

Zakahullah and Others Vs Deputy Director of Consolidation Administration and Others

Court: Allahabad High Court

Date of Decision: Sept. 4, 1992

Acts Referred: Constitution of India, 1950 " Article 226

Local Government Act, 1933 " Section 130(1)

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 48(3)

Citation: (1993) 1 AWC 271 : (1993) RD 2

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

Bench: Single Bench

Advocate: R.N. Ojha, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.L. Yadav, J.

Whether opportunity of hearing must be afforded to the parties concerned in a Reference u/s 48(3) of U.P.
Consolidation

of Holdings Act, 1953, (for short the Act), is the short point for determination in this petition filed by the Petitioners under
Article 226 of the

Constitution of India.

2. The facts are almost admitted. By the impugned order dated 5-5-92, the Deputy Director of Consolidation has
accepted the Reference u/s

48(3) (Forty Eight-sub clause three) of the Act in pursuance of the order of Consolidation Officer dated 26-9-91, which
was passed in respect of

some area of plot No. 12/1 area. 021 having been kept out of consolidation operation. The application initiating
Reference u/s 48(3) of the Act

appears to have been made by Ghamndi, father of Respondent No. 4 and the Reference has been accepted. The
Consolidation Officer made

reference to the Settlement Officer (Consolidation), who in his turn, referred the matter to the Deputy Director of
Consolidation, who thereafter

passed the impugned order.

3. Sri. R.N. Ojha, learned Counsel for the Petitioner urged that opportunity for hearing was mandatory to the Petitioners
in view of the provisions

of Section 48(3) of the Act. Under common law also as making the Impugned order would affect rights of the parties, hence in view of the

principles of "AUDI ALTERAM PARTEM" the hearing was a must.

4. Learned Counsel for the Respondents, on the other hand, urged that by a perusal of the impugned order it appears that hearing was afforded to

the Petitioner and there was no violation of the principles of natural, justice. The provisions about hearing u/s 48(3) was directory.

5. Having heard learned Counsel for the parties, there are two points which fall for determination. First is as to whether provisions of Section

48(3) of the Act was mandatory or directory, and the next is whether the principles of natural justice have been violated. Ex abundanti cautela, the

provisions of Section 48(3) of the Act are set out below:

48(3). Any authority subordinate to the Director of Consolidation shall, after allowing the parties concerned an opportunity of being heard refer the

record of any case or proceedings to the Director of Consolidation for action under Sub-section (1).

6. Even though the word "may" has been used in connection with any subordinate authority to make reference, but it does not mean that that

authority may afford opportunity of hearing or may not. Normally in ordinary usage the expression "may" is permissive and "shall" or "must" are

imperative. In other words, normally the expression "may" used in a statute, is not to be held to be mandatory. But according to reference to the

Context the expression "may" means mandatory and equivalent to "shall". Where the expression "may" has been used in connection with disposal

of cases pertaining to rights of the parties, it is just out of sheer respect to the Court or authority that it has been used. But it has to be read as

equivalent to "must" so that jurisdiction could be exercised in the manner suggested by the Legislature. *Shaw v. Rackett* (1893) 1 QB 779.

7. In *Anson v. District Auditors for S.T. Pancras Borough Council* (1962) 1 QB 489, u/s 130(1) of the Local Government Act, 1933, a person

charged may apply to a Tribunal for declaration that he acted reasonably or under the plea that his action was authorised by law, and the

Tribunal, after being satisfied, may make declaration to that effect. The question arose, about the meaning of expression "may" as to whether it was

mandatory or directory. Lord Parker, C.J. after considering the relevant authorities on the meaning of expression "may" and "shall" held that

wherever, the expression "may" is used for conferring discretion on a court, it has to be construed as "must". It is on account of respect to the

Court or Tribunal that the expression "may" is used. But the order has to be passed or the case has to be decided in accordance with the directions

or conditions imposed under the provision.

8. To put it differently, wherever the capacity or power is given to a public authority, there are circumstances which make it imperative that the

power of public authority, tribunal or court has to be exercised with, greater sense of duty and the provision is made as to how that power is to be

exercised or duty has to be performed. Consequently, in such situation the expression "may" means "must" or "shall".
Bhaiya Punjalal

Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad, : Ramji Missir and Another Vs. The State of Bihar, ; Sardar Govind Rao v. State of

Madhya Pradesh AIR 1965 SC 1200.

9. Normally the word "may" is enabling, but it is construed as compulsory or must. Whenever an object or power is given to a Tribunal or

Authority or Court, it is to effectuate the legal right of a subject. In such situation the power given to an authority or court has to be exercised in the

manner suggested by the Legislature and such power would not be left to the discretion of the authority, but it has to be exercised in the manner

suggested. Consequently, the expression "may" is equivalent to "must" or "shall" as used in Sub-section (3) of Section 48 of the Act.

10. As the reference was to be decided only after affording opportunity of hearing to the parties concerned, in the present case, I have perused the

impugned order, but the impugned order does not contain any reason, nor it indicates that any opportunity of hearing was afforded to Petitioner.

There is a maxim "CESSANT" RATIONE LEGIS CESSANT IPSA LE", which connotes that the reason is the soul of an order or law and when

the reason disappears so the law or order itself disappears. In the present case as there was no reason, it can very well be inferred that the order

itself disappears. As no opportunity of hearing was afforded, which was must to the Petitioner, the impugned order cannot be sustained, as the

same was in violation of statutory provisions of Section 48(3) of the Act.

11. In view of the premises aforesaid, the petition succeeds and is allowed. The impugned order dated 5-5-92 and 12-8-92 are quashed. The

Deputy Director of Consolidation is directed to decide the reference after affording opportunity of hearing to the Petitioner and other parties

concerned within a period of three months from the date a certified copy of this order is furnished before him. There shall be no order as to costs.