(1992) 09 AHC CK 0122

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 36588 of 1992

Zakahullah and Others		APPELLANT
	Vs	
Deputy Director of Consolidation Administration and Others		RESPONDENT

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 potato 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 abundant! cautela, the provisions of Section 48(3) of the Act are set out below:

48(3). Any authority subordinate to the Director of Consolidation stay, 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 med. 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 surcharged may apply to a Tribunal for declaration that he acted reasonably or under ''he 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 decide 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, greatersense 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 impuged 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 IPSALE", 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.