

**(2015) 02 AHC CK 0150**  
**In the Allahabad High Court**  
**Case No : Writ-B No. 454 of 1977**

Lalji and Others

APPELLANT

Vs

D.D.C.

RESPONDENT

**Date of Decision :** 16-02-2015

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

**Citation :** (2015) 4 ADJ 62 : (2015) 4 ALJ 262 : (2015) 2 AWC 1899 : (2015) 127 RD 300

**Hon'ble Judges :** Ran Vijai Singh, J

**Bench :** Single Bench

**Advocate :** V.K. Singh and S. Shaker, for the Appellant; R.N. Shukla, D.D. Chauhan, P.R. Maurya, R.K. Shukla and R.P. Mishra, S.C., Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Ran Vijai Singh, J.—Heard Sri V.K. Singh, learned Senior Counsel assisted by Sri A.P. Singh, learned Counsel for the petitioner, learned Standing Counsel appearing for the State-respondents, Sri Diwakar Singh learned Counsel for the Gaon Sabha and Sri P.R. Maurya, learned Counsel as an intervener. By means of this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the order dated 25.3.1977 passed by the Deputy Director of Consolidation in Reference No. 1307 (State v. Lalji and others), by which the aforesaid reference has been allowed and the leases granted in favour of the petitioners on 17.10.1976 have been cancelled.

2. The facts giving rise to this case are that the respondent-Gaon Sabha has made a proposal for grant of agricultural lease in favour of the petitioner No. 1 over gata Nos. 319, 320, 322, 334/1, 334/2, 335M, 337/3337/2, 324, 333M, 323/1, 323/2 and 325. The same kind of proposal was made for grant of lease in favour of petitioner No. 2 also on gata Nos. 74, 75M, 76/1, 76/2, 77, 78, 326/1, 326/2, 337, 338, 330/2, 331 and 332/7. The proposal of the gaon sabha was

approved by the Sub Divisional Officer and consequently, the leases were also executed in favour of the petitioners. The petitioners' names were also mutated in the revenue records on 8.1.1976 on the basis of the aforesaid.

3. It further transpires that the village has gone under consolidation operation and pending consolidation, a complaint was made before the Sub-Divisional Officer for cancellation of the petitioners' leases on the ground that the persons, in whose favour leases have been granted, do not belong to that very village. The Sub-Divisional Officer had made an inquiry and reported the matter before the Consolidation Officer. The Consolidation Officer, in turn, made a reference while exercising power vested in him under sub-section (3) of section 48 of the U.P. Consolidation of Holdings Act, 1953 (in short, "the Act") vide order dated 10.6.1976. In turn, the Deputy Director of Consolidation had decided the reference after hearing all concerned and allowed the same, cancelling the leases granted in favour of the petitioners.

4. Before the Deputy Director of Consolidation, two contradictory decisions of this Court were cited; one of the year 1970, wherein this Court has held that the Deputy Director of Consolidation has no jurisdiction to cancel the lease granted under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950. Another decision was cited in which it was held that the Deputy Director of Consolidation has jurisdiction to adjudicate upon the validity of the lease. The Deputy Director of Consolidation, placing reliance upon the second judgment of this Court, which was later in time, has assumed the jurisdiction and passed the impugned order.

5. While assailing the impugned order, learned Counsel for the petitioners has made following submissions:

(1) The order of reference dated 10.6.1976 was without jurisdiction as before passing the impugned order, no opportunity of hearing was given to the petitioners, which was mandatorily required in view of the provisions contained under sub-section (3) of section 48 of the Act;

(2) In view of the Full Bench decision of this Court in the case of Simlesh Kumar v. Gaon Sabha and others 1977 RD 408, the Deputy Director of Consolidation had no jurisdiction to adjudicate upon the validity of the lease or allotment of land granted by a Land Management Committee.

6. So far as the first submission of learned Counsel for the petitioners with regard to affording opportunity of hearing before passing the order of reference is concerned, learned Counsel for the petitioners contended that the petitioners were neither associated at the time of inquiry made by the Sub-Divisional Officer pursuant thereto reference was made, nor before making the reference, the Consolidation Officer has ever issued notices or heard the petitioners.

7. On being confronted as to whether the petitioners were associated at the time of inquiry or at the time of making reference, learned Standing Counsel

appearing for the State-respondents, Sri Diwakar Singh, learned Counsel for the gaon sabha and Sri P.R. Maurya, learned Counsel who appears as an intervenor, could not show from the perusal of the impugned order that before making the reference, the petitioners were noticed and heard.

8. For appreciating the controversy, it would be appropriate to go through the provisions contained under sub-section (3) of section 48 of the Act, which reads as under:

"(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)."

9. From the bare reading of the aforesaid provision, it is apparent that the authority subordinate to the Director of Consolidation may, before making reference, shall provide an opportunity of hearing to the parties concerned.

10. This Court in Ram Pratap Vs. Deputy Director of Consolidation and Others, (2013) 6 ADJ 457 : (2013) 3 AWC 2834 : (2013) 119 RD 419 , dealing with the provisions contained under sub-section (3) of section 48 of the Act, has held as under:

"12. It is also well-settled that if any thing has not been done in the manner provided for under the Statute and the Statute has provided a consequence for non-performance of such act as provided for, then those provisions are mandatory and not directory. This Court in the case of Smt. Dukhani and another v. State of U.P. and others, passed in Writ Petition No. 42057 of 2012 has held that the provisions contained under sub-section (1) and sub-section (3) of section 48 are mandatory in nature and unless the procedure as prescribed under the statute is followed, that order would be void order."

11. From the bare perusal of the records and the submissions made by the learned Counsel for the parties, it transpires that before making reference, no opportunity was offered to the petitioner, therefore, the reference itself was void in nature.

12. So far as second submission based on the Full Bench decision of this Court in the case of Simlesh Kumar v. Gaon Sabha and others 1977 RD 408, regarding jurisdiction, wherein it has been held that the Deputy Director of Consolidation has no jurisdiction to adjudicate upon the validity of the lease or allotment granted by the Land Management Committee is concerned, learned Counsel for the respondents placing reliance upon the judgment of the Apex Court in the case of U.P. Sugar Corporation Ltd. v. Dy. Director of Consolidation and others 2000 (91) RD 165, has submitted that the Deputy Director of Consolidation had jurisdiction to look into the validity of the lease/allotment of land. In support of his submissions, he has placed reliance upon para 44 of the aforesaid judgment, which reads as under:

"44. The decision of this Court in Garakh Nath Dube's case (supra) was also followed by the Allahabad High Court in Ramanand v. DDC and others, and it was held that a document which is void and is, therefore, liable to be ignored by the Courts, would not affect the jurisdiction of the Consolidation Courts and they would be within their jurisdiction in adjudicating upon that document so as to finally decide the rights of the parties. The Full Bench decision of the High Court in Similesh Kumar's case (supra) was distinguished."

13. Learned Counsel for the petitioner has also placed reliance upon the judgment of this Court rendered in Writ C No. 5651 of 2009 (Noor Mohd. and others v. Addl. Commissioner and others, decided on 13.11.2014). So far as the judgment of Apex Court is concerned, there the Apex Court has held that if a document is void, in that eventuality, the Deputy Director of Consolidation will have jurisdiction to look into the same and ignore the same.

14. Sri Mourya, taking shelter of the judgment in the case of Noor Mohd. (supra), has submitted that the Deputy Director of Consolidation had jurisdiction as the leases were void. In the case of Noor Mohd. (supra), His Lordship was dealing with the procedural lapse in the process of grant of lease, wherein it was found that the required Z.A. Forms 57 and 58 were not signed, in that eventuality, the Court held that such lease was void in nature.

15. Here in this case, not even a single whisper has been made regarding procedural lapse, i.e., non-signing of Z.A. Forms 57 or 58, nor anything has been argued before this Court that there was no resolution of the gaon sabha, or the Sub Divisional Officer has not approved the leases, nonetheless, the allegation in the application seeking cancellation of the lease was that the petitioners do not belong to the village where the land is situated; in other words, they are of the different villages. In my considered opinion, whether a particular person belongs to the village concerned or not, was a question of fact and was to be adjudicated upon on the basis of the evidence produced by the parties and such allegation will not render the lease void. Therefore, in view of the Full Bench decision of this Court in the case of Simlesh Kumar (supra), the Deputy Director of Consolidation had no jurisdiction to adjudicate upon the matter and the impugned order passed by him is without jurisdiction. The cases cited by Sri Mourya are of no help to him. In view of the foregoing discussions, the writ petition succeeds and is allowed. The order dated 25.3.1977 passed by the Deputy Director of Consolidation in Reference No. 1307 (State v. Lalji and others) is hereby quashed.