

Janardan Singh Vs. D.M. and Ddc and Others

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Court : Allahabad

Decided On : Mar-25-2011

Judge : A.P.Sahi, J.

Acts : U.P. Consolidation of Holdings Act. 1953 - Section 6, 8, 19, 21(4), 44-A, 48;
Constitution of India. - Article 226; Consolidation Rules - Section 6 R/w Rule 17

Appeal No. : Civil Misc. Writ Petition No.63495 of 2009 And Writ Petition No. 4222 of 2010

Appellant : Janardan Singh

Respondent : D.M. and Ddc and Others

Advocate for Pet/Ap. : Sri. S.K.Pandey

Judgement :

1. These two writ petitions relate to a common cause of action for quashing of the order passed by the District Magistrate/District Deputy Director of Consolidation, whereby the said authority in compliance of the judgment of this Court dated 27.9.2007, has disposed of the representation filed by the respondent No.2 Ajay Kumar Singh with a direction to the Settlement Officer Consolidation to proceed with the consolidation operations afresh from the stage of preparation of statement of principles, in so far as it relates to valuation of plots and proposals of allotment without effecting the decisions already taken in relation to the dispute of title.

2. The petitioners in both these writ petitions are the the tenure holders of Village Nuwan Pargana and Tahsil Anamat District Varanasi who have come up assailing the orders on the ground that the order impugned is against the records and without providing any opportunity of hearing to the concerned persons and that the District Magistrate while exercising powers of the Deputy Director of Consolidation has travelled beyond his jurisdiction by reviewing the earlier orders on account of illegal political pressures and to the detriment of the marginal farmers specially the Scheduled Caste and other oppressed classes. In effect the contention is that the consolidation operations that had almost attained finality was being impeded at the instance of land Mafias including the respondent no.2 to the detriment of the tenure holders at large. The impugned order being motivated and malafide also deserves to be set aside as no procedure prescribed in law has been followed for the exercise of such powers. It is urged that through an administrative fiat, the Collector has proceeded to exercise his purported powers under Section 48 of the U.P.C.H.Act,1953 without adhering to the principles that are applicable for the exercise of such powers. It is, therefore submitted that the orders passed by the District Magistrate on 7.9.2009 as also the order dated 28.2.2008 recalling the earlier order be quashed.

3. Sri S.K.Pandey was heard for the petitioner and Sri J.P.Sharma has raised his submissions on behalf of Ajay Kumar Singh and the learned standing counsel for the State authority.

4. Affidavits have been brought on record from both the sides including the State and the matter has been heard finally with the consent of the parties.

5. Learned counsel for the petitioner states that the consolidation operations had reached the level of final allotment of chak and the persons aggrieved by such allotments have filed appeals which have also been disposed of and a few revisions were pending including that filed by the contesting respondent Ajay Kumar Singh. It is therefore submitted that there was no occasion to intervene and set aside the consolidation operations reverting them back to the stage of the Assistant Consolidation Officer and preparation of statement of principles.

6. Learned counsel contends that all actions taken and exercised annulling the proceedings as aforesaid are unjustified under the garb of the judgment of the High Court dated 27.9.2007 in Writ Petition No. 47530 of 2007. Learned counsel contends that this Court in the aforesaid judgment did not issue a command for cancellation of the proceedings up to a particular stage and there was no material so as to warrant any such exercise of power by the Collector. Learned counsel for the petitioner has invited the attention of the Court to the reports submitted from time to time to contend that the land was available for consolidation to the tune of 57% in the Village and the alleged irregularity if any was subject to a judicial process as provided for under the Act itself. The aggrieved tenure holders have already adopted the said process including the contesting respondent and hence there was no occasion to set aside the entire proceedings. It is submitted that the valuation of the land having increased on account of passing of the National High Way through the Village, several Land Mafias including the respondent Ajay Kumar Singh made all efforts to somehow the other forestall the consolidation proceedings and they are also taking undue advantage of their own acts. Learned counsel for the petitioner submits that there was no occasion to adopt this method and there is no justification for the cancellation of the entire proceedings.

7. Sri J.P. Sharma learned counsel for the contesting respondent Ajay Kumar Singh contends that after the consolidation process had been notified in the year 1991, gross irregularities were committed in the preparation of statement of principles and also the provisional consolidation scheme by the officers particularly the Lekhpal and the higher officers who tried to conclude the proceedings hurriedly for which allegations have been made against the Settlement Officer Consolidation .

8. It is on account of such gross irregularities that a majority of the villagers represented the matter before the authorities who failed to take notice of the same. As a result whereof they approached this Court and filed a Writ Petition in which directions were issued by this Court on 27.9.2007 to decide the same in accordance with law.

9. Accordingly an inquiry was conducted at the level of the Collector/District Deputy Director of Consolidation and after having received the reports, the Collector rightly came to the conclusion that gross irregularities have been committed that has resulted in an unfair proceedings having been adopted. Hence the power was exercised under Section 48 of the U.P.C.H. Act to cancel the consolidation operations and to re-initiate the same from the stage of statement of principles. Sri Sharma has relied on the decision in the case of Tarkeshwar Pandey v. DDC reported in 1983 RD 249 to contend that the Collector was well within his jurisdiction to have proceeded to invoke the powers under Section 48 of the Act and he even otherwise possesses *suomotu* powers to do so as well. He has further relied on the decision in the case of Jaga V. DDC reported in 1984 RD 180 to contend that a provisional consolidation scheme can be interfered with by the Settlement Officer Consolidation under Section 21(4) of the Act which power can also be exercised by the Deputy Director of Consolidation under the provisions of Section 44-A of the Act. Sri Sharma has raised an alternative argument that the consolidation operations cannot proceed as the land has been developed to a great extent over which Abadi sites have come up and a large scale construction has already been raised. According to him this renders consolidation operations impossible in the Village and he has invited the attention of the Court to the news declaration made by the Consolidation Commissioner published in Dainik Jagran in Varanasi copy whereof is Annexure 3 to the counter affidavit filed in Writ Petition No. 4222 of 2010. The said news reporting according to him recites that proceedings have been under taken for cancellation of the notification of consolidation under Section 6 of the U.P.C.H. Act , 1953. He therefore submits that as a matter of fact no consolidation should be allowed to proceed at all in view of the changed circumstances which have been noticed in the impugned order. Another argument to support the said stand has been advanced that the area has been brought within the municipal limits of Varanasi and therefore in view of the law laid down in the case of Maharaj Singh Vs DDC reported in 1990 RD 115 the consolidation of the area is impossible.

10. With these two alternative arguments Sri Sharma submits that the writ petition deserves to be dismissed as the petitioners have not made out any case for interference under Article 226 of the Constitution of India.

11. Learned standing counsel with the help of the affidavit filed on behalf of the State contends that a full scale inquiry has been conducted by the Collector and having found the irregularities, as well as subsequent events and changed circumstances existing on the spot, an order has been passed that does substantial justice between the parties. He further submits that the U.P. Housing Board (Awass Vikas Parishad) has also notified a Scheme in Varanasi for housing purposes and in such circumstances the entire proceedings for consolidation have to be reviewed which can be undertaken only from the stage of preparation of statement of principles under Section 8 of the U.P.C.H. Act, 1953. He therefore submits that the impugned order be not interfered with at this stage.

12. Having heard learned counsel for the parties it appears from the facts on record that the consolidation operations under U.P.C.H. Act were proposed in the year 1991. The notification under Section 4 of the 1953 Act was issued on 24.9.91. Objections were invited for settling disputes in 1994. The revised annual register and other proceedings after the preparation of statement of principles under Section 8 and 8-A was conducted in 1995 and then in the same year a proposal of the provisional consolidation scheme under Section 19 read with 19-A was also notified. The proposed allotment of chaks began with filing of objections which were disposed of under Section 21 of the Act and appeals were preferred. It is at this stage that complaints were raised and the consolidation process came to a halt on account of a criminal case having been filed and at the same time spot inspections were carried out almost on four occasions. The pending appeals relating to allotment were finally decided where after revisions were filed which are pending consideration before the Deputy Director of Consolidation under the provisions of Section 48 of the U.P.C.H. Act.

13. In between the respondent Ajay Kumar Singh and some others appear to have approached the authorities at Lucknow and also the Collector by moving a representation that the consolidation operations should be concluded only in accordance with law. The first application dated 15.6.06 that was moved by the petitioner is Annexure 1 to Writ Petition No. 4222 of 2010.

14. Thereafter respondent No.2 Ajay Kumar Singh approached this Court by filing a Writ Petition No. 47530 of 2007 which was disposed of on 27.9.2007 by following order:

Heard Sri J.P.Sharma learned Advocate, in support of this writ petition.

After hearing Sri Sharma, learned Advocate and on consideration of the prayer as made in this petition, this court is of view that straight way this court cannot intervene and cannot involve in the matter as acceptance/rejection of the petitioners claim is depended on various factual aspect which is to be better ascertained and to be taken note by the collector who happens to be District Deputy Director of Consolidation.

At this stage Sri Sharma, learned Advocate submits that the petitioner has already moved to the collector but he is not paying any heed to his grievance.

15. In view of the aforesaid this writ petition is being disposed of by giving direction to the learned collector to entertain petitioner's grievance and to take appropriate decision, after giving adequate to everybody, in accordance with law, with all expedition.

16. With the aforesaid, this writ petition stands disposed of.

17. After passing of the said order another application appears to have been filed by Ajay Kumar Singh on 8.6.2007 where, for the first time, he raised a plea before the Collector to make a recommendation to the State Government for issuing a notification under Section 6 of the U.P.C.H.Act and cancel the consolidation operations altogether. A further relief was prayed for that the appeals that were pending should not be decided by the Settlement Officer Consolidation.

18. It appears that during the said period the Settlement Officer Consolidation decided the appeals against which revisions were filed. The Settlement Officer Consolidation submitted reports dated 31.10.2007 and 17.12.2007. The complaint of Ajay Kumar Singh came to be disposed of on 2.2.2008 and a copy of the said order has been filed as Annnexure 6 to the writ petition. The objections filed by Ajay Kumar Singh were rejected and it was held that there was no occasion to

make a recommendation for cancellation of consolidation process when the consolidation operations had been completed to the extent of 75%. It appears that an application was moved that the order passed on 2.2.2008 and the earlier orders were ex-parte and therefore the objections deserve to be heard again. Accordingly in exercise of suo-motu powers the District Magistrate on 28.2.2008 recalled his earlier orders dated 1.1.2008 and 2.2.2008 and restored the proceedings relating to the miscellaneous complaint afresh. Thereafter the impugned order dated 7.8.2009 has been passed taking into account the development for the past more than 10- years and the existing situation on the spot.

19. Upon having perused the records the first issue that appears to be addressed to is the power to be exercised for implementation of a Scheme under the U.P. Consolidation of Holdings Act, 1953. The Scheme commences after a notification is made under Section 4 of the Act . The revision of map has to be carried out under Section 7. Under Section 8 the field book, the annual register and the records have to be revised and while doing so a survey has to be conducted and the same is to be done in consultation with the Consolidation Committee. Needless to mention that the Consolidation Committee is a statutory authority defined under Section 2-AA which is constituted in terms of Rule 3-A and has to perform the functions with regard to the preparation of statement of principles in accordance with the procedure prescribed in Paras 88 to 94 of Chapter IV of the Chakbandi Manual. The functions to be performed by the Committee are also prescribed under Section 8 itself. Then comes the preparation of statement of principles which is the basis to be followed in8 preparation and carrying out of the consolidation operations in the unit.

20. They relate to the detail of areas to be earmarked for the purposes as indicated in Section 8-A of sub section (2). Thus the role of Consolidation Committee assumes importance as the entire statement of principles have to be prepared with the consultation of the Consolidation Committee.

Needless to mention that the consultation of the Consolidation Committee has been held to be mandatory by this Court in the decisions in the case of Radha Kishan v. Mohd. Matin reported in 1969 RD 329 (paras 3 and 7) and in the case

of Kedar Nath Singh and other v. DDC reported in 1982 RD 142.

21. After the statement of principles are prepared then the extracts and record of the statement are issued through notices inviting objections from the tenure holders. The tenure holders there after are entitled to set up their claim of title, valuation etc as per the statement of principles and all such disputes are to be decided in accordance with the provisions of Section 9-A and Section 9-B of the Act. The partition of holdings between the co-sharers can also be effected under the provisions of Section 9-C of the Act. The revised annual registers are thereafter prepared and any party aggrieved by the proceedings before the Consolidation Officer relating to the objections has a remedy to file an appeal under Section 11. A bar under Section 11-A has been introduced not to allow objections to be filed later on if the opportunity afforded is not availed under section 9 of the Act.

22. Then a third stage arrives where during the consolidation operations any transfer effecting the rights or interest can be revised by moving an application under Section 12 of the Act and on such an application being moved any objection thereto has to be decided in the same manner as under Sections 7 to 11 which apply mutatis mutandis.

23. Then comes the stage of preparation of the provisional consolidation scheme proposing the actual allotment of plots. This is done under Section 19 and the provisional consolidation scheme is prepared under Section 19-A. This operation brings about the stage of filing objections to the actual allotment of plots. The Consolidation Officer is authorised under Section 21 to decide any such objections against which an appeal can be filed before the Settlement Officer Consolidation where after a revision can be preferred before the Deputy Director of Consolidation under Section 48 of the Act.

24. The powers to be exercised by the authorities are clearly defined . The Settlement Officer Consolidation can set aside a provisional consolidation scheme and issue appropriate orders for preparation of the same afresh. The powers to be exercised by the higher authorities are the same as by the authorities below them as per Section 44-A of the Act. It is in the aforesaid back ground that the exercise

of power in the present case has to be understood.

25. One of the other arguments raised by the learned counsel for the contesting respondent is that the Village has fallen within the Municipal limits and therefore it should be excluded from the consolidation proceedings in view of the judgment in the case of Maharaj Singh vs DDC (supra). This has been disputed by Sri S.K.Pandey learned counsel for the petitioner by bringing on record the letter dated 13.7.2009 from the office of Nagar Nigama, Varanasi appended as Annexure RA -3 to the Second Supplementary Rejoinder Affidavit dated 10.5.2010. The said letter indicates that the Village is not within the Municipal limits of the Municipal Corporation, Varanasi but according to the notification of the Urban Development Department Govt. of U.P. dated 30.11.2006, the Village falls within Varanasi Maha Nagar area. This dispute does not appear to have been either raised or dealt with before the District Magistrate when the objection of the respondent Ajay Kumar Singh was being considered.

26. What is noticeable about the plea raised by the learned counsel for the respondent is that consolidation is no longer possible in the area while on the other hand he defends the impugned order which requires the consolidation operations to again commence from the stage of the Assistant Consolidation Officer. This alternative objection on the part of the respondent has to be understood in the light of the fact that the power to cancel a notification of consolidation altogether vests with the State Govt. under the provisions of Section 6 of the U.P.C.H. Act, 1953. This power can be exercised by the State Govt. in the circumstances as indicated in Rule 17 of the Consolidation Rules. Section 6 read with Rule 17 are quoted herein below for ready reference:

Section 6. Cancellation of notification under Section 4(1) It shall be lawful for the State Government at any time to cancel the (notification) made under Section 4 in respect of the whole or any part of the area specified therein. (2) Where (notification) has been cancelled in respect of any unit under sub-section(1), such area shall, subject to the final orders relating to the correction of land records, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of the cancellation.

Rule 17 The notification made under Section 4 of the Act, may among other reasons, be cancelled in respect of whole or any part of the area on one or more of the following grounds, viz, that-

(a) the area is under a development scheme of such a nature as when completed would render the consolidation operations inequitable to a section of the peasantry;

(b) the holding of the village are already consolidated for one reason or the other and the tenure-holders are generally satisfied with the present position;

c) the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult and¹¹

(d) that a co-operative society has been formed for carrying out cultivation in the area after pooling all the land of the area for the purpose.

27. If the State Govt is apprised of any such inconvenience being experienced by the tenure holders, or by the consolidation authorities, then the State Govt can exercise such powers for cancelling the notification of consolidation operations. In the instant case what has happened is that the irregularities as alleged by the respondents was made the basis for forestalling the consolidation operations, thereby resulting in impeding the process for more than 10 years. During this period, according to the impugned order itself various constructions have been raised and the topography of the land has changed, and not only this a large number of brick-kilns are stated to have flourished. The allotment of land would not be convenient in the said changed circumstances. A perusal of the impugned order indicates that in this situation, the consolidation is sought to be re-initiated afresh by preparation of statement of principles reverting the entire process of allotment, which had been completed up till now to the stage of the Assistant Consolidation Officer . The revisions which had been filed against orders of allotment are stated to be pending . With the exercise of suo-motu powers under Section 48 of the Act, all such proceedings have been initiated without any decision which has been undertaken on the judicial side. In such circumstances in my opinion if the proposal is pending before the State Govt for cancellation of

notification, the State Govt at the first instance has to exercise its option of either to continue the consolidation operation, or cancel the same keeping in view the reports submitted by the authorities.

28. Needless to mention that the criteria given in Rule 17 quoted herein above is not exhaustive and the State Govt. in its discretion can cancel the notification if it comes to the conclusion that the consolidation operations are impossible in the area.

29. Coming to the next issue relating to the argument of the learned counsel for the contesting respondent that consolidation operations should commence from the stage of preparation of statement of principles, it appears from the affidavit filed by the learned counsel for the respondent that the Deputy Director of Consolidation/Collector who has passed the impugned order, should have taken this fact into account as to whether the statement of principles had been prepared with the consultation of the Consolidation Committee or without its consultation.

30. The constitution of the Committee is defined under Rule 3-A of the Consolidation Rules. If the statement of principles have to be modified or rescinded then the view of the Consolidation Committee shall have a direct bearing, and the impugned order does not record any such consultation with the Consolidation Committee. In such a situation the District Magistrate/Collector was not justified in straight away proceeding to exercise his powers suo-motu annulling all proceedings. The District Magistrate is also exercising the power of Deputy Director of Consolidation under Section 48 of the Act and if the revisions were pending on the judicial he could have decided the same on the basis of the material before him including the subsequent events that may have been necessary for the purpose for either setting aside the order of the Settlement Officer Consolidation or carrying out of the consolidation process in accordance with the statement of principles. It was not necessary for the District Magistrate in the given circumstances to have exercised his suo-motu powers in order to annul all proceedings including the judicial process adopted by the parties. Even otherwise if the District Magistrate found that the entire process deserved to be set aside then in such a situation the District Magistrate ought to have proceeded in

accordance with the procedure prescribed in law and the powers conferred under Section 48 of the Act. It is no doubt true that the power vests in the Deputy Director of Consolidation or the District Magistrate to annul such proceedings in view of the decisions that have been referred to by the learned counsel for the respondent. While exercising powers on the judicial side they have to confine to the limits of exercise of such power that is available to the authorities. The Deputy Director of Consolidation under Section 44-A would therefore exercise a power to proceed to which it is permissible in law and not beyond the same. The power of the Settlement Officer Consolidation under Section 21(4) as suggested by the learned counsel for the respondent therefore will have to be exercised on the parameters prescribed therein and not beyond that.

31. Accordingly for the reasons given above the writ petition deserves to be allowed. The impugned order dated 7.8.2009 is quashed .

32. The District Magistrate shall now forward the entire documents relating to the plea of cancellation of notification before the State Govt. The State Govt shall on receipt of such documents proceed to take a decision objectively keeping in view the larger interest of the villagers and the reports that have been submitted from time to time as to whether it is necessary to cancel the notification under Section 4 or not. This decision shall be taken by the State Govt within two months from the date of presentation of the certified copy of this order. The Principal Secretary (Revenue), Govt. of U.P. shall proceed with the matter in the light of the observations made herein above and pass an order in accordance with law. Needless to say that this has to be done with the aid of the Consolidation Commissioner of the State and after obtaining the views of the petitioners, the concerned Gaon Sabha, and any other government department without being influenced by political considerations or undue influence of Land Mafias.

33. In the event the State Govt. holds that there is no necessity to cancel the notification then in that event the District Magistrate/Deputy Director of Consolidation shall proceed to re-assess the matter in the light of the observations made herein above and the provisions noted for the exercise of such powers.

34. Learned counsel for the respondent has contended that this Court has already invoked its power in the case of Mahendra Prasad v. Consolidation Commissioner decided on 22.11.2005 in Writ Petition No. 336 of 2001 and issued directions to proceed from the stage of preparation of statement of principles under Section 8. In the opinion of the Court it is not necessary for this Court to under take this exercise itself in the given circumstances of the present case as reasoned out herein above. The aforesaid decision therefore is of no avail to the contesting respondent.

35. The writ petition stands accordingly disposed of with the aforesaid directions.

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