

(1986) 08 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 3276 of 1985

Uday Pal Singh and Others	Vs	APPELLANT
Collector and Another		RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 20, 20(1), 20(2), 48
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (1987) 1 AWC 157

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : S.K. Chaturvedi, for the Appellant; R.P. Misra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This is a petition under Article 226 of the Constitution praying for a writ of mandamus in proceedings u/s 20 of U.P. Consolidation of Holdings Act, 1953 (for short Act). Under paragraph 4 etc. of the petition, it has been averred that a number of irregularities have been committed in assigning valuation to the plots held by the respective share holders and the members of the Consolidation Committee have not been consulted.

2. The learned Counsel for the Petitioner urged that Petitioner No. 1 was the Member of the Consolidation Committee and Petitioner No. 2 along with other tenure holders made representations before the Consolidation Commissioner U.P. Lucknow (vide Annexure 1 to the writ petition). In that representation a number of grievance about excessive valuation of the plots and/or under valuation of the plots were alleged and as a result thereof, the Consolidation Commissioner directed the Settlement Officer, Consolidation to make an inquiry regarding the allotments of Chaks. It was further urged by the learned Counsel that even at the stage of Section 20 of the Act valuation of plots could be corrected, the

interest of all tenure holders of the village were affected vitally, hence, the Consolidation Authorities Respondents Nos. 1 and 2 may be directed to assign correct valuation to the plots of respective tenure holders.

3. Sri R.P. Misra appearing on behalf of the State urged that in this case the Petitioner No. 1 was a member of the Consolidation Committee and a counter-affidavit has been filed by the Asstt. Consolidation Officer. It was, averred in paragraph 4 of the counter-affidavit that one Uday Pratap Singh was a member of the Consolidation Committee and he was consulted. Similarly, other members of the Committee were also consulted at the time when valuations were assigned to the plots held by the respective tenure-holders. The joint application or objection by the tenure-holders was not maintainable either u/s 9 or Section 20 of the Act. The objection must have been filed at the stage of Section 9 about the correction of valuation after the service of notices on the respective tenure-holders as contemplated by Section 9 of the Act, but the same was not done. The objection at the stage of Section 20 was not maintainable. This was not a case where a writ of mandamus could be issued unless conditions for issuance of mandamus were satisfied in as much as neither the objections were raised before the authorities concerned nor the same were decided or refused to be decided by them.

4. Having heard the learned Counsel for the parties the first point for determination is as to whether on a general application or a joint application by the Petitioners and other tenure holders for the correction of valuation of plots of the respective tenure holders at the stage of Section 20 of the Act was maintainable and could be considered. But at the stage of Section 20 the valuation of the plots held by tenure holders cannot be corrected. The correct stage is envisaged by Section 9 of the Act. The relevant statutory provisions of Section 9 are set out below:

...(1) Upon the preparation of the records and the statements mentioned in Section 8 and 8-A, the Asstt. Consolidation Officer shall

(a) correct the clerical mistakes, if any, and send or cause to be sent tenure holders concerned and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed showing:-

(iv) valuation of the plots.

Sub-section (2) of Section 9 enacts that any person to whom a notice under Sub-section (1) has been issued, may file an objection within 21 days of the receipt of the notice or of the publication under Sub-section (1), as the case may be, before the Asstt. Consolidation Officer.

5. u/s 20 the procedure is that upon the preparation of the Provisional Consolidation Scheme, the Asstt. Consolidation Officer would send to the tenure holders concerned and persons interested, notices containing relevant extracts

therefrom, and Sub-section (2) of Section 20 enacts that any person aggrieved after the service of notices u/s 20(1) shall file an objection about the Provisional Consolidation Scheme. In this view of the matter the intention of the law givers, as expressed through the language employed, appears to be that upon the preparation of the relevant records as mentioned u/s 8 or 8-A that notices have to be served on the individual tenure-holders and they will have to file objection u/s 9(2) of the Act, about the correction of valuation. On the other hand often the service of relevant extracts from Provisional Consolidation Scheme the person interested in the correctness of the provisions of the consolidation scheme should file an objection u/s 20(2). It is accordingly abundantly clear that about valuation of the plots objection could be filed at the stage of Section 9(2) and not at the stage of Section 20(2). Further single objection is also not ordinarily contemplated by the Act except in the case of co-tenants.

6. As regards second submission that the objection filed at the stage of Section 20 were maintainable even in respect of the valuation of the plots, suffice it to say that about valuation of the plots, the objection can be filed only u/s 9(2) if the person concerned has been served with a notice about the valuation u/s 9(1). There may be, however, some cases where at the stage of Section 20 if some corresponding valuation of the plots given to the tenure-holders in lieu of his original plots is sought to be enhanced or reduced, in that event the Court can make amendments in the valuation. Just like in case while hearing chak appeals or revisions some objection is taken about valuation in respect of plots of other tenure-holders and not of that particular person concerned in that at the stage of Section 20 valuation can be corrected. But in the instant case as the notices appear to have been served on the respective tenure-holders u/s 9(1) it was obligatory on them to have filed objection u/s 9(2) about the correct valuation of the plots.

7. The Petitioner has prayed for the writ of mandamus against the Consolidation Authorities. The circumstances under which writ of mandamus can be issued are well defined. The writ of mandamus is issued for the benefit of the subject and advancement of justice. It is issued against the public authorities to perform its duties. It must be shown that the Petitioner has a legal right and the public authority has a corresponding duties to enforce that right, in other words the mandamus has to secure the performance of public duty, in the performance of which the Applicant has a sufficient legal interest. But, it must be shown that the Applicant has applied first but the public authority or the court did not perform its duty or pass the order. It can be refused when the Applicant has some alternative remedy. Refusal to exercise jurisdiction by the public authority or the court is a valid ground for a writ of mandamus. In some cases, however, the writ of mandamus lies as a consequential relief to a writ of certiorari. See also *Chingleput Bottlers Vs. Majestic Bottling Company*, .

8. Applying these principles to the present case it transpires that the Petitioners did not apply at the proper stage u/s 9(2) of the Act before the Consolidation

Officer nor he refused to decide the question of valuation of respective plots of the Petitioners or the other tenure-holders. Similarly, even after decision of Consolidation Officer the appeal could have been filed u/s 11 before Settlement Officer, Consolidation and the revision could have been filed before Deputy Director, Consolidation u/s 48 of the Act, but the same was not done. It cannot, therefore, be said that the Petitioners were entitled to a writ of mandamus.

9. In view of the discussions made herein before the petition lacks merits and is dismissed, but without any order as to costs. It is, however, open to the Petitioners and other tenure holders to apply before the proper authority for correction of valuation along with an application for condonation of delay u/s 5 of the Limitation Act. The interim order dated 15-3-85 is vacated.