

(1998) 11 AHC CK 0113
In the Allahabad High Court
Case No : Writ Petition No. 765 (Cons) of 1998

Smt. Neelam Chaudhari and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 19, 19A, 20, 4

Citation : (1999) 2 AWC 1345

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : B.R. Tripathi, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R. H. Zaidi, J.—By means of the present petition, under Article 226 of the Constitution of India, petitioner Nos. 1 to 7 who claim themselves to be members of the Consolidation Committee of village Akraura, district Bahraich (now district Sharawasti) and petitioner No. 8 the Consolidation Committee Unit Akraura, pray for Issuance of a writ order or direction in the nature of certiorari to quash the order dated 19.9.1998 whereby the request of the petitioners to stop consolidation proceedings and to conduct the said proceedings afresh has been rejected and for quashing of the whole consolidation proceedings of the said village. Prayer for issuance of a writ In the nature of mandamus directing the respondents not to finalise/confirm the provisional consolidation scheme and to hold consolidation proceedings afresh from very beginning has also been made.

2. It appears that the Gram Sabha of village Akraura adopted a resolution on 15.4.1998 to oppose and boycott the consolidation proceedings in the village, to insist upon the authorities to cancel the consolidation proceedings in the said village and to conduct the proceedings afresh, on the ground that certain irregularities were committed by the consolidation staff posted in the circle. The said resolution is stated to have been communicated to various authorities

named in the Annexure-4A to the writ petition, by post on 24.4.1998. Since no action on the said resolution was taken by any one of the authorities, the petitioners approached this Court and filed a Writ Petition Wo. 396 (Cons.) of 1998, Smt. Neelam Chaudhury and others v. State of U. P, and others. The said writ petition was disposed of finally by order dated 3.8.1998 by this Court, which is quoted below :

"The petitioner has already approached the Deputy Director (Consolidation) against the consolidation scheme of the village. The Deputy Director stayed the scheme for fifteen days only and thereafter did not pass any order.

I am of the view that the Deputy Director of Consolidation should pass order on merit expeditiously say within six weeks from the date a certified copy of this order is produced before him.

With aforesaid observation, this writ petition stands finally disposed of."

3. The aforesaid order is alleged to have been communicated to the Deputy Director of Consolidation with an application dated 10.8.1998. In obedience of the order passed by this Court, the Deputy Director of Consolidation firstly tried to ascertain the alleged Irregularities committed by consolidation staff in the village which were stated to be 35 in number. Thereafter, he got an inquiry conducted through Consolidation Officer concerned who after conducting the inquiry submitted his report dated 20th of June, 1998 to the effect that out of 35 matters, only in 14 matters some irregularities were detected. The Deputy Director of Consolidation observed that steps were being taken to remove the aforesaid Irregularities. It was also held by the Deputy Director of Consolidation that there were as many as, 762 chaks carved out in the village, out of which In only 118 cases objections were filed by the tenureholders which were about 15 per cent of the total number, of the chak allotment cases. The said percentage of the objections was normal and on the basis of the same, it was not necessary to conduct the consolidation proceedings afresh. Having recorded the said findings, the objection/application of the petitioners was rejected by order dated 19.9.1998 which is impugned in the present petition.

4. Learned counsel for the petitioner vehemently urged that consolidation proceedings were being conducted in the village in violation of provisions of the Act and the rules framed there under, they were as such Illegal and were liable to be quashed. The Deputy Director of Consolidation, according to him, has acted illegally in rejecting the objection filed by the petitioners. On the other hand learned standing counsel supported the validity of the order passed by the Deputy Director of Consolidation. It was urged that writ petition was wholly misconceived, as it was based on vague allegations and imaginary facts. It was urged that the U. P. Consolidation of Holdings Act is a complete Code in itself. If any one of the tenureholder feels aggrieved by any order passed or action taken by any one of the consolidation authorities constituted under the said Act, he has got the right to file objection in accordance with law and if objections are filed

the procedure and machinery for disposing of objections has been provided in the Act and the Rules framed there under. According to the learned standing counsel, the application filed by the petitioners for dropping/staying the proceedings in the village was wholly misconceived and was legally not maintainable, the same has rightly been rejected by the Deputy Director of Consolidation.

5. I have considered the rival submissions made by the learned counsel for the parties and also perused the record.

6. The questions that arise for consideration by this Court in the present case are as to whether the writ petition as framed and filed by the petitioners is legally maintainable, whether this Court can direct the consolidation authorities or the State Government not to proceed with the consolidation operations in pursuance of notification issued u/s 4 of the Act and as to whether the whole consolidation proceedings in the aforesaid village can be quashed by this Court.

7. A perusal of the U. P. Consolidation of Holdings Act, 1953, reveals that the Consolidation proceedings start in a district or part thereof with a notification u/s 4 of the Act which is required to be published in the said area as also in each unit in the said area. It is discretionary for the Government to Issue such a notification whenever and wherever it is required to be issued.

8. The validity of the said section came to be considered before the Apex Court of the country in Attar Singh and Others Vs. The State of U.P., . It was contended that Section 4 was violative to the provisions of Article 14 of the Constitution of India as the same gives arbitrary powers to the State Government to make such notification. But the said contention was repelled by the Supreme Court and Section 4 was held to be *infra vires*. Validity of Sections 4, 5, 6, 7, 8, 9, 9A of the Act was also upheld by a Division Bench of this Court in Shyam Sunder and Others Vs. Siya Ram and Another,

9. Section 4A provides that after expiry of 24 years of the denotification u/s 52 of the Act, a notification u/s 4 can again be issued, if it is required to be issued. It is in the public interest and in special circumstances, such a declaration can be issued in the public Interest even after 10 years of the denotification u/s 52 of the Act.

10. After Issuance of a notification u/s 4, before preparation of statement of principles, the village maps, field book and current annual register are required to be revised.

11. Section 6 empowers the State Government to cancel the notification issued u/s 4 of the Act, in respect of whole or any part of the area specified therein. The effect of the cancellation is that, subject to the final order passed regarding correction of record, the area ceases to be under consolidation operations.

12. The valuation of the land including the holding of the tenure-holders is also to be determined under Sections 7 and 8. Thereafter u/s 8A the statement of

principle is prepared containing the details of area earmarked for extension of abadi, area for abadi sites for Harijans and landless persons, etc, in consultation with the consolidation committee of the village etc. After completion of the aforesaid work, notices are required to be issued by the Assistant Consolidation Officer to tenureholders of the unit inviting objections, if any, u/s 9 of the Act.

13. Any person to whom notice is issued under the aforesaid section may file objections before Assistant Consolidation Officer disputing the correctness of entries within twenty one days of the receipt of the notice. The Assistant Consolidation Officer on receipt of the objections may settle the disputes by conciliation between the parties falling which he is required to refer the dispute to Consolidation Officer for adjudication and disposal with the report of the Consolidation Committee. The Consolidation Officer thereafter is required to decide the objections after following the procedure prescribed under the Rules and orders passed by the Consolidation Officer are subject to appeal and revision before the Settlement Officer of Consolidation and Deputy Director of Consolidation respectively.

14. In the matters relating to allotment of chaks, provisional consolidation scheme is required to be prepared in accordance with the provisions contained in Sections 19 and 19A of the Act. The extract of which along with the notices are thereafter sent to the tenureholders who may, if aggrieved, by the same file their objections before the Assistant Consolidation Officer or Consolidation Officer. Consolidation Officer is required to submit" objections before the Consolidation Officer for disposal. The orders passed in the allotment proceedings by the Consolidation Officer are subject to appeal and revision, before the Settlement Officer of Consolidation and Deputy Director of Consolidation respectively. Thus, the dispute whether it is related to rights of tenureholders in the land or to allotment of chak is to be dealt with and decided in accordance with the provisions of the Act and the Rules framed there under. The U. P. Consolidation of Holdings Act, is thus a complete Code for decision of disputes arising out of consolidation proceedings. The petitioners or anyone of them, if they felt aggrieved by any act or omission of the consolidation authorities in conducting the consolidation proceedings, could file objections before the Assistant Consolidation Officer either u/s 9B or u/s 20, as the case may be.

15. As stated above and also held by the Deputy Director of Consolidation in the order Impugned in the present petition, objections have already been filed by the tenure holders, which are being dealt with and decided in accordance with law. The general complaint made by the petitioners against consolidation authorities was thus legally not maintainable and consequently, the present petition as framed and filed is also not maintainable.

16. The question as to whether this Court could quash the notification Issued u/s 4 or 6 of the Act was also considered by a Division Bench of this Court in Agricultural and Industrial Syndicate Ltd, v. State of U. P. 1976 RD 35. The Division Bench of this Court was pleased to rule as under :

"When the Director of Consolidation issues a notification u/s 4 or 6 of the Act. he performs neither a quasi-Judicial function nor exercises any administrative power, but performs a legislative function. To Judge the validity of the notification the Court must apply the same tests as it would apply to a piece of legislation. Just as it cannot be contended that any legislative authority should give reasons In support of its legislation or give a hearing to those effected before proceeding to legislate, the Director of Consolidation also cannot be required to give either a reasoned order or to accord a hearing to the tenureholders concerned before Issuing a notification u/s 6 of the Act."

It was further ruled that :

"There is yet another argument advanced by the learned counsel for the State which Implies to reject the submissions made on behalf of the relief to it. If we were to allow this petition and quash the notification issued u/s 6 of the Act, the result would be in substance a direction to the State Government to continue consolidation proceedings in the area in question in spite of the fact that it has not considered it fit to do so in exercise of powers vested in it by the Legislature. As already held, the notifications under Sections 4 and 6 of the Act are issued by the State Government in exercise of conditional legislative powers. It cannot be conceivably contended that this Court can issue a mandamus to the Legislature to legislate on any subject or to apply any law to any area. It was observed by the Supreme Court in *State of Bihar v. Sir Kamleshwar Singh*:

"It cannot possibly have been intended that the legislature should be under an obligation to make a law in exercise of that power, for no obligation of that kind can be enforced by the Court against a legislative body."

Similarly this Court could not pass an order which would make it obligatory on the State Government to enforce the scheme of consolidation in an area where in its opinion such scheme should not be enforced. It would amount to compel the State Government to exercise its power of conditional legislation."

17. As stated above, this Court in exercise of powers under Article 226 of the Constitution of India cannot quash the notification issued u/s 4 or u/s 6 of the Act. The validity of the notifications issued u/s 4 of the Act in respect of the land in dispute has also not been challenged in the present petition. Only a prayer for issuance of a direction to stop the consolidation proceedings and to initiate the same afresh has been made. The said prayer, if granted, shall in effect nullify the notification issued u/s 4 of the Act. It is well-settled in law that if anything cannot be done directly, the same also cannot be done Indirectly, therefore, the prayer made by the petitioners for quashing or stopping the consolidation proceedings cannot be granted.

18. Learned counsel for the petitioners referred to and relied upon the decision in *Tajammul Husain and others v. Assistant Consolidation Officer, Jalalabad and others* 1959 ALJ 209. In the said case, objection u/s 12 of the Act (unamended), was filed by the petitioner before the Assistant Consolidation Officer. The

Assistant Consolidation Officer, without consulting the Land Management Committee as it was then required under the Act, fixed 25.6.1955, before Consolidation Officer for hearing. The Consolidation Officer dismissed the objections by judgment and order dated 18.7.1955. Challenging the validity of the said order, revision was filed by the petitioner, which was also dismissed on 11.1.1956. Challenging the validity of the orders passed by the Consolidation Officer and the Deputy Director of Consolidation, said writ petition was filed in this Court. This Court under the facts and circumstances of the said case, ruled that the Land Management Committee was statutory body and consultation with it before submission of the report by the Assistant Consolidation Officer, was necessary. Said case did not arise out of general complaint, as the present case. Therefore, the petitioners cannot take any advantage from the said decision. The petitioners, as observed above, are at liberty to file objections before the authorities concerned and if the objections are filed the same shall be decided In accordance with the provisions of the Act and the Rules framed there under.

19. I do not find any illegality or infirmity in the order passed by the Deputy Director of Consolidation dated 19.9.1998. The writ petition as framed and filed is totally misconceived and is liable to be dismissed. Subject to what has been observed above, the writ petition fails and is dismissed in limine.