
(2005) 10 AHC CK 0178

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19746 of 2001

Ram Briksha Singh

APPELLANT

Vs

Deputy Director Consolidation, Settlement Officer
Consolidation and Vijay Singh

RESPONDENT

Date of Decision : 17-10-2005

Acts Referred:

Citation : (2006) 2 AWC 1242 : (2005) 99 RD 787 : (2005) 2 RD 787

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Ram Prakash Rai and Satyendra Narayn Singh, for the Appellant;
L.K. Tripathi and S.C., for the Respondent

Judgement

S.N. Srivastava, J.—Challenge in this petition is directed against judgment dated 31.3.2001 passed by Deputy Director, Consolidation.

2. The dispute in the instant petition revolves round chak No. 82 belonging to the petitioner. According to the averments in the petition, the respondent No. 3 staked claim for allotment of this Chak before the Deputy Director Consolidation by filing a revision. The case of the petitioner is that the Deputy Director Consolidation allowed the revision without regard being had to the background of the facts and without reckoning with the objection filed by the petitioner.

3. The chequered history of the pendency of this writ petition from 2001 onwards in this Court may be noticed before proceeding further. The writ petition having been instituted, the Court granted six weeks" time on 21.5.2001 to file counter affidavit. Sri L.K. Tripathi who filed power to represent Opp. Party No. 3 was further granted two weeks" time to file counter affidavit. On 18.2.2003, the case had to be adjourned the illness slip having been put in on behalf of the learned counsel for the Opp. Party No. 3. On 17.7.2003, the case again suffered adjournment on account of illness slip of learned counsel appearing for Opp. Party No. 3. On 18.12.2003, two weeks and no more time was granted to the learned counsel for the Opp. Party No. 3 to file counter affidavit. Again on the

request of the learned counsel appearing for Opp. Party No. 3, the case was adjourned on 5.2.2004. The case was again adjourned on 10.5.2004 on account of illness slip of the learned counsel representing Opp. Party No. 3. The petition came to be admitted on 15.7.2004 granting three weeks' time to the counsel for the Opp. party to file counter affidavit. On 30.9.2004 the court was compelled to direct listing of the case peremptorily. Even thereafter on 30.10.2005, the case was adjourned on the illness slip of the learned counsel for the Opp. Party No. 3. In the above perspective, this Court does not view with equanimity the temporizing attitude of the counsel in the matter and is constrained to decline request for further time to file counter affidavit and rules that the matter be heard today.

4. Learned counsel for the petitioner assailed the judgment rendered by Deputy Director Consolidation arguing that it suffers from an error of law apparent on the-face of record inasmuch as there is complete non-application of mind to the case of the petitioner in the impugned order and further that no reason is embodied in the impugned order and ultimately, it has been argued that the impugned order has occasioned great irreparable injury to the petitioner. Per contra, learned counsel appearing for Opp. Party urged that although no reason has been assigned for conclusion by the authority concerned but the same can be supplied by way of counter affidavit. He further submitted that it brooks no dispute that the respondent No. 3 was repeatedly granted time in the last four years to file counter affidavit and even once, stop order was passed by the Court on 18.12.2003 but it remains a fact that no counter affidavit has been filed and therefore, it is not open to the petitioner at this stage to assail the decision on the solitary ground that the impugned order is bereft of reasons.

5. I have heard learned counsel for the parties and perused the materials on record with the assistance of the learned counsel for the parties.

6. Coming to grips with the contention of the learned counsel for the respondent No. 3 that the reasons could be supplied by counter affidavit, I feel called to refer to the decision of the Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The Apex Court in this decision was dealing with the amplitude of powers and width of functions to be exercised by Election Commission under Article 321. In this decision, the substance of what the Apex Court held is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and the same cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It was further observed that otherwise, an order bad in the beginning may, by the time, it comes to court on account of a challenge, get validated by additional grounds later brought out. The Apex court also referred to observations made in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, which is quoted below.

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making

the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

7. In another recent decision in MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another, , the Apex Court held that reasons substitute subjectivity by objectivity. Right to reason is an indispensable part of a sound judicial system. The affected party can know why the decision has gone against him. In the ultimate analysis, the Apex Court remitted the matter to the High Court for fresh consideration on merits observing that the High Court shall pass a speaking order recording reasons in support of its conclusions. In its decision (supra), the Apex Court referred to various foreign decisions including (1971) 1 All ER 1148 and 1974 ICR 120. The crux of what has been held in the aforesaid decisions is that "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at." Taking into reckoning the aforesaid decision, the Apex Court observed as under:

"Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the inscrutable face of the sphinx, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirement of natural justice is spelling out reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi judicial performance."

8. Reverting to the decision impugned herein, from 3 careful consideration of the judgment rendered by Deputy Director Consolidation, it is amply clear that no reasons have been recorded by the authority while accepting the case of the revisionist. It is also clear that the authority concerned has not reckoned into consideration the case of the petitioner while allowing the revision and setting aside the order of Settlement Officer Consolidation. In the circumstances, I have no hesitation to hold that the judgment impugned herein is not supported by any reason and therefore, the same is bad in law on account of non-consideration of the grievances of both the parties and by this reckoning, the same is liable to be quashed.

9. By various decisions, while sitting in this jurisdiction, the Court has been stressing on the need of giving reasons by these authorities under the U.P. Consolidation of Holdings Act but even thereafter, cases have come to fore which gives appearance that the decisions of this Court have not been enforced in

obedience. The Court should be concerned with actual implementation of its order and cannot remain a passive prononcer of the judgment.

10. It is hoped that the authority concerned will be visited with condign chastisement for not observing in compliance the earlier pronouncements of the Court in this regard.

11. As a result of foregoing discussion, the writ petition succeeds and is allowed. The order dated 31.3.2001 passed by Deputy Director, Consolidation is quashed. In consequence, the Deputy Director Consolidation, Gorakhpur is directed to pass appropriate orders attended with reasons in accordance with law after affording opportunity of hearing to the parties.