**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Usman Gani Vs. State of U.P. and Others**

**Usman Gani Vs. State of U.P. and Others**

**SooperKanoon Citation** : sooperkanoon.com/477136

**Court** : Allahabad

**Decided On :** Jul-03-2001

**Reported in** : 2001(3)AWC2149

**Judge** : R.R. Yadav, J.

**Acts** : Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 4 and 6 and 6(1)

**Appeal No.** : C.M.W.P. No. 23529 of 2001

**Appellant** : Usman Gani

**Respondent** : State of U.P. and Others

**Advocate for Def.** : S.C.

**Advocate for Pet/Ap.** : N.D. Keshari, Adv.

**Disposition** : Writ petition dismissed

**Judgement** :

**R.R. Yadav, J.**

1. By way of filing the Instant writ petition, the petitioner ts seeking relief In the nature of mandamus directing the respondents to quash the entire consolidation proceedings by denotifying village Lai, Pargana Nawabganj, Tehsil Soraon, district

Allahabad under Section 6 of the U. P. Consolidation of Holdings Act (hereinafter referred to as Act oi 1953), as they have done in respect of village Kudha, vide Annexures-9 and 10 to the writ petition. I have heard learned counsel for the petitioner. Sri N. D. Keshari at length and perusedthe provisions envisaged under Section 6 of the Act of 1953.

2. From the perusal of the aforesaid section, I am of the opinion that the State Government, under Section 6 of the Act of 1953, is empowered with exclusive jurisdiction to cancel the Notification under Section 4 of the Act of 1953 in respect of the whole or part of the area specified therein. It is further to be noticed that where Notification under Section 4 of the Act of 1953 is cancelled in respect of any unit under sub-section (1) of Section 6 of the said Act, such area shall subject to final order relating to the correction of the land records, if any, passed on or before the date of such cancellation, ceases to be under consolidation operation with effect from the date of such cancellation. State Government has reliable ears and eyes to ascertain the facts leading to cancellation of Notification under Section 4 of the Act of 1953 in exercise of its power under subsection (1) of Section 6 of the said Act whereas this Court has no mechanism to ascertain the facts for cancellation of Notification under Section 4 of the Act of 1953.

3. There is yet another reason to arrive at the aforesaid conclusion. To my mind, the power conferred upon the State Government under Section 6 of the Act of 1953 to cancel a Notification under Section 4 of the said Act whole and part of the area specified therein is in the nature of policy decision taken by the State Government under aforesaid section and it cannot be permitted to be assailed as a matter of course without demonstrating that policy decision in denotifying whole or part of an area taken by the State Government in breach of either statutory provision or in breach of constitutional philosophy. The State Government has taken a policy decision to cancel the Notification under Section 4 of the Act of 1953 of village Kudha in exercise of its power conferred under Section 6 of the said Act and it cannot be compelled to take policy decision to cancel the Notification under Section 4 of the Act of 1953relating to village Lai as suggested by the learned counsel for the petitioner. In the present case, the learned counsel for the petitioner miserably failed to bring to my notice any breach of either

statutory provision or constitutional provision in not cancelling the Notification under Section 4 relating to village Lai.

4. The arguments of the learned counsel for the petitioner that the State Government is bound to cancel the Notification issued under Section 4 of the Act of 1953 relating to village Lai as it has done In respect of village Kudha on the ground of parity is not acceptable to me and it is hereby repelled.

5. The bottom line argument of the learned counsel for the petitioner before me is that the petitioner has moved representations before the respondents to cancel the Notification issued under Section 4 of the Act of 1953 relating to village Lai as they have cancelled in respect of village Kudha. It is urged by the learned counsel for the petitioner that this Court may issue a mandamus directing the respondents to decide his representation. Suffice it to say in this regard that writ of mandamus can be issued only in those cases where the authorities are under legal obligation to perform a statutory duty, but on representation they failed to perform the same, Their failure to perform statutory duly gives a cause of action to an aggrieved person. The mere filing of representation Is not sufficient to issue a writ of mandamus unless it is further demonstrated that their action is demurrable. None of the conditions for issuing mandamus are satisfied In the present case. Learned counsel for the petitioner failed to demonstrate before me that the Consolidation Authorities-respondents are required to pass speaking order after giving reasonable opportunity of hearing to the petitioner.

6. It is well to remember that whenever and wherever State Government takes a policy decision on any subject affecting either individual or a large number of persons, it is practically not possibleeither to pass speaking order or to give reasonable opportunity of hearing to a large number of persons affected by such policy decision. After Issuing Notification under Section 4 of the Act of 1953, a large number of tenure holders are affected, therefore, practically it is not possible to give opportunity of hearing to each tenure holder on his representation by speaking order but the State Government has no option except to notify the village under Section 4 of the Act of 1953 vice versa practically it is not possible to pass speaking order at the behest of Individual tenure holder or all of the tenure holders

affected when the State Government at any time decides to cancel the Notification under Section 6 of the Act of 1953 in respect of the whole or any part of the area specified in the Notification issued under Section 4 of the said Act.

7. Upshot of the aforesaid discussion is that the aforesaid writ petition lacks merit and is hereby dismissed in limine at the admission stage.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**