Officer is confirmed. The authorities shall act accordingly.