
(2001) 08 AHC CK 0010
In the Allahabad High Court
Case No : C.M.W.P. No. 30625 of 2001

Lalji

APPELLANT

Vs

Deputy Director, Consolidation, Varanasi and Others

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19A, 20, 21(1), 21(2), 21(3)

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 54A, 55, 55(2), 55(3)

Citation : (2001) 4 AWC 2743

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Vijay Kumar Rai, Sankatha Rai and Vinod Kumar Rai, for the Appellant;

Judgement

R.R. Yadav, J.—Heard the learned counsel for the petitioner. Perused the order impugned dated 4.8.2001 (Annexure-1 to the writ petition) whereby ad-interim stay order has been modified by the Deputy Director of Consolidation, Varanasi.

2. At the first instance, it is held that ordinarily no writ petition is maintainable against interlocutory order modifying the ad interim stay order unless compelling unconscionable reasons are demonstrated. The writ petition against interlocutory order cannot be entertained as a matter of course under Article 227 of the Constitution. The present writ petition is not maintainable against Interlocutory order and an argument contrary to it is not acceptable.

3. It is contended by the learned counsel for the petitioner that he has no objection, if the chak is demarcated on the spot, but delivery of possession should not be made because crops of the petitioner are standing over a portion of chak which is likely to be disturbed causing prejudice to him.

4. The grievance of the petitioner to the effect that his crops are standing, therefore. If delivery of possession is effected, a serious prejudice will be caused

to him, is not palatable to me in view of Sub-rule (2) of Rule 55 of the Rules framed under Act of 1953 which provides that in case the right to tend and gather the crops standing on such chaks or lands or parts thereof remain with the person from whom possession is transferred. the Assistant Consolidation Officer shall in consultation with Consolidation Committee determine in C.H. Form No. 32 the amount of compensation which may not exceed three times rental value of cropped area for use of the land to be payable by the person to whom possession over the land is transferred. The date by which the standing crops must be harvested and removed from the plot, and the date by which compensation determined must be paid, should also be fixed by the Assistant Consolidation Officer. Extracts in C.H. Form 32 shall be served on the tenure holder concerned.

5. It is pertinent to mention here that in order to clear the ambiguity, an Explanation is added to Sub-rule (2) of Rule 55 of U. P. Consolidation of Holdings Rules, 1954, according to which no compensation shall be determined and paid where no sowing season intervenes between the date of delivery of possession and the date fixed for harvesting the standing crops. It is to be imbibed that Section 29 of the Act of 1953 read with Sub-rule (3) of Rule 55 of the Rules framed under the aforesaid Act provides for determination of compensation by the Assistant Consolidation Officer. The aforesaid safeguards available to all the tenure holders of the unit after confirmation and publication of provisional consolidation scheme by the Settlement Officer, Consolidation shall be treated to be sufficient and the petitioner is not entitled to claim some additional safeguard as suggested by the learned counsel for the petitioner beyond mandatory provisions envisaged under Sections 23, 24, 28 and 29 of Act of 1953 and Rules 54A and 55 of the Rules framed under the said Act. It would be expedient to reproduce the mandatory provisions envisaged u/s 23 of the Act of 1953 which reads thus :

"23. Confirmation of the Provisional Consolidation Scheme and the issue of the allotment orders--(1) The Settlement Officer, Consolidation, shall confirm the Provisional Consolidation Scheme-

(a) if no objections are filed within the time specified in Section 20 : or

(b) where such objections are filed, after such modifications, or alterations, as may be necessary in view of the orders passed under Sub-sections (1) to (4) of Section 21.

(2) The Provisional Consolidation Scheme so confirmed shall be published in the unit and, except as otherwise provided by or under this Act, shall be final.

(3) (i) Where the allotments made u/s 19A are not modified u/s 21 and are confirmed under Subsection (1), the extract contained in the notice issued u/s 20, shall. except as provided by or under this Act be treated as final allotment orders for the tenure-holders concerned.

(ii) In cases not covered by Clause (i), revised extract specifying the modified allotments, as confirmed under Sub-section (1) shall be issued by :

(a) the Consolidation Officer, where the allotments are not modified by the Settlement Officer. Consolidation ; and

(b) by the Settlement Officer, Consolidation, where he has modified the allotments, and the same shall except

as otherwise provided by or under this Act be the final allotment orders for the tenure-holders concerned."

6. From close scrutiny of Section 23 of Act of 1953, it is revealed that after confirmation and publication of the provisional consolidation scheme by the Settlement Officer. Consolidation in the unit, it becomes final except as otherwise provided by or under this Act. The expression "except as otherwise provided by or under this Act" used in Sub-section (3) (ii) (b) leads to an irresistible conclusion that finality of the provisional consolidation scheme after confirmation by Settlement Officer, Consolidation and its publication in the unit is subject to chak revisions as contemplated under Sub-section (1) of Section 48 of the Act of 1953. The expression "unit" has been defined u/s 3 (11A) of the Act of 1953 which is also reproduced herein below :

" "Unit" means a village or part thereof, and where the Director of Consolidation so notified by publication in the official gazette two or more villages or part thereof, for which a single scheme of consolidation is to be framed."

7. In my considered opinion, after confirmation and publication of the provisional consolidation scheme in the unit, it cannot be split up by granting ad interim stay order, staying either demarcation or delivery of possession or both against the mandatory provisions envisaged under Sections 24, 28 and 29 of the Act of 1953 read with Rules framed thereunder by Deputy Director of Consolidation at the behest of some of the tenure holders by way of filing chak revisions under Sub-section (1) of Section 48 of the said Act for the reasons discussed he re in above. The expression "publication in the unit" is also defined u/s 3 (8) of the Act of 1953.

8. The conjoint reading of Sections 23, 24, 28 and 29 of Act of 1953 read with Rule 54A and Rule 55 of the Rules framed under the aforesaid Act together with the definition of the "unit" and "publication of unit" u/s 3 (11A) and Section 3 (8) respectively reveals that grant of ad interim stay order either staying the demarcation of the provisional consolidation scheme which has attained finality or staying delivery of possession by the Deputy Director of Consolidation at the behest of some of the tenure holders in chak revisions u/s 48 (1) of Act of 1953 is impermissible, An act which cannot be done directly by the Deputy Director of Consolidation staying demarcation and delivery of possession of the provisional consolidation scheme which has attained finality cannot be permitted to be done indirectly by granting ad interim stay order in chafe revisions withholding

demarcation and delivery of possession of all the tenure holders of the unit at the behest of some tenure holders aggrieved against the confirmed and published provisional consolidation scheme. It is held that if Deputy Director of Consolidation in a chafe revision is satisfied that preparation of provisional consolidation scheme which is confirmed and published in the unit itself is defective or has been prepared against the spirit of the Act of 1953 and Rules framed thereunder affecting large numbers of tenure holders in the unit, then after recording reasons he can stay the demarcation and delivery of possession to ait the tenure holders of the unit without splitting the confirmed and published provisional consolidation scheme. it is to be imbibed that in case by revisional court some adjustments are made in chaks of some of tenure holders in chak revisions, revised extracts of C.H. Form 23 specifying the modified allotment for purposes of demarcation and delivery of possession are to be issued only to affected chak holders ensuring the compliance of orders passed in revisions. The order passed by Deputy Director of Consolidation must accompany a schedule indicating exclusion of plots and inclusion of plots or any other adjustments such as chak road, abadi. bachat or water channel, etc. in chak/chaks of the parties before him strictly in conformity with the judicial order passed by revisional court. It is held that preparation of schedule is a ministerial act but it must be in conformity of the judicial order passed by Deputy Director of Consolidation.

9. With the aforesaid observations, the instant writ petition fs finally disposed of at admission stage with a direction to the Deputy Director of Consolidation, Varanasi, to decide the revision between the parties as early as possible.