

(2003) 02 AHC CK 0087
In the Allahabad High Court
Case No : C.M.W.P. No. 8371 of 2003

Shanti Devi and Others

APPELLANT

Vs

District Deputy Director, Consolidation/Collector and Another

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3)

Citation : (2003) 2 AWC 868

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

Bench : Single Bench

Advocate : S.K. Lakhtakia, for the Appellant; Sanjay Goswami and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Heard learned counsel for the petitioners and Sri Sanjay Goswami, learned standing counsel representing the State authorities. Since controversy involved in this petition lies in a narrow compass, both the counsel agreed to the disposal of the petition at the motion hearing stage.

2. Petitioners in the instant petition claim themselves to be the recipient of the land from Bhoodan Yojna Committee, Etah u/s 14 of the U. P. Bhoodan Act, 1952 the pattas in respect of which were alleged to have been executed in the year 1988-89. The validity of the order impugned herein purporting to have been passed by the District Magistrate in exercise of powers u/s 48 (3) of the U. P. Consolidation of Holdings Act, has been canvassed on the ground that it has been passed in a most secretive and clandestine manner ostensibly on the basis of some reports and no opportunity whatsoever was afforded to any of the petitioners before passing the impugned order. The learned counsel for the petitioners submitted that the order is not a valid order inasmuch as it not only suffers from the error of law but it has been passed sans any opportunity of hearing to the parties. He further submitted that Section 48 (3) itself envisages that parties concerned will be allowed opportunity of being heard. Lastly, it has

been submitted that the impugned order has been passed in antagonism of the mandatory requirements of law. The learned standing counsel, in opposition, tried to justify the impugned order on the premise that since there was report about forged entry, the authorities were vindicated in passing the order and in the circumstanced no opportunity was required to be afforded.

3. I have considered the respective submissions in all pros and cons. Before proceeding further, Section 48 (3) of the Act may usefully be quoted below for acquaintance with the purport and object of the provisions :

"48 (3) 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)."

It would transpire from the above that opportunity of being heard has been envisaged as mandatory requirement. It would further appear from the record that at no stage, opportunity was afforded to any of the petitioners and the entire matter leading to the impugned order has been proceeded with the imperviousness of an executive authority without there being any vestige of judicial approach. It transpires from the perusal of the impugned order that the Impugned order has been sought to be justified on reasoning and ratio flowing from a decision in Ved Gupta Vs. Apsara Theatres, Jammu and Another, . stating that no opportunity was needed in relation to forged entries. I have scanned the said decision and I am of the view that it was a case relating to a theatre which was being run by a non-licensee. The quintessence of what has been held in this pronouncement is that rules of natural justice are not applicable when the affected party had no legal right and suffered no adverse civil consequences. It being a decision In different set of facts and circumstances, cannot be invoked for application to the facts of the present case qua the fact that when Section 48 (3) itself envisages mandatory requirement of affording opportunity of being heard to the concerned parties. It, therefore, follows that opportunity was a mandatory necessity whatever be the circumstances.

4. The learned counsel has also drawn my attention to the Annexure-10 to the writ petition In which Is contained the signature of the District Magistrate following the report of the Additional District Magistrate concerned dated 13.10.1997. The District Magistrate has merely affixed his signature below the report-dated 13.10.1997 (supra). The signature affixed by the District Magistrate is all what is being taken for an order purporting to have been passed by the District Magistrate, in exercise of power u/s 48 (3) of the U. P. Consolidation of Holdings Act and not even a laconic word "approved" has been scribed by the District Magistrate in approbation of the report. This order has all the semblance of style of an executive authority and does not have any indicia of a judicial order, it brooks no dispute that the District Magistrate in acting u/s 48 (3) was discharging the function of a "deemed Court" and was not expected to have set about in a crusader's spirit and It was highly injudicious on his part. It should

have been borne in mind that he was discharging judicial functions and he was not acting as a poodle in the interest of any party whether it be the Gaon Sabha or the State Government. I may usefully quote the concern expressed by this Court in *Autar Krishna v. Gaon Sabha* 1975 ALJ 410 as under :

".....It must always be borne in mind that consolidation authorities exercising judicial functions while deciding an objection, are not to act as watch dogs of the interest of any party whether it be the Gaon Sabha or the State Government. Decision of objection is something entirely different from the correct maintenance of records. Once the duty of deciding objections is taken up by consolidation authorities, they have to disengage themselves from the duty of maintaining correct records, which is admittedly a ministerial function. Once such proceedings begin, all the limitation of objectivity and fairness which bind a Court of law are equally applicable to proceedings before them....."

5. As a result of the foregoing discussion, petition succeeds and is allowed and in consequence, the impugned order dated 13th October, 1997 Annexure-iO to the petition, passed by the District Deputy Director Consolidation is quashed and the matter is relegated to the District Deputy Director Consolidation for decision afresh within a period of three months from the date of presentation of a certified copy of this order attended with the direction to pass appropriate orders in accordance with law and after giving opportunity of hearing to petitioners.