

(2003) 09 AHC CK 0134
In the Allahabad High Court
Case No : C.M.W.P. No. 38834 of 2003

Ramdeo and Others

APPELLANT

Vs

Consolidation Commissioner and Others

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2004) 1 AWC 115

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

Bench : Single Bench

Advocate : Akshaivar Singh and Dinesh Singh, for the Appellant;

Final Decision : Allowed

Judgement

S. N. Srivastava, J.—Nucleus of attention in this petition is the order passed by Deputy Director Consolidation, Ghazipur, dated 30.7.2003 (Annexure-4 to the petition). The grievance of the petitioner in assailing this order is that the order dated 26.7.2003 passed by the Consolidation Commissioner weighed with the Deputy Director Consolidation, Ghazipur, who recalled the interim order passed in the revision and directed the subordinate authorities to carve out the chaks and deliver possession in obedience to the judgment of the appellate court.

2. The dispute has its genesis in the fact that the authorities marked excessive value of certain land situate in village Rampur pargana Khanpur Tahsil Saidpur district Ghazipur which were uncultivable and unproductive. The petitioners having met their Waterloo in proceedings before the Consolidation Officer and the Assistant Settlement Officer Consolidation preferred revision before the Deputy Director Consolidation followed by application for interim relief in revision. The Deputy Director passed interim order thereby directing to maintain status quo in relation to the possession vide order dated 24.7.2003. During pendency of the revision before the Deputy Director Consolidation, respondent Nos. 7 and 8 made some application dated 26.7.2003 at the end of Director Consolidation for demarcation of their chaks. The Director Consolidation acting

upon this application, issued directions to the Deputy Director Consolidation, Ghazipur, the text of which is that if there be no legal impediment, the chaks of the respondent Nos. 7 and 8 be carved out by measurement. It would transpire from the record that in consequence of this direction, the Deputy Director Consolidation marked the matter to the Consolidation Officer, Saidpur, while recalling its interim order and directing to effect delivery of possession in pursuance of the order passed by the Settlement Officer Consolidation. It is in this background that the present petition has been instituted for the relief.

3. The sheet anchor of the submissions made by the learned counsel for the petitioners is that the Consolidation Commissioner was not clothed with any authority or power to act as a Court and further that the directions issued by it had the complexion of an administrative direction which could not override the order passed by the Deputy Director Consolidation as a Court in exercise of quasi-judicial powers. It was further canvassed that the Deputy Director erroneously acted on the directions of the Director Consolidation and recalled the interim order passed on judicial side after hearing the parties. It was further canvassed that the directions of the Consolidation Commissioner had been issued on application moved by respondent Nos. 7 and 8 and this direction to the Deputy Director Consolidation had no judicial complexion and in the circumstances, the Deputy Director Consolidation exhibited his obsequiousness to his superior administrative authority subduing his judicial role to subalternity. He further submitted that Consolidation Commissioner had no juridical role in the hierarchy and directions issued by him amounted to interference with the judicial functions exercised by Deputy Director Consolidation in the scheme of Consolidation of Holdings Act. The learned counsel also submitted that kharif crops of macca and jwar are standing and the petitioners are still in possession over the plots in question. It was lastly submitted that construction raised by the petitioners have also been dismantled by the contesting respondents to the detriment of the petitioners. Sri K. K. Misra, holding belief of Sri Dinesh Singh, learned counsel representing the opposite parties proposed not to file any counter-affidavit and pressed for disposal of the matter at the threshold. In opposition, he contended that the Consolidation Commissioner was competent to issue the directions and the Deputy Director Consolidation being inferior in the hierarchical order to the Consolidation Commissioner was bound to act in obedience to the directions of the Consolidation Commissioner and he rightly passed the impugned order thereby recalling the interim order passed in revision and directing the Consolidation Officer to carve out the chak and deliver possession in pursuance of the order made by the Settlement Officer Consolidation.

4. Before, I notice and advert to the facts, it would be apt and proper to acquaint myself with the scheme of the Consolidation of Holdings Act. Section 48(1) may be excerpted below for ready reference :

"48. Revision and reference.--(1) The Director Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate

authority the purpose of satisfying himself as to the regularity of the proceedings ; or as to the correctness, legality or propriety of any order (other than an interlocutory order) passed by such authority in the case or proceedings, may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under Sub-section (1) may be exercised by the Director of Consolidation also on a reference under Sub-section (3).

(1) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under Sub-section (1).

Explanation.--(1) For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Rule 111 of the U. P. Consolidation of Holdings Rules, 1954, envisages as under :

"111. An application u/s 48 of the Act shall be presented by applicant or his duly authorized agent to the Joint/Deputy/Assistant Director of Consolidation, nominated by the Director of Consolidation, U. P., for the District or Settlement Officer (Consolidation) Unit concerned or failing posting of any such Joint/Deputy/Assistant Director of Consolidation in the district, to the District Deputy Director (Consolidation) within 30 days of the order against which the application is directed. It shall be accompanied by copy of the judgment or order in respect of which the application is preferred. Copies of Judgment or order, if any, of other subordinate authorities in respect of dispute shall also be filed along with the application."

5. It is obvious from the above that the jurisdiction of the Deputy Director of Consolidation can be exercised only in revisional jurisdiction in regard to any case decided by any subordinate authority. The Explanation (1) clearly postulates as to who will be subordinate to the Director of Consolidation or the Deputy Director of Consolidation with delegated powers. According to Explanation (1) aforesaid. Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation for the purposes of this section. In Section 3 (4A) "Deputy Director, Consolidation" has been defined to mean a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director Consolidation and Assistant Director of Consolidation. Again in Section 3 (4B) "District Deputy Director of Consolidation" has been defined to mean the person who is for the time being the Collector of the district. In the above conspectus, it transpires that the Deputy Director of Consolidation having been appointed and power delegated by the State Government was competent to exercise power in

revision u/s 48 of the U. P. Consolidation of Holdings Act and the Consolidation Commissioner as the case may be, will not sit in review over the orders or the judgments rendered by the Deputy Director of Consolidation in exercise of its delegated power u/s 48 of the U. P. Consolidation of Holdings Act. Coming to the aspect of judicial powers of the Director of Consolidation, it may be noticed that it is envisaged in Section 48 that the Director of Consolidation may call for record but this power was delegated to the Deputy Director of Consolidation, who was vested with the power to entertain application u/s 48 of the U. P. Consolidation of Holdings Act. A brief resume of history in relation to power of the Director of Consolidation is that for the first time by notification Revenue (A) Department Notification No. 5630 CH/1-A-351-1958, dated December 23, 1958, Consolidation Commissioner was appointed as Ex-Officio Director of Consolidation. Again by Revenue (A) Department Notification No. U. O. 530 CH/IE dated May 29, 1965, the Consolidation Commissioner was clothed with the power to appoint Rectangulation Officers u/s 3 (3) and District Deputy Director of Consolidation was vested with the power to appoint Rectangulators u/s 3 (3) of the Act. By means of Notification No. 1/2/76-Rev 8, dated September 4, 1976, published in U. P. Gazette Part I dated 18th September, 1976, the Consolidation Commissioner or Director of Consolidation was delegated the powers to appoint Assistant Settlement Officer, Consolidation, Consolidation Officer and Rectangulation Officer, Assistant Consolidation Officer, Assistant Rectangulation Officer etc. It would thus, appear from a perusal of the entire conspectus of the Consolidation of Holding Act that it does visualize administrative power to the Director of Consolidation while quasi-judicial powers have been delegated by the State Government to the Deputy Director, Consolidation in the hierarchy. As would be eloquent from the Act that the only power which vested in the Director of Consolidation was to the extent of calling for record and this power too has been delegated to the Deputy Director of Consolidation by the State Government in its revisional jurisdiction to pass appropriate orders after giving opportunity of hearing to the parties concerned. It thus, follows that Director of Consolidation had no power to sit in review or appeal over the decisions or the orders passed by the Deputy Director, Consolidation in exercise of powers u/s 48 of the U. P. Consolidation of Holdings Act in the event of power having been delegated to the Deputy Director of Consolidation by the State Government. Coming back to the facts of the present case, in the above perspective, it is obvious that the directions issued by the Director of Consolidation were issued without any authority in law and the Deputy Director, Consolidation erred in acting on such directions by recalling interim order passed after hearing both the parties. Once the power u/s 48 of the U. P. Consolidation Act has been exercised in revision by the Deputy Director of Consolidation any Misc. application as preferred by the respondents in the instant case was not maintainable nor could the same be entertained by the Director of Consolidation and direction issued thereupon had no legal sanctity and could not be acted upon. The order of the Deputy Director of Consolidation consequent upon the direction of the Director of Consolidation thereby recalling the interim order to maintain status quo and directing the

Consolidation Officer to initiate steps for measurement of plots and consequential delivery of possession on the basis of the order passed by the Settlement Officer, Consolidation, was erroneously passed. The consensus of judicial opinion leans in favour of the view that there will be an abuse of the power if in exercising the discretion, the authority vested with a discretionary power must exercise his independent discretion and cannot act according to the directions or instructions of his departmental superior, without exercising his independent judgment. Any action or order so taken or made will be invalid. *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, ; *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others*, and *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, The exercise of discretionary power will also be invalid if (a) authority acts on extraneous considerations, that is to say, takes into account matters which ought not to have been taken into account according to the provisions of the Statute ; or conversely, (b) the authority refuses or neglects to take into account relevant matters or material considerations ; or, (c) the authority imposes a condition patently unrelated to or inconsistent with the purposes or policy of the statute. (See *Padfield v. Minister of Agriculture*, (1968) 1 All ER 694 ; *P.J. Irani Vs. The State of Madras*, and *Associated Picture Theatres v. Wednesbury Corporation* 1947) All ER 694 . In *Commander of Police v. Gordhandas* (supra), under Rule 250 of the Rules framed under the City of Bombay Police Act, 1902, the Commissioner is bound to exercise his own independent judgment and to decide for himself with reference to the facts and circumstances of the case, whether to cancel the licence or not. Where the Commissioner who had been delegated the power cancelled a licence as directed by the Government, the Apex Court issued a mandamus directing the authority concerned to make a proper order. An exception to the above principle is provided by some of the Statutes which confer power on the Government or some superior administrative authority to issue administrative directions and instructions for the guidance of their subordinate authorities in the administration of the Statutes concerned. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , the quintessence of observations made by the Apex Court are that though such "orders and directions" are issued under statutory authority and though the subordinate authority shall give effect to them, it has been held that such orders and directions have no force of law and do not confer upon the public any legally enforceable rights, so that if the subordinate superior court cannot interfere by issuing certiorari or mandamus. In the conspectus of the above view, it thus, transpires that the Consolidation Commissioner could not issue any directions having an overriding effect on the powers of the Deputy Director of Consolidation and further the directions of the Consolidation Commissioner had no force of law

6. Reverting to the merit of the directions issued by the Consolidation Commissioner, it may be noticed that directions were issued merely on the application of the respondent Nos. 7 and 8 and it is nobody's case that it was

issued after calling for records or after issuing notices to both the parties or after hearing both the parties. The tenor of the directions does not indicate that it had any judicial complexion or it was given by invoking its special jurisdiction conferred on the Director of Consolidation. As stated supra, the power having been delegated to the Deputy Directors under the provisions of Section 48 of the Act by the State Government, the Director of Consolidation was left with no judicial or quasi-judicial power to entertain application or issue directions as has been done by me in the instant case. Even if it be presumed that the Director of Consolidation was vested with special power to act in specified situation, the provision u/s 48 of the Act only enables the Director to call for the record of a case and to examine and to issue administrative orders or directions for the guidance of their subordinate authorities in the administration of the Statute. Such orders or directions would not have the effect of interfering with the Judicial powers of the subordinate authority. In the instant case, it does not appear from the contents of the order that the Director, Consolidation, or the Consolidation Commissioner exercised its special power in some special contingencies on the ground of some substantial irregularity or on consideration of decision rendered in excess of jurisdiction, etc. However, turning to the impugned directions, it may be noticed that the very mention in the impugned direction that "if it does not involve any legal impediment" denotes that the Director, Consolidation did not intend to issue directions on the merits of the case or in exercise of quasi-Judicial powers conferred, upon him under the provisions of Section 48 of the Act as amended and acted administrative without intending to interfere with the quasi-judicial function of the Deputy Director, Consolidation. By this reckoning, it follows that the directions had all the indicia of administrative orders which could not override the powers delegated to the Deputy Director, Consolidation and the Deputy Director, Consolidation erred in law in acting upon such directions.

7. As stated supra, the power u/s 48 stands vested in the Deputy/Joint/Assistant Director of Consolidation by delegation. It is well-settled in law that an authority exercising power to entertain an application in revision too has a power to set aside any order against which revision was preferred. Likewise such authority has power to grant interim order or suspend operation of that order to protect the interest of the parties in the perspective of subject-matter pending revision. In the instant case, the interim order was passed to maintain status quo ostensibly having regard to the fact that valuable land of the petitioners on the roadside was illegally excised from the chaks of the petitioner by the Settlement Officer, Consolidation and the Deputy Director rightly passed the interim order of status quo to protect the interests of the parties and also having regard to the fact that kharif crops of macca and jwar sown by the petitioners were standing on the land. I would not forbear from expressing that normally no carvation of chaks should be enforced or directed pending revision or when the standing crops are there and in this situation, the order of the Settlement Officer, Consolidation appears to me highly unjust which called for consideration on merits in revision by the Deputy Director of Consolidation. It was in the above perspective that the

interim order had come to be passed by the Deputy Director of Consolidation which was warranted to protect the interest of concerned party pending revision.

8. Reverting again to the directions of the Director of Consolidation as stated supra, it was not intended to be issued in exercise of any quasi-judicial function or after hearing the parties and in the circumstances, the impugned order passed by the Deputy Director of Consolidation in obedience to the administrative directions of the Consolidation Commissioner is vitiated and cannot be sustained in law.

9. As a result of aforestated discussion, the petition is allowed with costs quantified at Rs. 1,000 in the facts and circumstances of the case and in consequence, it is directed that in case carving and measurements of chaks have been effected on the basis of the order of Settlement Officer, Consolidation followed by directions of the Deputy Director of Consolidation by means of the impugned order, and in consequence, possession has come to be delivered to the parties on the basis of measurements and fresh carving, it is directed that the possession of the plots in question shall be restored to the petitioner within 7 days from the date of presentation of a certified copy of this order. It is further directed that the Deputy Director of Consolidation shall undertake spot inspection to ascertain whether there was any construction of the petitioner on the date on the spot when the revision was pending. In case, there was any construction, which has been dismantled, the Deputy Director of Consolidation shall initiate steps to reconstruct the same in the same form at the cost of contesting opposite parties quantum of which may be assessed by the Deputy Director of Consolidation and in case the same is not deposited by the Opposite Parties 7 and 8 within time prescribed, it would be open to the concerned authority to recover the same as arrears of land revenue.