
(2008) 04 AHC CK 0127

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 53151 of 2005 and 2735 of 2006

Subodh Kumar and another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 23, 4(2), 48

Citation : (2008) 04 AHC CK 0127

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Preetpal Singh Rathore, learned counsel for the petitioners, Sri R, C. Singh, learned counsel who appeared in writ petition No. 53151 of 2005 for newly impleaded respondent and learned Standing Counsel appearing for the State.

2. Both the aforesaid writ petitions have been filed challenging the proceedings of consolidation in respect of village and qasba Asafpur Tehsil Bisauli District Budaun. Both the writ petitions pray that writ of certiorari be issued quashing the entire proceedings in village and qasba Asafpur Tehsil Bisauli District Budaun. Mandamus be also issued directing the respondents to restart the consolidation proceedings afresh in respect of kabza parivartan. Mandamus has also been sought praying for a direction to the respondents Nos. 3, 4 and 5 to comply the order dated 20.6.2005 passed by Consolidation Commissioner asking report from Settlement Officer of Consolidation, Badaun.

3. The brief facts necessary for deciding the writ petitions are; village and qasba Asafpur Tehsil Bisauli District Budaun is under consolidation operations after issuance of notification under Section 4 subsection (2) of U.P Consolidation of Holdings Act, 1953. After issuance of notification the proceedings were initiated and consolidation authorities proceeded up to carving of chak.

4. The petitioner's case is that valuation of plot was fixed in the year 1985 and

on the basis of said valuation proceedings of chak carvation have been started in the year 200405. The petitioners' further case is that objections were filed before Consolidation Commissioner by villagers praying that revaluation be done of the plots and thereafter consolidation proceedings be proceeded any further. Representations are said to have been sent to the Consolidation Commissioner on which Consolidation Commissioner on 20th June, 2005 wrote to Settlement Officer of Consolidation asking for submission of report immediately. Further petitioner's case is that no action has been taken thereafter for stopping the consolidation proceedings, hence, the present writ petition has been filed.

5. In the writ petition it is averred that several irregularities have been committed by the consolidation authorities regarding fixation of valuation of land and exchange ratio of plots. It is pleaded that grievances have not been redressed. It is averred that value of inferior land has been enhanced and value of superior land has been decreased, it is averred that provisions of Consolidation of Holdings Act have not been followed by the consolidation authorities.

6. Counter affidavits have been filed by the State as well as by newly impleaded respondent. In the counter affidavit filed by the State the allegations made in the writ petition have been denied. It is pleaded that consolidation proceedings have been held in accordance with the procedure prescribed. The objections received against CH form No. 5 have been decided and thereafter CH form No. 23(1) have been prepared. It is further stated that chaks have not yet been measured due to interim order passed by this Court in this writ petition on 2nd August, 2005. It is further averred in the counter affidavit that 90% villagers are satisfied by the consolidation proceedings and only 10% villagers are raising objections. It is averred that valuation of plot and exchange ratio has rightly been fixed. The allegations with regard to plot Nos. 359, 601/1, 602/2, 636, 638, 1009 and 637 have been denied. In the counter affidavit filed by the newly impleaded respondent the averments made in the writ petition have been denied. It has been averred that proceedings up to stage of Section 23 of the U.P. Consolidation of Holdings Act, 1953 has been completed by strict adherence of provisions of the Act It is further stated that under the scheme of Act there is right of filing objection, revision and appeal which can very well be availed by the aggrieved persons.

7. Learned counsel for the petitioners, challenging the order, contended that in view of the several irregularities committed by the consolidation authorities entire consolidation proceedings are liable to be quashed. Reliance has been placed on certain orders passed by this Court with regard to some other villagers in District Badaun. Reliance has been placed on the interim order dated 19.2.2000 passed in writ petition No. 8890 of 1997, Uday Beer Singh v. Commissioner of Consolidation and others, an order dated 18.5.2001 passed in writ petition No. 18822 of 2001, Babu Singh and others v. State of U. P. and others, an order dated 20.2.2003 passed in writ petition No. 7627 of 2003, Village Consolidation Committee v. State of U.P. and others, and the judgment of

this Court in the case of Harpal Singh and others v. State of U.P. and others, 2006 (101) RD 792.

8. Refuting the submission of learned counsel for the petitioners learned counsel for the respondent contended that entire consolidation proceedings of the village have been stalled at the instance of only few tenure holders and if they have any grievance with regard to any particular proceeding they are free to file objection, appeal or revision under the Act. It is also contended that there is no illegality in the consolidation proceeding.

9. I have considered the submissions of counsel for the parties and perused the record.

10. The writ petition has been filed praying for quashing the consolidation proceeding with the allegation that several irregularities have been committed by the consolidation authorities, consolidation operation chak objections have not been decided and no proper procedure has been followed. The allegations are with regard to valuation of plots, reservation of plots, fixing the exchange ratio and the fact that the lands were valued in the year 1984-85 and on the basis of which chak have been carved out. The averments made in the writ petition are not to the effect that consolidation proceeding be not held in the village rather the prayer is for quashing the consolidation proceeding already held and to direct for start of fresh consolidation proceeding. U.P. Consolidation of Holdings Act, 1953 is a special Act which contains right of objection, appeal and revision at every stage of consolidation. The tenure holder is entitled to file objection against the statement of principle, against the valuation of land and other aspect of consolidation. Section 11 of the Act provides an appeal against the decision. Under Section 48 of the Act the Deputy Director of Consolidation has been given ample jurisdiction to correct any order passed by any subordinate authority or any proceeding taken by any subordinate authority. At the stage of preparation of consolidation scheme by Assistant Consolidation Officer right of objection has been given under Section 20 of the Act. Section 21 of the Act provides disposal of objection and Section

21 (4) of the Act gives very wide power to Consolidation Officer and Settlement Officer of Consolidation to revise provisional consolidation scheme. Section 21 of the Act is quoted below :

"21. Disposal of objections to the Provisional Consolidation Scheme. (1) All objections received by the Assistant Consolidation Officer shall, as soon as may be, after the expiry of the period of limitation prescribed thereof, be submitted by him to the Consolidation Officer, who shall dispose of the same, as also the objection received by him, in the manner hereinafter provided, after notice to the parties concerned and the Consolidation Committee.

(2) Any person, aggrieved by the order of Consolidation Officer under subsection (1) may, within (15) days of the date of the order, file an appeal before the Settlement Officer, Consolidation, whose decision shall, except as otherwise

provided by or under this Act, be final.

(3) The Consolidation Officer shall, before deciding the objections, and the Settlement Officer, Consolidation, may, before deciding an appeal make local inspection of the plots in dispute after notice to the parties concerned and the Consolidation Committee.

(4) If, during the course of disposal of an objection or the hearing of an appeal, Consolidation Officer or the Settlement Officer, Consolidation, as the case may be, is of the opinion that material injustice is likely to be caused to a number of tenureholders in giving effect to the Provisional Consolidation Scheme, as prepared by the Assistant Consolidation Officer, or as subsequently modified by the Consolidation Officer, as the case may be, and that a fair and proper allotment of land to the tenureholders of the units is not possible without revising the Provisional Consolidation Scheme, or getting a fresh one prepared, it shall be lawful, for reasons to be recorded in writing for

(i) the Consolidation Officer to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenureholders concerned, or to remand the same to the Assistant Consolidation Officer, with such directions as the Consolidation Officer, may consider necessary; and

(ii) the Settlement Officer, Consolidation, to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenureholders concerned or to remand the same to the Assistant Consolidation Officer, or the Consolidation Officer, as the Settlement Officer, Consolidation, may think fit, with such directions as he may consider necessary.]

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11. It can very well be comprehended that during the consolidation operation tenure holders will file objection, appeal and revision at different stages but U.P. Consolidation of Holdings Act, 1953 provides complete machinery for deciding the said objection and for redressing the grievances of tenure holder. The mere fact that certain objections are being raised by some tenure holders is no ground to quash the entire consolidation proceeding. Moreso, this is for the Consolidation Officer and Settlement Officer of Consolidation to consider the objections and they have been given wide power to revise the entire provisional consolidation scheme even if all the tenure holders have not filed the objections.

12. The submissions of the petitioners" counsel that certain orders have been passed by this Court with regard to other villagers does not improve the case of petitioner in any manner in writ petition No. 8890 of 1997 this Court passed an interim order staying the proceeding of consolidation till the next of listing. In writ petition No. 18822 of 2001 this Court permitted the petitioner of that case to submit representation to the District Magistrate who was directed to take appropriate action. In writ petition No. 7627 of 2003 this Court again permitted

the petitioner of that case to represent the matter before District Magistrate, who was directed to consider and take appropriate decision. The said orders do not contain any direction for quashing the consolidation proceeding. The judgment relied by the petitioner in Harpal Singh (supra) was a case on its own facts. In the said case Settlement Officer of Consolidation decided 72 appeals by a common order and set aside the provisional consolidation scheme directing for preparation of fresh scheme after redetermination of valuation of plots in presence of parties. Without complying the aforesaid direction of Settlement Officer of Consolidation, the consolidation authorities again started consolidation proceeding at that stage writ petition was filed. This Court directed the respondents to prepare fresh consolidation scheme after redetermination of valuation in the facts of that case. It is relevant to quote paragraph Nos. 2 and 11 of the writ petition which clearly indicates the facts and grounds of that case and ultimate direction issued by this Court:

2. Briefly stated the facts are as under:

The village in question was notified for consolidation operation vide notification issued under Section 4A(2) of U.P. Consolidation of Holdings Act (for short "the Act") published in gazette dated 10.7.1980. After publication of the provisional consolidation scheme various objections were filed by the tenureholders on the ground that a large number of illegalities and irregularities have been committed by the subordinate consolidation staff in revision of field books, determination of valuation of the plots and exchange ratio etc. Against the order passed by the Consolidation Officer, 72 appeals were filed before the Settlement Officer Consolidation who consolidated all the appeals and vide order dated 17.5.1989 set aside the provisional consolidation scheme and directed to prepare a fresh scheme after redetermination of the valuation of the plots in the presence of the parties, making provision for chak road, nali etc. After the aforesaid order, the matter remained pending. This consolidation authorities again restarted consolidation proceedings sometimes in 2004 and January, 2005 without framing fresh consolidation scheme as directed by Settlement Officer Consolidation in its order dated 17.5.1989. Aggrieved the petitioners made representations dated 5.4.2005 and 2.5.2005 before the Consolidation Commissioner. The Consolidation Commissioners, after considering the representation filed by the petitioners, vide order dated 21.5.2005 directed the Settlement Officer Consolidation to ensure compliance of the order dated 17.5.1989. Still when nothing was done by the consolidation authorities to frame a fresh consolidation scheme the petitioners have approached this Court.

11. Considering the facts and circumstances, the writ petition is disposed of with the direction to respondents authorities to prepare fresh consolidation scheme after redetermining the valuation of the plots as of now and the exchange ratio in accordance with the provision of the Act and Rules framed thereunder and thereafter, frame a fresh provisional consolidation scheme. Since, much time has elapsed since the notification under Section 4 of the Act was issued, it is

expected that authorities shall proceed as expeditiously as possible in the matter."

13. Thus the above case was on its own facts and the Court issued direction to the Consolidation Officer to prepare fresh consolidation scheme in view of the fact that Settlement Officer of Consolidation has already directed for preparation of fresh consolidation scheme in deciding 72 appeals of the villages. In the present case objections and appeals against chak carving are yet to be decided. Thus, Harpal Singh (supra) does not help the petitioners in the present case.

14. In so far as endorsement of Consolidation Commissioner contains in representation, Annexure 9 to the writ petition, is concerned the Consolidation Commissioner has called for a report from the Settlement Officer of Consolidation. If so advised the petitioners may pursue his representation before the Consolidation Commissioner to whom the petitioners have also submitted representation but the mere fact that certain representations have been submitted by the petitioners to the Consolidation Commissioner on which report has been called by the Consolidation Commissioner is no ground for quashing the entire consolidation proceeding. As observed above if so advised the petitioners may pursue his representation before the Consolidation Commissioner in accordance with law.

15. In view of the forgoing discussions no ground is made out to quash the entire consolidation scheme of village and qasba Asafpur Tehsil Bisauli District Budaun and the prayer of the petitioners as made in the writ petition cannot be granted in the present writ proceeding.

16. Subject to the observations made above both the writ petitions are dismissed. Interim order, stands discharged.

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