

(2014) 01 AHC CK 0016
In the Allahabad High Court
Case No : Writ B. No. 54058 of 2006

Jugender Pal Singh

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3), 9B

Citation : (2014) 122 RD 594

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Ayub Khan and Bramhnarayan S. Rathore, Advocate for the Appellant; Archana Singh Jadaun, L.P. Singh, V.K. Singh and V.S. Chaudhary, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Anjani Kumar Mishra, J.—This writ petition and writ petition No. 45811 of 2006 have been filed against orders passed in reference proceedings u/s 48(3) of the U.P. Consolidation of Holdings Act, 1953. Since they involve almost identical facts the same are being decided by a common order. I have heard Sri Ayub Khan learned Counsel for the petitioners in both the writ petitions.

2. The impugned order in this writ petition has been passed in Reference No. 423 while the order impugned in Writ Petition No. 45811 of 2006 has been passed in Reference No. 372.

3. The petitioner in this writ petition is holder of Chak No. 61 while the petitioner in the second writ petition is holder of Chak No. 57. Both the petitioners were proposed separate chaks However, both were allotted land of the plots in dispute which are plot Nos. 347, 348, 349, 350, 248, 254 and 289/2 and which were subject matter of impugned reference proceedings.

4. It is the common case in both the writ petitions that the plot Nos. 347, 348,

349, 350, 248, 254 and 289/2 (referred to as plots in dispute) were plots recorded in the name of Gaon Sabha and were not chak out and therefore allotted in the chaks of various persons during carving of chaks. On 30.7.2004 an objection was filed u/s 9B of the U.P. Consolidation of Holdings Act, 1953 praying that the aforesaid plots be excluded from consolidation operations and they be declared chak out.

5. On the aforesaid application, a report was called for from the Consolidator which was submitted on 20.9.2004.

6. On receipt of the report aforesaid the Consolidation Officer by his order dated 5.11.2004 excluded the said plots from consolidation operations and declared them to be chak out.

7. Subsequent to this order and during the preparation of the final records, another report was submitted by the Consolidator for preparing a reference to give effect to the order of the Consolidation Officer dated 5.11.2004. This report indicated that Chak holders Nos. 80, 235, 86, 118 and 57 and Bachat land were going to be being affected. The Assistant Consolidation Officer referred the same to the Consolidation Officer on 28.2.2006 who in turn forwarded it to the Deputy Director of Consolidation fixing 25.3.2006. The Deputy Director of Consolidation by order dated 27.3.2006 accepted the reference thereby disturbing the chaks of the petitioners. It is these orders passed in separate references which are impugned in these writ petitions.

8. It is the common case of the petitioners that they had no notice or information either of the order of the Consolidation Officer dated 5.11.2004 or of the subsequent report and the reference proceedings. They came to know of the same only when the reference was sought to be given effect to on the spot. It is their case that the orders being ex-parte, having been passed without notice or information to them and without considering their case or the hardship caused to them, are illegal and liable to be set aside by this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

9. In both the writ petitions" impleadment applications were filed by persons alleging that the plots in dispute which were declared chak out, were allotted to them by the Gaon Sabha on 31.8.2009 after the close of the consolidation operations by issuance of notification u/s 52 of the U.P. Consolidation of Holdings Act in 2008. These impleadment applications were allowed and the impleaded parties are represented by Sri L.P. Singh, Advocate who has submitted that the petitioners were aware all along of the order passed by the Consolidation Officer on 5.11.2004 but have not challenged the same either before the Court below or in the instant writ petition itself. He has further submitted that the reference proceedings were only for the purpose of giving effect to the order passed by the Consolidation Officer declaring the plots in dispute to be chak out. Since the main order is not under challenge, the reference proceedings initiated which are in the nature of execution proceedings to implement the order of the Consolidation

Officer the same cannot be faulted.

10. He has further pointed out that the petitioner No. 2 in Writ Petition No. 45811 of 2006 namely Vinod Pal Singh had filed a restoration application for recall of the order dated 5.11.2004 on the ground that it was an ex-parte. This restoration application was dismissed by the Consolidation Officer and this order was not challenged any further and has become final as far as Vinod Pal Singh is concerned. Vinod Pal Singh the petitioner No. 2 is therefore guilty of concealment of material facts as factum of filing of the restoration and its subsequent dismissal has not been disclosed in the writ petition. Sri L.P. Singh therefore submits that the writ petition No. 45811 of 2006 deserves to be dismissed as the petitioners therein are guilty of concealment of facts and have not come with clean hands.

11. Having heard learned Counsel for the parties and having perused the record, the crucial fact which emerges from pleadings and submissions of the parties is that the order passed by the Consolidation Officer declaring the plots in dispute to be chak-out is not under challenge in the writ petition nor the same has been subjected to any challenge before any forum by any of the petitioners other than the petitioner No. 2 Vinod Pal Singh. Even that challenge has failed and the order dated 5.11.2004 is final against Vinod Pal Singh.

12. Since the reference proceedings were initiated only to give affect to this order of the Consolidation Officer, the petitioner cannot assail the reference proceedings without challenging the main order which is sought to be implemented thereby.

13. At this stage Sri Ayub Khan learned Counsel for the petitioners has submitted that the petitioners were not aware of the order dated 5.11.2004. He has further submitted that he may be granted time to either challenge the order of the Consolidation Officer before the appropriate forum or in the alternative he may be granted time to file an amendment application challenging the order of the Consolidation Officer before this Court.

14. Sri L.P. Singh learned Counsel for the respondent has opposed this prayer on the ground that he represents the persons who were allotted the land in the year 2009. Subsequent to the allotment, the allottees were put in question. However, the allottees were subsequently dispossessed by the petitioners on the strength of the interim order granted in this writ petition whereby the operation of the orders impugned were stayed. He has further stated that the petitioners in both the writ petitions have no concern with the land which has been allotted to the persons impleaded as respondents in these two writ petitions. The land which has been allotted in the chak of the petitioners was not subject matter of the allotment in favour of the impleaded respondents. This fact is admitted by Sri Ayub Khan learned Counsel for the petitioners.

15. In view of the above facts the Writ Petition No. 45811 of 2006 in so far as it has been filed by Vinod Pal Singh is dismissed as the said Vinod Pal Singh has

failed to disclose in the writ petition the fact that he had challenged the order dated 5.11.2004 passed by the Consolidation Officer by means of restoration application which was dismissed, which dismissal has since become final. In so far as the other petitioners in Writ Petition No. 45811 of 2006 as also Writ Petition No. 54058 of 2006 are concerned it is not disputed that they had not challenged the order dated 5.11.2004.

16. Under the circumstances the remaining petitioners are granted 10 days time to make an appropriate application challenging the order either by filing a recall application or by filing an appeal. Since there was a stay operating in favour of the petitioners in these writ petitions, it is though fit to provide that if an appropriate application is filed either by way of recall or appeal along with an application for stay, within a period of 10 days from today, the authority concerned shall consider the stay application and pass appropriate orders within a week thereafter and therefore, the dispossession of the petitioner in pursuance of the impugned order shall remain stayed for a period of 17 days from today or till such time the stay applications filed by the petitioners are decided, which ever is earlier.

17. Since the parties are not at issue on the fact that the allottees before this Court impleaded as respondents in the two writ petitions, have been allotted land of the plots in dispute with which the petitioners are not concerned, it is directed that the authority concerned shall ensure that the possession over the land allotted to these respondents is handed over to them forthwith and in any case within 10 days from the date a certified copy of this order is filed before the concerned authority.

18. Under the circumstances in my considered opinion, the orders impugned in these two writ petitions are not liable to be quashed. They shall however abide by the final orders to be passed on the applications that may be filed by the petitioners as indicated above. Accordingly and subject to the directions aforesaid, both the writ petitions are disposed of.