
(2014) 03 AHC CK 0270
In the Allahabad High Court
Case No : Writ-B No. 3146 of 2014

Om Prakash

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226
General Clauses Act, 1897 — Section 6(c)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 21, 27, 4, 4(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 201

Citation : (2014) 123 RD 210

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : S.C. Tripathi, Advocate for the Appellant; Manoj Kumar Yadav, Advocate for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri S.C. Tripathi, for the petitioner and Standing Counsel, for the respondents. The writ petition has been filed for issue of writ of prohibition, prohibiting Deputy Director of Consolidation from entertaining/deciding the restoration applications filed by respondents-2 and 3 and for mandamus directing Deputy Director of Consolidation to decide the issue relating to maintainability of restoration application and delay condonation application as preliminary issues with reasoned order before hearing/deciding restoration application on merit.

2. It has been stated that Bujharat (father of the petitioner) was allotted plot 1286 by the order of Deputy Director of Consolidation dated 31.3.1981 passed in Reference No. 853. Thereafter, the notification u/s 52 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act") took place on 10.4.1982. The order dated 31.3.1981 was given effect to and since its allotment, the petitioner was in possession of the land in dispute. Raj Bahadur (respondent-3) filed a restoration application dated 2.12.2004 for recall of the order dated 31.3.1981. Thereafter, District Government Counsel (Revenue),

Jaunpur filed a restoration application dated 10.10.2008 for recall of the order dated 31.3.1981, in the name of "Rajya Sarkar Bajariye Apper Zila Shaskiya Adhivakta Rajasva, Jaunpur". Deputy Director of Consolidation, Jaunpur is proceeding in these restoration application.

3. The petitioner filed his objection that village has already been notified u/s 52 of the Act on 10.4.1982. On the date of notification, no proceeding was pending as such restoration applications filed after such a long time, was not maintainable. The restoration applications are long barred by limitation and there is no reason to condone the delay. Restoration application filed by Rajya Sarkar Bajariye Apper Zila Shaskiya Adhivakta Rajasva, Jaunpur was not maintainable. Raj Bahadur was not affected by the impugned order as such restoration application on his behalf was not maintainable. The Counsel for the petitioner submitted that the petitioner raised these points and prayed to Deputy Director of Consolidation to decide these points as preliminary points but he is adamant to decide restoration application on merit. These preliminary points goes to the root of the case and are liable to be decided before hearing the restoration application. These restoration applications have been filed by unauthorized persons after notification u/s 52 of the Act as such respondent-1 is liable to be restrained from proceeding in the matter.

4. So far as the arguments of the Counsel for the petitioner for deciding the preliminary points before hearing and deciding restoration application, is concerned, U.P. Consolidation of Holdings Act, 1953 does not prescribe for deciding preliminary points before deciding the case on merits. In the absence of any specific procedure, consolidation authorities used to decide delay condonation application or any other preliminary points in the appeal, restoration application and revision under the Act, along with the appeal, restoration application and revision. Supreme Court in Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., held that the Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated:

This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue, the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that" this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.

Apart from the fact that the provisions of the Code do not *stricto sensu* apply to "industrial adjudication", even under the Code, after the Amendment Act, 1976, the normal rule is to decide all the issues together in a civil suit.

In such circumstance, there is no legal impediment for deciding preliminary issue before deciding the case/proceeding on merit under the Act as such no mandamus can be issued in this respect.

5. So far as arguments of the Counsel for the petitioner that after notification u/s 52 of the Act, restoration application is not maintainable as held by Division Bench of this Court in Hari Ram v. DDC and others 1989 RD 281 (DB) and relied upon in Nanhki v. DDC and others, 1995 RD 264 is concerned, the relevant provisions are quoted below:

Section 5. Effect of notification u/s 4(2).--(1) Upon publication of the notification under sub-section (2) of section 4 in the Official Gazette, the consequences, as herein after set forth, shall, subject to the provisions of this Act, from the date specified thereunder till publication of notification u/s 52 or Sub-section (1) of section 6, as the case may be, ensue in the area to which the notification u/s 4(2) relates, namely--

(a) the district or part thereof, as the case may be, shall be deemed to be under consolidation operations and the duty of maintaining the record-off-rights and preparing the village map, the field book and the annual register of each village shall be performed by the District Deputy Director of Consolidation, who shall maintain or prepare them, as the case may be, in manner prescribed;

(2) Upon the said publication of the notification under sub-section (2) of section 4, the following further consequences shall ensue in the area to which notification relates, namely--

(a) every proceeding for correction of records and every suit and proceeding in respect of declaration of rights 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 for 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 shall abate.

Section 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 operations have been closed in the unit and the village or villages forming a part of the unit shall then cease to be under consolidation operations.

(2) Notwithstanding anything contained under sub-section (1), any order passed by a Court of competent jurisdiction in the cases of writ filed under the provisions of Constitution of India, or in cases or proceedings pending under this Act on the date of issue of notification under sub-section (1) shall be given effect to by such authorities as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have been not closed.

6. The words "consolidation operations" have not been defined under the Act.

From the scheme of the Act, revision of village map, filed book, current annual register, determination of valuations and shares in joint holdings, preparation of Statements of Principles, preparation and maintenance of Revised Annual Registers, framing Provisional Consolidation Scheme and after enforcement of scheme delivery of possession and preparation of final records u/s 27 of the Act are the consolidation operations. While discharging functions of consolidation operations, the consolidation authorities are required to decide all the disputes under sections 9-A, 9-B, 9-C, 12 and 21 and appeals and revisions arising out of these proceeding under the Act. The proceedings pending before consolidation authorities on date of notification u/s 52(1) of Act, are specifically saved u/s 52(2) of the Act. For the purposes of pending cases, section 52(2) specifically provides that the consolidation operation shall be deemed to have been not closed. There is no impediment in filing the restoration applications.

7. By virtue of section 41 of the Act, if an order has been passed *exparte* against any person by the consolidation authorities, he is entitled to file a recall application. Similarly, any order can be challenged in appeal or revision as the case may be. Close of the consolidation operation by notification u/s 52 of the Act, does not affect right, privilege, obligation or liability accrued or incurred during consolidation operation. Section 6(c) of General Clauses Act, 1897 provides that repeal of any Act shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Right to file a restoration application is fully covered under this clause. Notification u/s 52(1) of the Act ensue same consequences as repeal of the Act. As such right to file a restoration application is saved u/s 6(c) of General Clauses Act, 1897. Supreme Court in *Glaxo Smith Kline PLC and Others Vs. Controller of Patents and Designs and Others*, held that a pre-existing right of appeal continues to exist, by necessary implication the old law which created the right of appeal also exists to support the continuation of that right and hence the old right must govern the exercise and enforcement of that right. In the absence of contrary intention in repealing the enactment, rights under the old statute are not destroyed. Similarly right to file restoration application has been provided u/s 41 of the Act, read with section 201 of U.P. Land Revenue Act, 1901, as such, in spite of the notification u/s 52(1) of the Act, restoration application is maintainable and consolidation authorities have jurisdiction to decide the same,

8. This issue has already been decided by Single Judge of this Court in *Gopi Singh and Others Vs. Deputy Director of Consolidation and Others*, and Division Benches in *Dilawar Singh Vs. The Gram Samaj and Others*, *Ram Bahadur Vs. Deputy Director of Consolidation and Others*, and *Jiwa Ram and Another Vs. The Deputy Director of Consolidation and Others*, Unfortunately, these Division Bench decisions were not brought to the notice to the Division Bench in *Hari Ram v. DDC and others* 1989 RD 281 (DB) Earlier judgment of Division Benches were binding upon subsequent Division Bench. Thus the law laid down in *Hari Ram*'s case is *per-incurium* and has no binding effect as earlier Division Benches are binding, but were not noticed. A Larger Bench of 7 Hon''ble Judges of Supreme

Court in A.R. Antulay Vs. R.S. Nayak and Another, held that it is a settled rule that if a decision has been given per incuriam, the Court can ignore it. This view has been consistently followed by Supreme Court in Raj Kishore Prasad Vs. State of Bihar and another, and A.P. Housing Board Vs. Mohammad Sadatullah and Others,

9. The arguments of the Counsel for the petitioner that as in Writ-B No. 62773 of 2006, Mohd. Farook v. The Collector and others, in which similar points were involved and this Court granted interim order as such same interim order be granted in this case also on the principle of Article 14 of the Constitution, is concerned, interim orders are not binding upon coordinate Benches. This Court is deciding the writ petition finally.

10. The arguments of the Counsel for the petitioner that the restoration application filed by Rajya Sarkar Bajariye Apper Zila Shaskiya Adhivakta Rajasva, Jaunpur was not maintainable, is concerned, it is merely a defect in the nomenclature of the parties. The petitioner may raise objection in this respect before the Court concerned then it would be corrected. It is well settled that merely for mis-joinder or non-joinder of the parties a suit cannot be dismissed without giving opportunity to remove defect. District Government Counsel Revenue is appointed u/s 127-B of U.P. Act No. 1 of 1951. u/s 127-B(2) District Government Counsel Revenue is entitled to appear, plead and act without any written authority on behalf of gaon sabha as well as State of U.P. The application has been filed by District Government Counsel Revenue is maintainable. The defect in nomenclature in the restoration application is a curable defect and not fatal as such writ of prohibition does not lie. The Constitution Bench of Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, held that Article 226 is not intended to supercede the mode of obtaining relief by an action in ordinary Court established under the law. Shutting the hearing of the restoration application in exercise of writ jurisdiction by this Court is not proper. The petitioner has alternative remedy to raise these points before the authorities concerned. Sufficiency of cause for condonation of delay is still required to be examined by Deputy Director of Consolidation. In the view of aforesaid discussions, the writ petition has no merit and is dismissed.