

(1992) 10 AHC CK 0061

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 20215 of 1992

Tulasi

APPELLANT

Vs

Deputy Director Consolidation
and Others

RESPONDENT

Date of Decision: Oct. 12, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 20, 48(3)

Citation: (1993) 2 AWC 905 : (1993) RD 96

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

Bench: Single Bench

Advocate: R.S. Maurya, for the Appellant;

Final Decision: Allowed

Judgement

B.L. Yadav, J.

Whether without assigning any reasons and without hearing the Petitioner, the Deputy Director Consolidation in exercising his jurisdiction pertaining to Reference u/s 48(3) of U.P. Consolidation of Holdings Act 1953 (for short the Act) can allow the Reference, is the short question for determination in this petition under Article 226 of the Constitution.

2. It appears that the proceeding for allotment of chaks u/s 20 of the Act, were finalised. There were some mistakes In the area etc, In some plots, consequently, the consolidation officer made a Reference to the Settlement officer, who in his turn made Reference to the Deputy Director of Consolidation with modification, which was to be accepted u/s 48(3) of the Act But the Reference as proposed by Asstt. Settlement Officer Consolidation has been rejected and as proposed by the Consolidation Officer, It has been accepted.

3. The learned Counsel for the Petitioner urged that Petitioner was not heard and principles of natural justice have been violated and the impugned order dated 18th of May 1992 also does not indicate that the Petitioner was heard even though he was adversely affected by the Reference being accepted. The restoration application filed by the Petitioner, which has not been disposed of but circumstances indicate that it cannot succeed. The provisions of Section 48(3) are mandatory and the word "may" used is just to indicate respect and responsibility but in fact it is mandatory and means must and shall. No reasons have been assigned in the impugned order. Without reasons the order ceases to exist.

4. Counter and rejoinder affidavits have been filed and learned Counsel for the parties suggested that the petition itself may be decided on merits. Consequently, I proceed to decide the writ petition on merits.

5. The learned Counsel for the Respondent urged that the Petitioner was heard and the reasons given in the impugned order was sufficient and the word "may" used in Section 48(3) of the Act, is directory and the restoration application is pending, this Court may await the result of the same. The hearing as contemplated u/s 48(3) of the Act means hearing only at the preliminary stage either by Asstt. Consolidation Officer or Consolidation Officer, but it does not refer to the Deputy Director of Consolidation.

6. Having heard learned Counsel for the parties, the points for determination are whether expression "may" used u/s 48(3) is mandatory or directory, whether reasons have been assigned in the impugned order, if not, can the order be sustained without any reasons, and whether principles of natural justice have been violated and whether Petitioner may await the result of restoration application.

7. As regards that first point, as to whether the word "may" as used u/s 48(3) is directory. Whenever expression "may" is used with reference to the authority, Tribunal or the court called upon to decide the right and title of the parties, in that event, it means "shall" and is mandatory.

8. In the present case also simply because, the word "may" has been used u/s 48(3) of the Act, that itself is not conclusive to indicate that it is directory. The public interest and injurious effect of non-compliance with the provisions are relevant consideration to decide whether word "may" has been used in directory or mandatory sense. There is no limitation for exercising power u/s 48(3), the orders under this provisions have far reaching effect on the right of individual, tenure holder and also on the public at large in the matter of land of public utility or the interest of Gaon Sabha or some other local authority. In such situation the word "may" was used by the legislature in mandatory sense and it means shall and must. Consequently, opportunity of hearing was a condition precedent before passing an order either accepting the Reference modifying or rejecting it.

9. There was nothing to indicate that the Petitioner was heard either by Deputy Director of Consolidation or the subordinate authority proposing the Reference. The same principle would apply to the Deputy Director of Consolidation and also with regard to subordinate authorities making the Reference See Jaswant Singh. Mathura Singh v. Ahmedabad Municipal Corporation (1992) (1) SCC 5. As the Petitioner himself has filed the restoration application, which is still pending, this Court need not wait for the same, as it is crystal clear from the perusal of the impugned order that the Petitioner was not heard. In case, the Petitioner was heard, it must have been stated in the order itself. Nothing has been stated in the counter affidavit, which indicates that the Petitioner was heard by the Deputy Director of Consolidation before deciding the Reference No copy of the order-sheet has been filed by the contesting Respondent to indicate that the Petitioner was heard. I am accordingly of the opinion that the Petitioner was not afforded any opportunity of hearing by the Deputy Director of Consolidation and the impugned order has been passed in violation of the principles of natural justice.

10. Reverting to the second point, as to whether reasons have been given in arriving at the conclusion A bare reading of the order would indicate that no reason has been assigned and the Deputy Director of Consolidation has rejected the proposal made by the Settlement Officer Consolidation in respect of the reference as earlier made by the Consolidation Officer. In fact, the old Latin Maxim "CESSANTE RATIONE LEGIS CESSANT IPSA LEX" connotes that the reason is the soul of law or the order, when the reason of a particular order or judgment ceases, the same ceases to apply. There are absolutely no reasons in the impugned order as to why the Reference as proposed by Settlement Officer Consolidation was not accepted, rather the one proposed by Consolidation Officer was being accepted.

11. As regard the last point, that in case the restoration application was pending, this Court may wait for the same or grant the relief prayed for in the petition. This petition was maintainable against the impugned order which was final in all respects. As the affidavits have been exchanged, ends of justice require that petition may be decided on merits without waiting for disposal of restoration application. A perusal of the impugned order itself makes it pellucid that the Petitioner was not heard. Consequently, even though restoration application is pending, but I am satisfied that no opportunity of hearing was afforded before making the Reference or actually deciding in it. At every stage, i.e. before making the Reference at the stage of Asstt. Consolidation Officer, Consolidation Officer, Settlement Officer Consolidation or at the stage of Deputy Director of Consolidation, the hearing was a must. The provisions of Section 48(3) are couched in a language having very wide sweep.

12. Under the circumstances of the case, Deputy Director of Consolidation may make an spot inspection also, so that he may appreciate the facts as to whether proposal made by the Assistant Consolidation Officer/Consolidation Officer in

respect of reference was correct or the amendment as suggested by the settlement Officer Consolidation was correct. It would, therefore, be proper in the ends of justice that the Deputy Director of Consolidation may make spot inspection before deciding the Reference.

13. Under the circumstances of the case the ends of Justice require that the case may be sent to some other Deputy Director of Consolidation for disposal of the Reference application within a period of three months. As the matter has been dragged on for too long, consequently, Deputy Director of Consolidation is directed to decide the reference within a period of three months from the date a certified copy of this order is produced before him.

14. In view of the premises aforesaid, petition succeeds and is allowed. The impugned order dated 18-5-92 is quashed and the Deputy Director of Consolidation is directed to make spot inspection and after hearing the parties, assign the reason in support of the order and decide the Reference afresh according to the observation made above and in accordance with law.