
(1993) 08 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11482 of 1980

Mukhtar

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 27, 27(1), 4, 4(2), 48(3)
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 109A, 27

Citation : (1993) 3 AWC 1549 : (1993) RD 457

Hon'ble Judges : V.K. Khanna, J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.N. Singh and S.N. Singh, for the Appellant; I.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—Consolidation proceedings took place in the village in which the land in dispute lies. Regarding allotment of chaks to the parties in this writ petition an order was passed by the Deputy Director of Consolidation on 13-5-1974 which had become final between the parties. Notification u/s 52 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter "described as the "Act") was issued on 26th November, 1977. On 8th July 1978 an application under Rule 109-A of the Rules framed under the Act (hereinafter described as the "Rules"), was moved by the contesting opposite parties for implementing and giving effect to the order passed by the Deputy Director of Consolidation dated 13-5-1974. The Consolidation Officer by his order dated 25th January 1980 rejected the aforesaid application as not maintainable as there had been a notification u/s 52 of the Act in respect of the village. A revision was filed by the contesting opposite parties. The aforesaid revision was allowed and the Consolidation Officer was directed to decide the aforesaid application on merits. The present writ petition has been filed against the aforesaid order of the Deputy Director of Consolidation

dated 10-12-1980.

2. The present writ petition was first heard by a learned Single Judge and he was of the opinion that the question to be decided in the case was whether after the Gazette notification u/s 52 of the Act an application under Rule 109-A of the Rules was maintainable or not. On the aforesaid question" the learned Single Judge was of the opinion that as two learned Single Judges of this Court have taken contradictory view on this point, matter required reference to a larger Bench for deciding the controversy. It is in these circumstances that " the entire writ petition has been referred to a Division Bench.

3. A learned Single Judge of this Court in the case of Raja Ram and Others Vs. The Dy. Director of Consolidation and Others, , has held:

In accordance with Rule 109-A read with Section 52(2) of U.P. Consolidation of Holdings Act the contesting opposite parties could not approach the Consolidation Authorities for . getting requisite entry as no case was pending on the" date on which notification u/s 52(1) of the U.P. Consolidation of Holdings Act.

4. In this case the order passed on 23-7-1965 by the Consolidation Authorities was sought to be given effect to by moving an application after the notification u/ s 52 of the U.P. Consolidation of Holdings Act had taken place. The learned Single Judge was of the opinion that as no case was pending the jurisdiction of the Consolidation Authorities under Rule 109-A of the Rules could not be invoked after notification u/s 52 of the Act.

5. In the case of Brij Bir Singh and Another Vs. Deputy Director of Consolidation and Others, , a learned Single Judge of this Court took a contrary view by holding that even after the close of Consolidation operation an application for" correction of papers for giving effect to an order which became final is maintainable under Rule 109-A of the Rules. In this case the Deputy Director of Consolidation had given a decision on July 8, 1964 in favour of the contesting Respondents and that order had become final. However, the necessary amendment in the revenue papers and relevant C.H. forms was not made. In 1966 a notification u/s 52 of the Act was also made. An application was thereafter made with a prayer for correction of the map and papers and also praying that the order dated July 8, 1964 may be given effect to in the revenue papers. The Settlement Officer Consolidation, who heard the parties held that as the village had been de-notified u/s 52(1) of the Act, it appears just that in order to give effect to the order. dated July 8, 1964 passed by the then Deputy Director of Consolidation,. which became final between the parties, in all respects, the dispute may be . decided in reference proceedings u/s 48(3) of the Act. A reference thereafter was sought to be made so that the order dated July 8, 1964 passed by the Deputy Director of Consolidation may be given effect to. Against that order a revision was filed by the Petitioner which was dismissed by the revisional court on April 29, 1986. It is these two orders which were under challenge in the aforesaid case.

6. It may be noticed that the case of Raja Ram (supra) was cited before the learned Single Judge which was distinguished on facts. The learned Single Judge held that once an order passed by the Deputy Director of Consolidation in favour of the contesting Respondents becomes final and the Consolidation Authorities have failed to carry out or to give effect to (that order in the revenue papers, it is not for the contesting Respondents to suffer. The petition was dismissed as the learned Single Judge was of the opinion that the impugned order passed by the Settlement Officer Consolidation directing the Consolidation Officer to submit a report u/s 48(3) did not suffer from any mistake or error muchless an error apparent on the face of the record.

7. The crucial question which falls for determination in this case is whether in view of the notification u/s 52 of the Act, the necessary corrections which ought to have been done in view of the final order passed by the Consolidation authorities could still be done on an application moved by the contesting Respondents under Rule 109-A of the Rules.

8. The relevant part of Section 52(1) and 52 (2) provides as follows: "52. Close Of Consolidation Operations:

(1) As soon as may be after fresh maps and records have been prepared under Sub-section (1) of Section 27, the State Government shall issue a notification in the official Gazette, that the Consolidation operation have been closed in the Unit and village or villages or forming part of the Unit shall then cease to be under consolidation operations:

Provided that the issue of the notification under this section shall not effect the powers of the State Government to fix, distribute and recover the cost of operations under this Act.

(2) Notwithstanding anything contained in Sub-section (1), any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of issue of the notification under Sub-section (1) shall be given effect to by such authorities as may be prescribed and the Consolidation operations shall, for that purpose be deemed to have not been closed.

9. Sub-section (2) of Section 52 contemplates that the Consolidation operations will not be deemed to have been closed in case there is any order passed by a court of competent jurisdiction in case of writ petitions filed under the provisions of Constitution of India, or in a cases or proceedings pending under this Act on the date of issue of the notification under Sub-section (1) shall be given effect to by such authorities as may be prescribed and for that purpose the provisions of Sub-clause (1) of Section 52 will have no application.

10. It is not disputed that in the present case there is neither any order passed in a writ petition which has to be implemented nor there is any case pending under the Consolidation of Holdings Act. The only question which has to be

determined is as to whether any proceedings are either pending or will be deemed to be pending under the Act on the date of issue of notification under Sub-section (1) of Section 52 of the Act.

11. The Act has been made to provide for the Consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture. u/s 4 of the Act the State Government may bring any district or part thereof tinder consolidation operations for which purpose a notification may be issued under Sub-section (2) of Section 4, The effect of the notification u/s 4(2) of the Act has been provided u/s 5 wherein it has been provided that all proceedings for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated. The Consolidation Authorities under the Act are entrusted with the duty of revising the revenue records of each village or part thereof which is brought under consolidation operations, correction of the clerical mistakes in the revenue records in respect of the tenure holders and their rights and liabilities in relation to the land including specific individual tenure holders in joint holdings, valuation of the plots, valuation of trees, wells and other improvements. Adjudication of disputes relating to claim to land and partition of joint holding is contemplated by inviting objections by the tenure-holders. After the decision of these objections a provisional consolidation scheme is prepared for the purpose of consolidation of holdings and allotment of chaks. Objections are invited at this stage also by the tenure holders which are decided and new records are prepared u/s 27 of the Act. Under Rule 27 of the Rules a duty has been enjoined on the District Deputy Director of Consolidation to get prepared for each, village a now map, field book and records of rights in respect of the Consolidation area on the basis of the entries in the map and allotment orders as finally made and issued in accordance with the provisions of the Act.

12. From the entire scheme of the Act and the Rules framed thereunder it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the CPC in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and no duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13-5-1974 was not finally implemented by the

Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting Respondents was to be incorporated by the Consolidation Authorities in the revenue records. The Consolidation Authorities having not done so, the proceedings in respect thereof can not be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the order dated 13-5-1974 would necessarily be taken to be pending on the date of the notification issued u/s 52(1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13-5-1974 under the Act even though a notification u/s 52(1) of the Act had taken place. In our opinion, the view taken by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law.

13. For the reasons stated above, we are of the opinion that the view taken by the Deputy Director of Consolidation under the impugned order is correct and does not call for any interference in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution. The writ petition is accordingly dismissed. Looking to the facts and circumstances of the case the parties shall bear their own costs. Stay order is discharged.