
(2016) 11 AHC CK 0138
In the Allahabad High Court
Case No : Writ-B No. 51595 of 2016

Mahipat

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 134 RD 18 : (2017) 1 RJ 389

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Ram Krishna Mishra, Advocate, for the Petitioners; C.S.C, for the Respondents

Final Decision : Disposed Off

Judgement

Manoj Kumar Gupta, J. - The instant writ petition has been filed seeking quashing of the notices dated 9.9.2016 issued by the Consolidation Officer, Chandauli, Camp at Ghorawal. By these notices, the petitioners have been called upon to appear before him on 14.9.2016. They have also prayed for a writ of mandamus directing respondent no.2 to restrain the respondent no. 4 from functioning as Consolidation Officer, Ghorawal. A further prayer has been made for direction to the second respondent to carry out demarcation as per the order of the Forest Settlement Officer, Sonbhadra dated 3.6.1999.

2. According to the petitioners, they are displaced persons on account of construction of Rihand Jalashaya. They claimed to have been allotted land by the Bhoodan Yagya Samiti for their rehabilitation. A dispute arose between the Forest department with respect to the land proposed to be allotted to the petitioners and Bhoodan Yagya Samiti. The said dispute was resolved in a meeting held on 18.3.1964 between the officials of the State Government and the Forest department as well as the representative of Bhoodan Yagya Samiti. Under the terms thereof, some of the plots belonging to the Forest department were earmarked and rest of the disputed plots were given to Bhoodan Yagya Samiti.

The case of the petitioners is that they were granted patta by Bhoodan Yagya Samiti over the land which was earmarked for such purpose. However, a notification was issued later on, notifying the said land as forest land. The Bhoodan Yagya Samiti raised a dispute before the Forest Settlement Officer, Sonbhadra and the same was decided by order dated 3.6.1999. It has been urged that in respect of Arazi No. 224m an area of 109-5-0 was to vest in the Forest department and the remaining area with the Bhoodan Yagya Samiti and its allottees, the petitioners herein. The notification issued under Section 20 of the Forest Act was directed to be amended accordingly. Aggrieved thereby, an appeal was filed by the State under Section 17 of the Forest Act which came to be dismissed by the Ist Additional District Judge, Sonbhadra by order dated 7.12.2009. The further case of the petitioner is that in consolidation operations, the land allotted to the petitioners have been duly taken notice of and separate chaks have been carved out in their favour. There is due entry in that regard in CH form 41 and 45. However, the notification under Section 52 of the U.P. Consolidation of Holdings Act, 1953 is not being issued. The Consolidation Officer in the meantime, has issued the impugned notice whereby he intends to abolish the plot carved out in favour of the petitioners and enter the said land as Forest land. It is urged that same is not permissible in view of the decision taken in the meeting between the Government officers, Forest department and the representative of the Bhoodan Yagya Samiti as well as the adjudication made under the Forest Act. The petitioners have therefore prayed for quashing of the impugned notice.

3. Learned standing counsel appearing on behalf of the respondents pointed out that at the stage of preparation of the final record it transpired that the area of the Forest land as recorded in CH Form 45 has got substantially reduced. Consequently, the notice was issued by the Consolidation Officer. He further submitted that the petitioners themselves have filed an application before the Settlement Officer, Consolidation for being given opportunity to lead evidence and thus they should participate in the proceedings which are pending before the Consolidation Officer.

4. He further points out that challenging the order dated 3.6.1999 as well as the order dated 7.12.2009 passed under the provisions of the Forest Act, Writ-C No.43326 of 2011 was filed by the State of U.P. but on 31.7.2015, it has been dismissed as infructuous. The State intends to file an application for recall of the said order.

5. It is not disputed before this Court that the petitioners in response to the impugned notices have already filed their objections bringing to the notice of the Consolidation Officer the fact that an agreement was entered into between the officials of the State Government, Forest department and the representatives of the Bhoodan Yagya Samiti on 18.3.1964 as well as regarding the adjudication made under the Forest Act. The said objections are still pending and have not been decided so far. They have also filed an application before the Settlement

Officer, Consolidation praying that the proceedings before the Consolidation Officer be stayed or in the alternative, the Consolidation Officer be directed to provide opportunity to the petitioners to lead evidence and thereafter pass necessary orders. On the said application of the petitioners which has been placed on record by the learned standing counsel, the Settlement Officer, Consolidation by order dated 15.9.2016 has directed the third respondent to grant 15 days further time to the petitioners to lead evidence and thereafter decide the matter.

6. The proceedings initiated in pursuance of the impugned notices are thus still pending. The objections filed by the petitioners against the said notices are yet to be decided by the Consolidation Officer. The apprehension of the petitioners that the Consolidation Officer will ignore the adjudication made under the Forest Act as well as the decision taken in the meeting dated 18.3.1964 does not appear to be based on any solid foundation. In the opinion of the Court, once objections have been filed, the Consolidation Officer is duty bound to consider the same before taking any decision in the matter. However, in view of the adjudication made under the Forest Act as well as having regard to the entire facts and circumstances of the case, it is hereby provided that till the final decision is taken on the basis of impugned notices, status quo as on date, should be maintained.

7. Accordingly, without interfering with the impugned notices, this writ petition is disposed of by providing that the Consolidation Officer, while taking decision in the matter shall have due regard to the objections filed by the petitioners in response to the impugned notices and till the decision is taken, status quo as on date shall be maintained by the parties.