

(1992) 07 AHC CK 0073

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19837 of 1992

Sati Ram

APPELLANT

Vs

Consolidation Officer, Ghazipur and Others

RESPONDENT

Date of Decision : 16-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 254, 40, 48, 52
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 109
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 5

Citation : (1992) 3 AWC 1446 : (1992) RD 425

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : R.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Misra, J.—The sole question which falls for determination in this writ petition is as to whether the Deputy Director of Consolidation (for short DDC) possesses the power to grant stay or not.

2. Briefly stated, the facts of the present case are that the Petitioner is said to be a landless person who was allotted patta by the Land Management Committee, Parwa, Ghazipur in the year 1976, in respect of plot Nos. 623 area one Bigha; plot No. 291 area three Biswa, Plot No. 360 area one Biswa six dhur and plot No. 361 area ten biswa. He applied for mutation on the basis of the aforesaid patta which was allowed in his favour, Since then he is in possession. The village was denotified u/s 52 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act). Thereafter, the Consolidation Officer cancelled the patta by his order dated 21-1-1984. The Petitioner filed a revision which was allowed by the DDC on 21-7-1984. Thereupon, respondent No. 2 Gaon Sabha filed a restoration application and the earlier order of the DDC dated 21-7-1984 was recalled and the case was fixed for hearing on merits, on 7-10-1989. During the pendency of

the proceedings before the DDC, Gaon Sabha filed an application before the Consolidation Officer, Ghazipur under Rule 109 of the U.P. Consolidation of Holdings Rules for Amalarmad. Admittedly, the revision at the instance of the Petitioner is still pending before the DDC Ghazipur. The Petitioner filed an application for staying the proceedings pending before the Consolidation Officer Ghazipur with regard to the land in dispute but the same was rejected by the DDC Ghazipur with the following observations:

Heard the applicant. There is no provision of stay. Hence rejected.

Aggrieved by the order of the DDC dated 25-2-1992, the Petitioner has filed the present writ petition.

3. I have heard learned Counsel for the Petitioner as well as the Standing Counsel. It is not necessary to issue notices to the Respondents in view of the fact that respondent Nos. 1, 4 and 5 are already represented by Standing counsel and the question involved in this case, as already said above, is a pure question of law.

4. Learned Counsel for the Petitioner urged that the view of the DDC that there is no power of granting stay, is erroneous and that being a court of fact u/s 48 of the Act, the DDC is competent to pass an order of stay in appropriate cases so as to safeguard the interest of the parties. Learned Standing counsel tried to justify the impugned order of the DOC on the ground that there is no specific provision of passing an order of stay by the, DDC or any other consolidation Authority.

5. After hearing the learned Counsel for the parties and going through the various provisions of law, it is true that under the provisions of the Act and Rules, the consolidation Authorities have not been empowered to pass an order of stay but at the same time, there is also no specific bar that they cannot pass such order. If there is no such bar, then the grant of stay can be said to be incidental or ancillary to its revisional jurisdiction. It is not denied that u/s 48 of the Act, DDC has wide powers including the power to interfere in the findings of fact and to set aside the order of a subordinate authority, i.e. Consolidation Officer and the Settlement Officer (Consolidation). In substance, he does possess the power of an appellate authority. Power conferred u/s 40 with widest possible amplitude, must carry with it by necessary implication of powers and duties-incidental and ancillary to make the exercise of that power fully effective. If an authority has the power to set aside the order of the subordinate authority in the present case that the Co., then it cannot be imagined that he will have no power to stall the proceedings till a final decision in the matter takes place. In this connection, the following observations of Hon'ble Supreme Court in *Income Tax Officer Cannanore v. M.K. Mohammad Kunhi* AIR 1969 SC 430, pertaining to powers of appellate Tribunal in the matter of grant of stay, are relevant:

An express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest

possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective....

When the legislature wanted the power of a Tribunal or Authority for exercising the power one way or the other ;n the matter of grant of stay, the legislature has normally made such provision, one way or the other. One such illustration is that under the U.P. Public Services Tribunal Act, 1976. The Tribunal has no power to grant stay, Section 5(b) of the U.P. Public Services Tribunal Act, 1976 reads as under:

Notwithstanding anything in the foregoing Sub-sections, the Tribunal shall have no power to make the interim order (whether by way of injunction or stay or in any other manner....

6. In *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , a question arose as to whether the power of appointment conferred on the Custodian u/s 10(2) of the Act 1950 conferred by implication upon the Custodian to suspend or dismiss any person appointed, the Supreme Court held as under:

The principle underlying the section is that the Dower to terminate is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power.

7. In the instant case, there is no provision on the exercise of power of the DDC forbidding him not to grant an interim stay. In the absence of such a provision, the incidental power can be inferred and the DDC will have the right to grant stay in appropriate cases.

8. As regards the contention that the order of Deputy Director of Consolidation is an interlocutory order and the petition may not be maintainable, a Bench of this Court in *Ram Sewak v. Dy. Director of Consolidation* 1982 AWC 575, held as under:

...In fact Article 226 is couched In widest possible terms. Its scope is ever expanding. To say therefore that a writ petition against an interlocutory order is not maintainable is not correct....

9. In view of this authority, the submission of the learned Standing Counsel to the effect that the petition is not maintainable, is not acceptable.

10. In the normal course, this Court does not interfere in the matters like present one, but the instant case raises a question of law regarding power of DDC to grant interim stay This is a jurisdictional fact and as such, this question calls for a determination and interference by this Court Under Article 226 of the constitution.

11. Apart from the legal position, as discussed above, a perusal of the impugned order would go to show that the DDC did not apply his mind to consider as to

whether the present was a fit case for granting stay or not, but he simply rejected the prayer on the ground that he did not have the power under the law in view of the law laid down by Hon"ble Supreme Court as well as this Court in the aforesaid cases, it is quite clear that the revision. court possesses an incidental power in the exercise of power conferred u/s 48 of the Act to grant stay and consider the same on merits. The view taken to the contrary by the DDC is incorrect and, therefore, the impugned order deserves to be set aside.

12. In the result, the writ petition is allowed. Impugned order of the DDC dated 25-2-1992 is set aside and he is directed to decide the application for stay of the Petitioner afresh in the light of the observations made above.