

(1980) 02 BOM CK 0014

In the Bombay High Court

Case No : Spl. C.A. No. 461 of 1973 (Nagpur Bench)

Rambhau Wagh

APPELLANT

Vs

Consolidation Officer, Buldana Division

RESPONDENT

Date of Decision : 04-02-1980

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 15A, 19, 20
Central Excises and Salt Act, 1944 — Section 36
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 5A, 6

Citation : (1980) 82 BOMLR 447

Hon'ble Judges : Mohta, J; Joshi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.V. Joshi, J.—By this writ petition under Articles 226 and 227 of the Constitution the petitioners have challenged the orders of the respondent No. 2 dated March 18, 1973 confirming the scheme for consolidation of lands for the village Wadshingi in Jalgaon Jamod taluka of Buldana district u/s 20(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the Consolidation Act).

2. The petitioners Nos. 1 to 3 own certain fields at village Wadshingi. Petitioner No. 1 Rambhau is the father of petitioner No. 2 Mukund and the petitioner _No. 3 Sanjay is the son of petitioner No. 2 Mukund. The field survey No. 42/1-B belonging to the petitioner No. 2 lies sandwiched between the two fields survey No. 42/1 and survey No. 42/2, to the north and south of the field 5. No. 42/1-B of petitioner No. 2 respectively, and these two fields survey No. 42/1 and survey No. 42/2 belong to respondent No. 3 Shivshankar. The other fields of the petitioners lie to the south of field survey No. 42/2 of the respondent No. 3. The proceedings for consolidation of land at village Wadshingi were taken up in the year 1972 and a notice, dated August 10, 1972 signed by the Assistant

Consolidation Officer, was issued to the petitioners requiring them to remain present in the Gram Panchayat Office on August 17, 1972 in this respect. It appears on August 17, 1972 the Assistant Consolidation Officer could not reach the village because of rains and therefore, eventually another notice was issued to the petitioners on August 22, 1972 requiring their presence at Jalgaon Jamod on August 25, 1972. On August 25, 1972 the petitioners submitted their proposals about the manner in which the consolidation affecting their fields and the field of respondent No. 3 should be effected. These were, it would seem, the objections raised by the petitioners u/s 15A of the Consolidation Act. On August 26, 1972 the Assistant Consolidation Officer recorded a memorandum signed by the members of the Village Committee recommending consolidation of the petitioner's fields by way of exchange with the fields of respondent No. 3 in a certain manner. On October 10, 1972 notices were issued by the Assistant Consolidation Officer, Buldana, to the petitioners in respect of the draft-scheme published u/s 19(1) of the Consolidation Act. The petitioners submitted their objections to the draft scheme in writing on October 30, 1972. These were the objections submitted u/s 19(1) of the Consolidation Act. The Consolidation Officer, Malkapur, issued notices to the petitioners on December 1, 1972 requiring them to attend with necessary documentary proof at Jalgaon on December 12, 1972 at 11 a.m. when they would be heard in regard to their objections. Accordingly on December 14, 1972 the petitioners appeared before the Consolidation Officer, showed their various proposals as per the sketch-maps and requested that the draft proposal be withdrawn or modified and their proposal should be accepted. They also made oral submissions to the Consolidation Officer. Thereafter on January 16, 1973 the Consolidation Officer, Buldana Division, Malkapur, informed the petitioners that as a result of the enquiry in the matter, it was found that the plans submitted by the petitioners were not proper, and, therefore, the petitioners' application had been filed. Apparently the Consolidation Officer did not consider it necessary to amend the draft scheme under the provisions of Section 19(2) of the Consolidation Act, and forwarded the papers to the Settlement Commissioner for confirmation of the scheme. The petitioners on January 30, 1973 submitted a petition direct to the Settlement Commissioner, Poona containing the petitioners' objections and in reply the Director of Land Records and Commissioner of Holdings sent a reply to the petitioners saying that the petitioners' application had been sent to the Deputy Director of Land Records, Nagpur for necessary action, and the petitioners may make enquiry directly from him. Thereafter it appears, on March 18, 1973 the Settlement Commissioner and Director of Land Records, Maharashtra State, Poona, approved and confirmed the consolidation scheme u/s 20(1) of the Consolidation Act and the notification to that effect was published in the Official Gazette. The Settlement Commissioner and Director of Land Records, Poona, also informed the petitioners by his letter dated March-30, 1973 that the petitioners' objections were not found to be justifiable and there appeared no reason for effecting changes in the scheme already finalised and therefore, the Settlement Commissioner, Maharashtra State, Poona, had confirmed the scheme.

These are the basic facts about which there does not appear to be any serious dispute on either side.

3. The contentions taken up by Mr. Udhoji for the petitioners are :

(1) that the Settlement Commissioner was bound to give a personal hearing to the petitioners on the objections taken by them to the draft scheme, before finally approving the scheme u/s 20(1) of the Consolidation Act;

(2) What Section 20(1) of the Consolidation Act requires is an objective appraisal by the Settlement Commissioner of the objections taken by the petitioner before he decides to confirm the draft scheme proposed, and, therefore, it was necessary, for the Settlement Commissioner to have passed a speaking order with reasons for approving the scheme in the light of the objections taken by the petitioners.

4. These are mainly the contentions that have been urged by Mr. Udhoji before us.

5. On the first point, that it was necessary for the Settlement Commissioner to have given a personal hearing to the petitioners before approving the proposed scheme and confirming it under the provisions of Section 20(1) of the Consolidation Act, Mr. Udhoji has placed reliance on the observations of this Court in *Vithu v. State of Maharashtra* (1975) Spl. C.A. No. 496 of 1969 of Nagpur Bench decided on September 25, 1975 by B.A. Masodkar and A.R. Shimpi JJ. (Unrep.) (But reference appearing in Notes of cases in (1976) Mah. L.J. 4. In that case individual notice u/s 19 of the Consolidation Act was served on the petitioner and he submitted his objections, however, the notice fixing the date of hearing was not served on the petitioner and the Consolidation Officer had proceeded to give a decision. It was held that no opportunity of being heard on the objections was given to the petitioner; his objection was not considered; and therefore, there was breach of Section 19(2) and the proceedings were, therefore, vitiated. In the present case it would seem to us clear even on the recitals in para 12 of the petition that the petitioners had been personally heard, their objections considered by the Consolidation Officer on December 14, 1972, and, therefore, it would seem to us, there is no infirmity in the present case of the type noticed in *Vithu v. State of Maharashtra* (cited supra). However, Mr. Udhoji has drawn our attention to the use of identical expression regarding "considering the objections" used in Section 19(2) and also in Section 20(1) of the Consolidation Act, and, therefore, on the basis of the observations in *Vithu v. State of Maharashtra* (cited supra) Mr. Udhoji urges that if it was necessary for the Consolidation Officer to give a personal hearing to the petitioners u/s 19(2) of the Consolidation Act, it was equally necessary for the Settlement Commissioner also to have given a personal hearing to the petitioners u/s 20(1) of the Consolidation Act before deciding to approve and confirm the proposed scheme. This argument does not appeal to us, looking to the entire scheme of the provisions of Sections 19 and 20. Section 19(1) envisages the publication of

a draft scheme by the Consolidation Officer and the issue of a notice in form No. I under Rule 14 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959, inviting objections within a period of 30 days. If the objections are received, the Consolidation Officer under the provisions of Section 19(2) of the Consolidation Act, has to consider the objections by giving a personal hearing to the objectors as was held in *Vithu v. State of Maharashtra* (cited supra), and then if the Consolidation Officer considers it necessary to amend the draft scheme, he may amend the draft scheme and then he has to publish the amended draft scheme again u/s 19(1) inviting objections to the amended scheme so published. Where no objections are received to the draft-scheme published u/s 19(1) or to the amended draft-scheme published u/s 19(2), or where objections are received to the draft-scheme or the amended draft-scheme, and the Consolidation Officer does not consider it necessary to amend the draft-scheme or the amended draft-scheme, he has to submit the papers with the objections and remarks thereon to the Settlement Commissioner for confirmation of the scheme. This is broadly the scheme of Section 19 of the Consolidation Act. Section 20(1) requires that the Settlement Commissioner after receiving the papers from the Consolidation Officer has to consider the objections raised by the landholders and the remarks of the Consolidation Officer thereon, and if he decides on this material to approve the draft-scheme, he is required to confirm it. If he, however, does not approve of the draft-scheme or amended draft-scheme forwarded by the Consolidation Officer to him and if the Settlement Commissioner considers it necessary to amend the draft-scheme u/s 20(2) of the Consolidation Act, the Settlement Commissioner may amend it, and in that case he may publish it in the prescribed manner in the village or villages concerned. The same procedure about inviting objection within 30 days is repeated and in this case the objectors are required to communicate their objections in writing to the Settlement Commissioner. If the Settlement Commissioner receives no objections to the amended scheme or receives objections on consideration whereof he feels it is still necessary to confirm the draft-scheme, he may do it with or without modifications under the provisions of Section 20(3) of the Consolidation Act. The whole scheme of Section 19 and 20 would thus envisage the inviting of objections and the consideration of the objections on giving personal hearing to the objections only at the initial stage when (1) the draft scheme is published by the Consolidation Officer, or (2) the amended draft-scheme is republished by the Consolidation Officer, or (3) the amended draft-scheme is published by" the Settlement Commissioner u/s 20(2) of the Consolidation Act. u/s 20(1) which governs a case-like the present one when the Settlement Commissioner decides to accept the draft-scheme as recommended to him by the Consolidation Officer, approves of the same and decides to confirm it, he is neither required to publish the said draft scheme again nor is he required to invite objections again under form 1 of Rule 14 of the relevant rules. Under the provisions of Section 20(1) of the Consolidation Act, all that the Settlement Commissioner is to consider are the objections and the remarks of the Consolidation Officer on those objections. In the context of the

provisions of Sections 19 and 20 discussed above, it would not seem to us proper to interpret the words "after considering the objections" appearing in Section 20(1) of the Consolidation Act, as envisaging the giving of a personal hearing to the objectors afresh at that stage. It would seem to us that provisions of Sections 19 and 20 of the Consolidation Act, are on the same footing on which the provisions of Section 5A and Section 6 of the Land Acquisition Act, -1894 stand. In that Act also it is necessary for the Land Acquisition Officer u/s 5A of that Act to hear the objections of the interested persons, to give his remarks on those objections and then to forward the papers to the Commissioner for approval of the Land Acquisition proposal and for issue of the relevant notification u/s 6 of the said Act. The scheme under that Act also does not require the Commissioner to give a personal hearing to the objectors again at that stage. The Commissioner is required to determine whether to proceed with the acquisition proceedings or not on the basis of the objections taken u/s 5A of that Act before the Land Acquisition Officer and the remarks passed by the Land Acquisition Officer in relation to those objections., The same position would seem to be contemplated u/s 20(1) of the Consolidation Act. In this view it would not seem to us necessary, that the Settlement Commissioner should have given a personal hearing to the petitioners under the provisions of Section 20(1) of the Consolidation Act before approving the draft scheme and confirming it,

6. The second contention of Mr. Udhoji is that it was necessary for the Commissioner while approving the scheme and confirming it, to have passed a speaking order in relation to the objections taken by the petitioners. As we have already stated earlier, Section 20(1) of the Consolidation Act, does not invite any afresh objections from the objectors at that stage. The Settlement Commissioner has only to consider the objections which have been taken by the objectors before the Consolidation-Officer. Therefore, it was really not necessary for the petitioners to have sent any fresh objections to the Settlement Commissioner as they seem to have done in the present case on January 30, 1973. That was really superfluous. But that did not dispense with the Settlement Commissioner considering the objections that the petitioner had taken before the Consolidation Officer on October 10, 1972. The question is whether it was necessary for the Settlement Commissioner to have passed a speaking order. In this respect Mr. Udhoji has placed reliance on the observations of the Supreme Court in Travancore Rayon Ltd. Vs. Union of India (UOI), . It was observed in that case that when judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court insists upon disclosure to of and was by Court against two that Section were had under its Act, the which a in has order jurisdiction Supreme High Government with on as or That before case 1944, Salt Excises Central revisional impugned passed power. judicial invested authority executive action arbitrary possible deterrent operates reasons record obligation other, erroneous; his reject ,the persuaded demonstrate opportunity proceeding aggrieved party one, : grounds support>36. It would seem to us that the present case stands on a somewhat different footing. The

consideration that governs the Consolidation Officer u/s 19 of the Consolidation Act and the Settlement Commissioner u/s 20(1) of that Act, is not the acceptance or rejection of the objections taken, but the determination of the question whether it is necessary to amend the draft-scheme in view of the objections taken, so far as the Consolidation Officer is concerned u/s 19(2) of the Consolidation Act, and whether to approve and confirm or not the proposed draft-scheme so far as the Settlement Commissioner acting u/s 20(1) of the Consolidation Act, is concerned. Therefore, the final determination is regarding the acceptance of the proposed draft scheme and not regarding accepting or rejecting the objections taken. The Consolidation Officer and the Settlement Commissioner, are not determining questions relating to rights of parties in a juridical sense in which those rights are determined in an appellate or revisional jurisdiction. The approach is to the acceptance or otherwise of the proposed draft-scheme in the light of the objections taken. Here again we may draw analogy from the provisions of Section 6 of the Land Acquisition Act, 1894. There also the Commissioner considers the objections taken before the Land Acquisition Officer in the enquiry u/s 5A of that Act and the remarks passed by the Land Acquisition Officer on those objections, and then he decides whether or not to proceed with the acquisition scheme and to direct publication of the notification u/s 6. There also it is not necessary that the Commissioner should pass a reasoned speaking order. We fail to see why the same position should not be available also u/s 20(1) to the Settlement Commissioner. It was urged by Mr. Udhoji that after all the Consolidation Officer was not the final determining authority. His remarks were only of a recommendatory nature and it was the Settlement Commissioner who was to finally decide whether to approve and confirm the scheme or not. We fail to see how that would make any difference. The same position we feel obtains u/s 5A and 6 of the Land Acquisition Act, 1894. In these circumstances it is not possible for us to accept the contention of Mr. Udhoji that it was necessary for the Settlement Commissioner to have passed a speaking order. All that was necessary for him u/s 20(1) was to consider the objections that the petitioners had taken before the Consolidation Officer and this it would seem was clearly done in this particular case, because the Settlement Commissioner did inform the petitioners by his letter dated March 30, 1973 (annexure 15) that their objections were not found to be justifiable and there appeared to be no reason for effecting changes in the scheme already finalised, and therefore, the Settlement Commissioner, Maharashtra State had confirmed the scheme.

7. We see no merit in this petition which we, therefore, dismiss, but we make no order as to costs.