

Neutral Citation No. - 2023:AHC:209613

Reserved on: 27.10.2023

Delivered on: 02.11.2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 48

Case :- WRIT - B No. - 40506 of 2013

Gauri Shankar and another

.....

Petitioners

Through :- Sri J.P.S. Chauhan,
Advocate

Vs.

D.D.C. and 5 others

.....

Respondents

Through :- S.C., Sri Brajesh Shukla,
Advocate

Hon'ble Saurabh Shyam Shamshery,J.

1. Petitioners claimed that they were tenure holder of plot Nos. 179/2 area 0.897 hectare and 177 area 0.201 hectare situated at Tehsil Nazibabad, District Bijnor, along with other certain land. It was the case of petitioners that said plots of land were being used as *abadi* and for commercial purpose for last 30 years.

2. The village concerned was brought under consolidation scheme on 18/8/1992 when the notification under section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (for short "Act of 1953") was issued. It was further case of the petitioners that after above referred notification, proceedings were initiated under section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short "Act of 1950") and on basis of reply filed by petitioners, concerned authority by an order dated 15/1/1994 declared above referred land in dispute to be non agricultural with a further direction for Amaldaramad.

3. It appears that order was not implemented and meanwhile during consolidation proceedings, above referred land was reserved for purpose of an Ambedkar Park and for Abadi of Weaker Section of Society, after determining its valuation.

4. In above circumstances, petitioners at belated stage for the first time filed objections under section 20(1) of the Act of 1953. It is not in dispute

that petitioners have never filed any objection under section 9 of the Act of 1953. The Consolidation Officer by an ex-parte order dated 10/04/2000 allowed objections of the petitioners and held that since order dated 15/01/1994, as referred above was not recorded in the revenue records, therefore, said error may be cured and valuation was determined and land in dispute was excluded from the consolidation proceedings. It must be noted here that the Consolidation Officer has not considered that above referred order dated 15/01/1994 was passed subsequent to commencement of the consolidation proceedings.

5. The contesting respondents being beneficiary as members of Weaker Section of Society , have filed a belated recall application since alternative land reserved by above order dated 10/04/2000 was not considered to be proper and suitable and it was requested to restore earlier allotment of land for said purpose.

6. The said Restoration application was allowed and order dated 10/04/2000 was set aside and objections of petitioners were rejected and it was held that subsequent land reserved for Ambedkar Park and for Abadi of Weaker Section of Society was not suitable, therefore, possession of land in dispute was restored back to them.

7. In these circumstances, petitioners have filed an appeal before Settlement Officer Consolidation which was dismissed by an order dated 14/2/ 2011 and relevant part thereof is quoted below -:

"मैंने उभय पक्षों के विद्वान अधिवक्तागण की बहस सुनी तथा ग्राम अभिलेखों व चक भूचित्र का अवलोकन किया तथा ग्राम में जाकर स्थल निरीक्षण किया गया।

उत्तरवादी के विद्वान अधिवक्ता का तर्क है कि चकबन्दी अधिकारी ने आदेश दिनांक 10.04.2000 को एकपक्षीय मानते हुए आदेश दिनांक 28.10.09 द्वारा रेस्टोर किया और पुर्नस्थापना प्रार्थना पत्र स्वीकार होने के उपरांत आदेश दिनांक 03.03.10 द्वारा वाद का निस्तारण गुण दोष पर किया इस आदेश पर धारा 52(1) का कोई आदेश अवर न्यायालय में चल रही कार्यवाही की रोके जाने का नहीं था। जैड०ए०एल०आर० एक्ट की धारा 143 का कोई उल्लेख अपील में नहीं किया गया है। इसलिए अवर न्यायालय का आदेश विधिनुसार सही है। अपील निरस्त की जाय।

पत्रावली के अवलोकन से स्पष्ट है कि चकबंदी अधिकारी ने आदेश दिनांक 10.04.2000 को एकपक्षीय मानते हुए आदेश दिनांक 28.10.09 द्वारा निरस्त कर वाद पुर्नस्थापित किया था। तदोपरान्त आपत्तियों का गुण दोष के आधार पर निस्तारण दिनांक 03.03.10 को किया गया इस प्रकार धारा 52(1) का कोई प्रभाव इस आदेश पर नहीं होता है। पत्रावली पर उपलब्ध नकल खतौनी 1410 फ० बाबत खाता सं० 183 पर उपलब्ध परगनाधिकारी नजीबाबाद के धारा - 143 में पारित आदेश दिनांक 15.01.94 का अमलदरामद उपलब्ध है जिसके अनुसार गाटा सं० 340/0.200 आदि को अकषिक घोषित किया गया है। उक्त आदेश का अमलदरामद खतौनी पर दिनांक 13.04.2010 को जाना अंकित है। इस प्रकार स्पष्ट है कि अवर न्यायालय के आदेश के समय भूमि खाली थी इसी कारण इस गाटे में हरिजन जाति के अम्बेड़कर पार्क हेतु आरक्षण किया गया है। स्थल निरीक्षण से स्पष्ट है कि गाटा सं० 340. से चकबन्दी अधिकारी, सहायक चकबन्दी अधिकारी स्तर पर जो हरिजन आबादी व अम्बेड़कर पार्क का आरक्षण किया गया है, वह उचित व पर्याप्त है। उक्त आरक्षण में किसी प्रकार के संशोधन की आवश्यकता प्रतीत नहीं होती है। फलस्वरूप अपील निराधार है और निरस्त किये जाने योग्य है।"

(Emphasis Supplied)

8. Above referred order was challenged by the petitioners before Revisional Authority which was dismissed by an order dated 01/05/2013 and relevant part thereof is mentioned below:-

“ मैंने पक्षों की बहस सुनी तथा पक्षों की उपस्थिति में विवादित स्थल का निरीक्षण किया। विदित हुआ कि सहायक चकबन्दी अधिकारी स्तर पर सिद्धान्तों के विवरण पत्रों की तैयारी के समय ग्राम जुल्फकारपुर के गाटा सं० 179/2 में हरिजन आबादी व अम्बेड़कर पार्क हेतु भूमि सुरक्षित की गयी थी, जिसे गौरीशंकर आदि द्वारा धारा - 20(1) के अन्तर्गत प्रस्तुत की गयी आपत्ति पर गाटा संख्या 179/2 से समाप्त करते हुए 17926 व 179/7 में सुरक्षित कर दिया गया, उक्त आदेश चकबन्दी अधिकारी द्वारा दिनांक 10.04.2000 को पारित किये गये। आदेश दिनांक 10.04.2000 के विरुद्ध च०अ० न्यायालय में मुन्नू सिंह आदि द्वारा वाजवे नम्बर प्रार्थना पत्र प्रस्तुत किया गया, जिसे दिनांक 28.10.2009 को स्वीकार करते हुए वाद पुर्नजीवित किया गया, तथा पक्षों को सुनने के पश्चात पुनः दिनांक 03.03.2010 को आदेश पारित करते हुए चकबन्दी अधिकारी द्वारा पूर्व पारित आदेश दिनांक 10.04.2000 को निरस्त किया गया, तथा गौरीशंकर की आपत्तियों को भी निरस्त किया गया। चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक 03.03.10 के विरुद्ध गौरीशंकर पुत्र ओमप्रकाश आदि की ओर से अपील योजित की गयी, जिसे अपीलीय न्यायालय में दिनांक 14.02.2011 को निरस्त कर दिया। अपीलीय न्यायालय के आदेश दिनांक 14.02.2011 के विरुद्ध यह निगरानी योजित की है, जिसमें मांग की है कि चकबन्दी अधिकारी का आदेश दिनांक 03.02.2010 व अपीलीय न्यायालय का

आदेश दिनांक 14.02.2011 निरस्त किये जाकर निगरानी स्वीकार की जाये। मैंने स्थल निरीक्षण किया, जिससे विदित हुआ कि निगरानीकर्ता जिस स्थान पर यानी गाटा सं० 249,350 में अम्बेडकर पार्क व हरिजन आबादी सुरक्षित कराना चाहता है, वह गाटा मुख्य मार्ग से काफी आबादी के चारों ओर से घिरे हुए है, मेरे विचार से इस स्थान पर आबादी व अम्बेडकर पार्क हेतु भूमि सुरक्षित किया जाना उचित नहीं है वर्तमान में अम्बेडकर पार्क व हरिजन आबादी हेतु भूमि मुख्य मार्ग से लगी हुई सुरक्षित व गई है, तथा उसमें डा० भीमराव अम्बेडकर की मूर्ति भी स्थापित है, यदि इस स्थान से उक्त मत हेतु सुरक्षित भूमि में बदलाव किया जाता है, तो वह विधि अनुकूल नहीं होगा। जोत चकबन्दी अधिनियम की धारा-9 ख(1) में व्यवस्था दी गई है कि जब धारा 9 के अधीन सिद्धान्तों के विवरण के विरुद्ध आपत्ति प्रस्तुत की गई हो, तो सहायक चकबन्दी अधिकारी सम्बद्ध पक्षों को सुनवाई का अवसर देने और चकबन्दी समिति के दृष्टिकोण पर विचार करने के पश्चात अपनी रिपोर्ट चकबन्दी अधिकारी को प्रस्तुत करेगा, जो आपत्तियों का निस्तारण नियत रीति से करेगा। धारा 9 ख(2) में व्यवस्था है कि " यदि सिद्धान्तों के विवरण के विरुद्ध धारा-9 में नियत समय के भीतर, कोई आपत्ति प्रस्तुत न की गई हो तो उसकी शुद्धता की परीक्षा करने की दृष्टि से चकबन्दी अधिकारी चकबन्दी समिति को उचित सूचना देने के पश्चात कटक का स्थानीय निरीक्षण करेगा और तत्पश्चात वह सिद्धान्तों के विवरण में ऐसे परिष्कार या परिवर्तन कर सकता है, जो वह आवश्यक समझे। इससे स्पष्ट है कि सिद्धान्तों के विवरण पर की गई आपत्तियों का निस्तारण धारा -21(1) के अन्तर्गत किया गया है, जब इस धारा के अन्तर्गत आपत्ति ही पोषणीय नहीं थी अतः ऐसी स्थिति में चकबन्दी अधिकारी द्वारा आदेश दिनांक 10.04.2000 को निरस्त कर उचित कार्यवाही की है जहाँ तक निगरानी कर्ता का यह कथन कि परगनाधिकारी द्वारा विवादित भूमि को अपने आदेश दिनांक 15.17.1994 अन्तर्गत अकृषिक घोषित किया गया था, इस संबंध में विपक्षीगण की ओर से जोत चकबन्दी आकार पत्र 29 कार्यवाही पुस्तक, जिसमें दिनांक 18.08.1992 की कार्यवाही अंकित है, जिसके अनुसार ग्राम में धारा 4 क(2) का प्रकाशन दिनांक 18.08.1992 को किया गया, इससे सिद्ध है कि धारा 4 क(2) के जारी विज्ञप्ति के पश्चात राजस्व न्यायालय को गुण दोष के आधार पर आदेश पारित करने की अधिकारिता नहीं रह जाती है। ऐसे मामले में उक्त अधिनियम की धारा 5(2) के अन्तर्गत उपशमित हो जाते हैं, अतः परगनाधिकारी द्वारा पारित आदेश दिनांक 15.01.1994 धारा 4 क(2) की विज्ञप्ति जारी होने के पश्चात पारित किया गया है, जो विधि की दृष्टिकोण में शून्य है। अतः उपरोक्त कारणों से इस निगरानी के माध्यम से निगरानीकर्तागण को कोई अनुतोष दिया जाना सम्भव नहीं है और अम्बेडकर पार्क व हरिजन आबादी वर्तमान में उचित स्थान पर होने तथा डा० भीमराव अम्बेडकर की मूर्ति स्थापित होने के कारण इसमें परिवर्तन किया जाना सम्भव नहीं है, तदुसार निगरानी निरस्त किये जाने योग्य है।"

(Emphasis Supplied)

9. Sri J.P.S. Chauhan, learned counsel for petitioners has vehemently argued that order dated 15.01.1994 passed under proceedings, initiated under section 143 of Act of 1950 was never challenged and, therefore, it has attained finality, and it would not be considered to be abated in terms of Section 5(2) of Act of 1953, since no one has approached the authority concerned to abate it, therefore, it has legal consequences.

10. Learned counsel for petitioners has further submitted that in above circumstances since the aforesaid order dated 15/01/1994 was not recorded in revenue records, therefore, error could be corrected by way of filing objections under section 20(1) of Act of 1953 even if no objections were filed under section 9 of the Act of 1953.

11. Learned counsel for petitioners has referred revenue records and submitted that land in dispute was recorded as sugarcane factory and rice mill i.e. land was of commercial nature which ought to have been excluded from consolidation proceedings.

12. Learned counsel for petitioners has placed reliance on a judgement passed by this Court in the case of **Ram Samuj Vs. D.D.C. Jaunpur, LAWS(ALL)-1996-2-27** and relevant paragraph No.5 thereof is reproduced below:-

“5. THE question which arises for consideration, however, is as to whether *any part of the holding which has been kept within the consolidation scheme can be taken out of the same in the proceeding subsequent to the stage of the proceedings under Section 9 of the Act. Under the provision of Section 48 of the U. P. Consolidation of Holdings Act the Director of Consolidation which includes the Deputy Director of Consolidation as indicated above has powers to look into any proceeding or order passed by the authorities below on his own initiative or on an application made by any party and make such order as he thinks fit. THE provisions contained in Section 9-B (3) of the Act does not bar or restrict the jurisdiction of the Director of Consolidation envisaged under Section 48 of the Act. Further the bar of Section 11-A of the Act is confined to the claims to land, partition of joint holdings and valuation of plots trees, wells and other improvements where the question is sought to be raised by*

tenure-holder of the plot or the owner of the tree, well or other improvements recorded in the annual register under Section 10 relating to the consolidation area. THE question in respect of taking out of the consolidation scheme a particular holding or part thereof does not fall within the ambit of Section 11-A of the Act. Taking into consideration the scheme of the Act specially the jurisdiction vesting in the Director of Consolidation contemplated under Section 3 (2) (vii) of the Act there can be no justification for holding that such a question as involved in the present case cannot be agitated or determined in the proceedings under Section 20 of the Act or in a revision envisaged under Section 48 of the Act.”

13. Per contra, Sri Brajesh Shukla, learned counsel appearing for respondents has submitted that admittedly no objections were filed under section 9 of the Act of 1953, therefore, objections filed later on under Section 20(1) of the Act of 1953 could not be considered, therefore, order passed by the authority under Act of 1950 were *non est* since it was passed after consolidation proceedings were commenced in the concerned village. Petitioners have not placed correct facts before said Authority in this regard, and in view of Section 5(2) of the Act of 1953, said order has no legal consequence.

14. Learned counsel for respondents has placed reliance on a judgement of **Smt. Kiran Devi Vs. Deputy Director of Consolidation, Ghaziabad and other, 2008(4) ADJ 28** and relevant paragraph thereof are mentioned below:-

“13. The Apex Court considering the provisions of Section 11-A of the UP. Consolidation of Holdings Act, 1953 in AIR. 1975 S.C. 1716; Gafoora and another v. Dy. Director of Consolidation and others, made following observations in paragraph 3 of the judgment:

3. The short question that arises for consideration is whether the High Court is correct in not interfering with the order of the Deputy Director (Consolidation) under Article 226 of the Constitution. Jurisdiction under Article 226 is well settled. The High Court will interfere only if some order is passed by an authority in excess of jurisdiction or there is a manifest error of law apparent on the face of

the records. The principal question that was canvassed before the Deputy Director (Consolidation) was whether failure to prefer objection within the time-limit prescribed under Section 9(2) of the Act would entitle an aggrieved party to agitate the matter beyond the prescribed period without explaining the cause of delay in preferring the objection and obtaining a proper order of condonation of delay from the appropriate authority. It is clear from the records that no objection was preferred within the prescribed time. The Deputy Director (Consolidation) refused, if we may say so, rightly to accept that the appellants had earlier lodged any objection on November 21, 1966. That being the position, there was no material whatsoever before the Settlement Officer (Consolidation) for exercising his jurisdiction to condone the delay in lodging objection under Section 9(2) of the Act. Section 11A bars all objections in respect of claim to land, partition of joint holdings and valuation of plots, etc. relating to the consolidation area which have been raised under Section 9 or which might or ought to have been raised or heard at any subsequent stage of the consolidation proceedings. That being the position there is no error of law in order of Deputy Director (Consolidation) nor is there any excess of jurisdiction committed by him in disposing of the matter as he did in exercise of his revisional power under Section 48.

14. Section 11-A creates a bar on objection in respect of claim to land, partition of joint holding and valuation of plots etc. relating to the consolidation area, which has been raised under Section 9 or which might or ought to have been raised under that section, but has not been so raised. Thus no question under Section 11-A can be raised or heard at any subsequent stage of the consolidation proceedings. In view of the above position of law, the Settlement Officer of Consolidation committed error in changing the valuation of Plot No. 267 from 80 paise to 60 paise, which has effect of reduction of valuation of the petitioners. Although the Settlement Officer of Consolidation has noted in the order that valuation of 80 paise to 60 paise be fixed with regard to which there is oral consent of the parties but in the order of Settlement Officer of Consolidation it has not been stated that the present petitioners, who were respondents in appeal, have agreed for reduction of the valuation, which had effect of taking out

area from their plots in any view of the matter when there is a bar under Section 11-A with regard to valuation, the same cannot be done even by any kind of consent by the parties. ”

15. Heard learned counsel for parties and perused the records.

16. In the background of above referred circumstances of facts and law, it would be evident that during consolidation proceedings, land in dispute was reserved for purpose of Ambedkar Park and Abadi for Weaker Section Society. Petitioners have not filed any objection under section 9 of Act of 1953. For the first time, objections were filed at belated stage under section 20(1) of the Act of 1953 and since order has already been passed way back in the year 1994, whereby land in dispute was declared as non agricultural land and by mistake it could not be entered into revenue records, therefore, petitioner has prayed that error may be cured.

17. The Consolidation Officer has allowed objections only on ground that it was an error not to record legal consequence of an order passed in 1994. The appeal filed by the contesting respondents was allowed merely on ground that land specifically reserved for Ambedkar Park and for Abadi of Weaker Section of Society was not suitable. Both authorities have not considered an issue that what would be effect of order passed in the year 1994, subsequent to commencement of the consolidation proceedings i.e. after notification under section 4(1) of Act of 1953 which was issued on 18/08/1992.

18. The Revisional Authority has considered the case and dealt with both issues i.e. effect of the order passed by the revenue authorities after notification under section 4(1) of Act of 1953 was issued as well as effect of not filing objection under section 9 of the Act of 1953 and legal consequence of the objections filed under section 20 of Act of 1953 for the first time. As referred above, all the issues were decided against petitioners.

19. Learned counsel for petitioners has placed reliance on **Ram Samuj** (*supra*) wherein it was held that question in respect of taking out a particular holding or part thereof does not fall within the ambit of section 11-A of Act of 1953 and it could be agitated or determined in the proceedings under

section 20 of the Act of 1953 or in a revision under section 48 of the Act of 1953, whereas in **Smt. Kiran Devi (*supra*)**, as relied upon by learned counsel for respondents, it was held that there was a bar under Section 11-A of Act of 1953 with regard to raising of objection with respect to any land relating to consolidation area, which ought to have been raised under section 9 of Act of 1953.

20. Entire case of petitioners rests upon the order dated 15/01/1994, passed by Revenue Authority under the provisions of Act of 1950 and admittedly this order was passed after notification under Section 4 of Act of 1953 was published on 18/08/1992, therefore, legal consequence of the provisions of Section 5(2) of Act of 1953 shall fall.

21. Section 5 of Act of 1953, provides effect of notification issued under Section 4 (2), and its sub-section 2 provides that any proceeding pending in regard to land which falls under the consolidation area, would abate. Therefore, proceedings which were initiated under the Act of 1950 after notification issued under section 4 of Act of 1953 could not be legally initiated and in case it was initiated it could not be continued since admittedly in present case it was proceeded after notification under Section 4 of Act of 1953 was issued. It was legal obligation of the petitioners to present correct facts before the authority concerned, however, petitioners have failed to do so. Even if proceedings were carried on after notification was issued, legal consequence of Section 5 of Act of 1953 would definitely fall. Therefore even in absence of any specific order to abate the said matter, the Court is of the opinion that no legal consequence would fall of the order passed in a proceeding which ought to have been abated.

22. As referred above, Consolidation Officer as well as Settlement Officer of Consolidation have not taken note of legal consequence of Section 5(2) of Act of 1953, however the Deputy Director of Consolidation has taken note of the legal provisions and decided the matter against petitioners also and has held that order passed during pendency of consolidation proceedings by Revenue Authority would be considered to be *non est* and since

Consolidation Officer has passed order only on the basis of said order, claim of the petitioners could not survive.

23. So far as other argument that even at the belated stage, valuation of land could be fixed under section 20(1) of the Act of 1953 is concerned, even for the sake of argument, if it would be considered to be valid argument still only on basis of revenue entry that on the land in dispute, sugarcane crusher and rice mill was situated would not be sufficient to declare it to be a commercial land since the Revisional Authority has himself conducted a spot inspection but no such activity was found and further that alternative land was not found to be suitable for the construction of Ambedkar Park and for purpose of Abadi of Weaker Section of Society .

24. Even in the Inspection report, which is annexed along with this writ petition, which was placed before the Consolidation Officer, except that the land in dispute was not used for the purpose of agriculture. No reference was made that it was used for any commercial purpose i.e. for sugarcane crusher and rice mill, therefore, contention of the petitioners on this ground also fails.

25. In view of above discussion, this Court has come to a conclusion that petitioners have not made out any case for interference with the impugned order, accordingly, this writ petition being sans merit is **dismissed**.

Order Date: 02.11.2023

Nirmal Sinha/P. Pandey

[Saurabh Shyam Shamshery, J]