

(1968) 05 AHC CK 0003
In the Allahabad High Court
Case No : Special Appeal No. 127 of 1965

Ram Lal Singh and another	Vs	APPELLANT
Consolidation Officer, Faizabad and others		RESPONDENT

Date of Decision : 09-05-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 52(2)

Citation : (1968) 38 AWR 684

Hon'ble Judges : V.G. Oak, C.J.; U.S. Srivastava, J

Bench : Division Bench

Advocate : Hargur Charan Srivastavas, for the Appellant; S.R. Dwivedi for Respondents 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—This special appeal arises out of proceedings under the UP Consolidation of Holdings Act, hereinafter referred to as the Act. We are concerned with the Act as it stood before its amendment by UP Act 38 of 1958.

2. Village Dewapur in district Faizabad was brought under consolidation operations. In the village papers a certain grove was recorded in the names of Bindeshwari Singh and others. Ram Lal Singh and Chandra Bhan Singh filed an objection u/s 12 of the Act claiming ownership of the grove. Since there was a dispute on a question of title, the Consolidation Officer referred the dispute to arbitration through the Civil Judge, Faizabad. In due course a statement of Proposals was published in the village u/s 20 of the Act. The Civil Judge thought that in view of the publication of the Statement u/s 20 of the Act, arbitration proceedings had to be suspended u/s 22(2) of the Act. He directed the Consolidation Officer accordingly. Consequently the Consolidation Officer consigned the papers to the record-room. Being unable to get relief u/s 12 of the Act, Ram Lal Singh and Chandra Bhan Singh filed an objection u/s 20 of the Act claiming the same grove. The objection u/s 20 was dismissed as barred by limitation. Their appeal and revision against that decision were successively

dismissed by the Settlement Officer (Consolidation) and the Dy. Director of Consolidation. Having failed u/s 20 of the Act, Ram Lal Singh and Chandra Bhan Singh proceeded to get the objection u/s 12 revived. But the Civil Judge and the Consolidation Officer declined to revive the objection u/s 12. Ultimately, Ram Lal Singh and Chandra Bhan Singh filed before this Court a writ petition praying that the Consolidation Officer, Faizabad and the Civil Judge, Faizabad, be directed to revive the proceedings u/s 12 of the Act.

3. The writ petition has been dismissed by a learned single judge of this Court. Ram Lal Singh and Chandra Bhan Singh have therefore come up in special appeal.

4. Annexure 2 to the writ petition is a copy of the order of the Civil Judge dated 3-8-1962 staying proceedings u/s 12 of the Act. In pursuance of that direction the Consolidation Officer passed an order (Annexure 3) on 31-8-1962 consigning papers to the record room. The Civil Judge relied upon a single judge decision of this Court in *Ganga Singh v. The Dy. Director of Consolidation UP Lucknow* 1962 AWR 450. But this decision has been overruled by a Division Bench of this Court in *Roop Narain v. State* 1962 AWR 727. Mr. S.R. Dwivedi appearing for Respondents No. 4 to 6 conceded that Respondents Nos. 1 and 2 were wrong in staying arbitration proceedings in August, 1962.

5. The learned single Judge was also satisfied that the orders of Respondents Nos. 1 and 2 were incorrect. Nonetheless he declined to give a direction to Respondents Nos. 1 and 2 as requested by the Petitioners. The learned single Judge gave two reasons in support of his decision. Firstly, there was delay in moving the writ petition. Secondly, the consolidation proceedings had been closed in the village u/s 52 of the Act.

6. As regards delay, it is true that the writ petition was moved about a year after Respondent Nos. 1 and 2 passed the two impugned orders. But since the decision of Respondent No. 2 was based upon a decision of this Court, it was difficult for the Petitioners to take any action in the (matter till the decision of this Court in *Ganga Singh's* case was overruled. The Petitioners spent a few months in pursuing their objection u/s 20 of the Act. It is true that the property in dispute, being a grove, fell outside the scope of consolidation operations. But the learned single Judge remarked that the Petitioners should have applied early u/s 20 of the Act. The Petitioners can therefore hardly be blamed for filing an objection u/s 20 of the Act. Having failed in the objection u/s 20 of the Act, the Petitioners proceeded to revive the proceedings u/s 12 of the Act. The application for revival was dismissed on 29-7-1963. Within a few days of the passing of the order (Annexure 8) elated 29-7-1963 the present writ petition was moved in this Court. It cannot be said that the Petitioners have been guilty of laches.

7. Closure of consolidation operations u/s 52 of the Act created some difficulty. For over coming this difficulty, the Petitioners relied upon Sub-section (2) of Section 52 of the Act. Section 52(2) states:

Notwithstanding anything contained in Sub-section (1) any order passed by a

court of competent jurisdiction in cases...or in 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 the consolidation operations shall, for that purpose, be deemed to have not been closed.

The learned single Judge thought that Section 52(2) does not help the Petitioners. He relied upon Section 47 of the UP Act VIII of 1963. Section 47 of Act VIII of 1963 dealt with transitory provisions. Section 47 of Act VIII of 1963 ran thus:

(1) In units notified u/s 4 of the principal Act, prior to the date on which this Act comes into force, hereinafter referred to as the said date, all work in regard to or connected with consolidation operation...shall be conducted and concluded in accordance with the provisions of the principal Act, as if the Act had not come into force....

9. Section 47 of Act VIII of 1963 merely explains whether work at certain stages has to be carried out under the amended Act or the unamended Act. That provision has nothing to do with the provision contained in Sub-section (2) of Section 52 of the Act. Section 52(2) clearly lays down that if any proceeding is pending on the date of issue of notification u/s 52(1) it is possible to enforce orders in that proceeding as if consolidation operations have not been closed. The Petitioners can certainly make use of Section 52(2) of the Act. In the instant case the objection u/s 12 of the Act had been stayed. That was how the matter stood when the notification u/s 52(1) of the Act was issued. It was therefore possible to continue the proceedings u/s 12 of the Act.

10. As discussed above, the two orders (Annexures 2 and 3) passed by Respondents Nos. 1 and 2 are incorrect. The Petitioners are entitled to have those orders quashed.

11. The appeal is allowed. The petition is allowed. We quash the order of the Civil Judge, Faizabad dated 3-8-1962 (Annexure 2) and order of Consolidation officer dt. 31-8-1962 (Annexure 3). We direct Respondents Nos. 1 and 2 to resume proceedings in the objection u/s 12 of the UP Consolidation of Holdings Act. Parties shall bear their own costs throughout.