

Neutral Citation No. **2023:AHC:224846**

Reserved -: **24/11/2023**

Delivered -: **29/11/2023**

Court No. - 48

Case :- WRIT - B No. - 727 of 2023

Petitioner :- Ram Sundar And Another

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Neeraj Kumar Pandey

Counsel for Respondent :- C.S.C.,Surya Prakash Dubey

Hon'ble Saurabh Shyam Shamshery,J.

1. The issue involved in present case is as follows -:

“Whether consolidation authorities have jurisdiction to correct clerical and arithmetical errors in any document, prepared under the provision of the Act, exercising their power under Section 42-A of the Act, after issuance of notification under Section 52 of the Act.”

2. Heard Sri Neeraj Kumar Pandey, Advocate for petitioners and Sri Surya Prakash Dubey, Advocate for respondents no. 4 to 7.

3. Aforesaid issue was recently referred by a Single Bench to Division Bench of this Court in a bunch of cases leading being **Writ B No. 33966 of 2016 (Ashrafi Devi and 7 other vs. DDC Varanasi and 3 others)**. The Division Bench vide judgment and order dated 16.11.2019 taking note that there were contrary view taken by different Division Benches, therefore, has referred the matter to Larger Bench and relevant paragraphs are quoted below-:

“27. Gafoor vs. Additional Commissioner 1979 RD 76 (DB) a Division Bench took the view that the collector under Section 28 of the U.P. Land Revenue Act has power for correcting the map after final notification has been made under Section 52 of the Act 1953 In the said case, after the notification under Section 52 of Act 1953 an application was moved by the petitioner therein for correction of the map.

28. It was contended on behalf of the petitioner in the said that from the evidence adduced by him it was evident that the map was not in conformity with the entries which were made in C.H. Form 45. The said submission was not accepted by the Division Bench and, hence, held as under:

“5. Thus the powers of the Collector under Section 28 of the U.P. Land Revenue Act for correcting the map in suitable cases are intact notwithstanding the map has been prepared by the consolidation authorities who have adjudicated the rights and title of the parties. In case there is any discrepancy in the map and final document has been prepared by the consolidation authorities, the same can be corrected in proceedings under Section 28 of the Land Revenue Act provided the right, interest and title of the party which have been finally adjudicated or have become final are not involved.”

29. A contrary view has been taken in the case of Mukhtar vs. Deputy Director of Consolidation, 1993 (3) AWC 1549. Before the Division Bench two contrary

judgments of learned Single Judge is Raja Ram vs. Deputy Director of Consolidation 1982 AWC 437 and Brijbeer Singh vs Deputy Director of Consolidation and others 1987(1) AWC 326 (Revenue Decision) was placed. In Raja Ram vs. D.D.C. (supra), the learned Single Judge took the view that in terms of Rule 109 A read with Section 52(2) of the Act, the consolidation authorities have no power to correct the error after the notification under Section 52 of the Act. However, in Brijbeer Singh vs Deputy Director of Consolidation and others (supra), the learned Single Judge took contrary view and held that even after close of consolidation application for correction of the papers for giving effect to the order, which became final, is maintainable under Rule 109A of the Rule.

30. The Division Bench held that after notification under Section 52, the Consolidation Authority can correct the same. The Court observed that the scheme of the consolidation Act is different from the provisions of the Code of Civil Procedure. Under the Act, an application is caused by the consolidation authorities themselves to implement the order passed under the Act. Accordingly, the Consolidation Authorities were bound to implement direction contained in the order passed by them. The Court further observed that when the order was passed, there was no notification under Section 52(1) of the Act. The relevant part of the order reads as under:

“From the entire scheme of the Act and the Rules framed thereunder it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the Code of Civil procedure in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and no duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13.5.1974 was not finally implemented by the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The Consolidation Authorities having not done so, the proceedings in respect thereof can not be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the

order dated 13.5.1974 would necessarily be taken to be pending on the date of the notification issued under section 52 (1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13.5.1974 under the Act even though a notification under Section 52 (1) of the Act had taken place. In our opinion, the view taken by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law.”

31. From the aforesaid two judgments of the Division Bench. it is evident that both the Division Bench has taken divergent view. In the above back ground the learned single judge has made this reference.

32. Regard being had to the fact that the attention of the later division bench was not invited to the contrary view taken by the earlier Division bench in Gafoor vs. Additional Commissioner 1979 RD 76 (DB)) 33.”

4. It appears that till date, Larger Bench have not decided the above issue.

5. At this juncture, it would be relevant to mention relevant paragraph of **Ashok Sadarangani and another vs. Union of India and others, (2012) 11 SCC 321** is quoted below -:

“29. As was indicated in *Harbhajan Singh case* [*Harbhajan Singh v. State of Punjab*, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would

remain stayed till a decision was rendered in the reference. The reference made in *Gian Singh case* [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

6. This Court has liberty to follow the judgment of Division Bench in **Ram Bahadur vs. Deputy Director of Consolidation, 1974 RD 53, Gopi Singh and another vs. Deputy Director of Consolidation, Bulandshahar, 1967 RD 214** and relevant paragraph 8 of a judgment passed by coordinate Bench of this Court in case of **Ramveer Kashyap vs. DDC Bareilly and 3 others, 2015:AHC:122784** is quoted below -:

“8. A bare reading of the provision shows that it has override effect over all the provisions of this Act as well as other law. In case any mistake has been committed by the consolidation authorities then they can correct the same in spite of the notification under Section 52 of the Act. Division Bench of this Court in the case of Ram Bahadur (supra) and Gopi Singh (supra) has held that right and liability accrued under the Act therefore recall application is maintainable even after notification under Section 52 of the Act, is fully applicable in the facts of the case. As in this case mistake has been committed during consolidation proceeding as such it can be corrected by the consolidation authorities in spite of the notification under Section 52 of the Act. In such circumstances,

the order of Deputy Director of Consolidation does not suffer from any jurisdictional error.”

7. In aforesaid legal position and by impugned orders, objections filed by petitioners that no correction could be made was rightly rejected, therefore, this Court does not find any illegality or perversity in impugned orders.

8. Accordingly, writ petition being sans merit is liable to be dismissed, hence, **dismissed**.

Order Date :- 29.11.2023

Nirmal Sinha

[Saurabh Shyam Shamshery, J.]