

Court No. - 7

Case :- WRIT - B No. - 386 of 1998

Petitioner :- Consolidation Committee And Another

Respondent :- D.D.C.Faizabad And Another

Counsel for Petitioner :- M.A.Siddiqui,H S Sahai,Shikha Sinha,Z. Zilani

Counsel for Respondent :- C.S.C.,Mohd. Arif Khan,Udai Bhan Pandey

Hon'ble Saurabh Lavania,J.

1. Heard Mr. M. A. Siddiqui, learned counsel for the petitioners and Mr. Udai Bhan Pandey, learned counsel for the private-respondent No. 2 and Mr. Hemant Kumar Pandey, learned counsel for the State.

2. By means of the present petition, the petitioners have assailed the order dated 10.07.1998 passed by respondent no.1- Deputy Director of Consolidation, Faizabad, District- Faizabad, now Ayodhya (hereinafter referred to as the 'D.D.C.'), in Revision No.2774 (Mata Prasad vs. Buddhi Ram and Others) which was filed under Section 48 of U.P. Consolidation of Holdings Act, 1953 (in short the 'Act of 1953').

3. By the impugned order dated 10.07.1998, the respondent no.1- D.D.C. caused interference in the order dated 18.02.1998 passed by Consolidation Officer, Kuchera, Tehsil- Milkipur, District- Faizabad, now Ayodhya (hereinafter referred to as the 'C.O.') in exercise of power under Section 21(1) of the Act of 1953, as appears from Annexure No.3 to the present petition, and order dated 08.06.1998, passed by Settlement Officer Consolidation, Faizabad, now Ayodhya (herein after referred to as the 'S.O.C.') in Appeal No.955 (Mata Prasad vs. Gram Sabha and Others) preferred under Section 21(2) of

the Act of 1953.

4. Brief facts of the case are to the effect that the petitioner no.2/Budh Ram at the time of initiation of consolidation operation, after issuance of notification under Section 4 of the Act of 1953, was the original tenure holder of Gata No.387, situated at Village- Parabrahamnan, Pargana- Pashchimrath, Tehsil- Milkipur, District- Faizabad, now Ayodhya.

5. For the purposes of consolidation operation in the unit/ village, mentioned above, the Statement of Principles was prepared as required under Section 8-A of the Act of 1953, which is required to carry out the consolidation operation in the unit. As per Section 8 and Section 8-A and relevant rules including Rule 25-A of U.P. Consolidation of Holdings, Rules, Statements of Principles shall contain the details of area to be earmarked for ex- tension of Abadi including area for Abadi site for Harijans and landless persons and other public purposes, the basis on which tenure-holders will contribute land for ex- tension of Abadi and other public purposes etc., the standard plot for each unit. Thereafter notice under Section 9 is to be issued containing extract from the records and statements prepared under Sections 8 and 8-A of the Act of 1953, inviting objections. Sections 9-A to 9-C provide for filing of objections and appeal. Section 11-A of the Act creates a bar to objections in respect of claims to land, partition of joint holdings and valuation of plots, trees and other improvements which has been raised under section 9 or ought to

have been raised under that section but has not been raised at any subsequent stage of consolidation proceedings.

6. Admittedly to the Statement of Principles prepared, no objection was filed by the petitioner no.2/ Budh Ram or by the Gaon Sabha or by petitioner no.1/ Consolidation Committee required under Section 9-B of the Act of 1953.

7. During the consolidation proceedings, the respondent no.2-Mata Prasad represented by Mr. Pandey preferred an objection with regard to allotment of chaks before the C.O. In the proceedings instituted by the respondent no.2- Mata Prasad before the C.O., the petitioner no.2 and others prayed for removing the Sector road indicated in the Statement of Principles by preferring an objection and this prayer was allowed by the C.O. vide order dated 18.02.1998. The operative portion of the order dated 18.02.1998 is extracted here-in-under:-

आदेश

उपरोक्तानुसार दोनो आपत्तियों का निस्तारण करते हुये संलग्न

संशोधन तालिका जिस पर मेरे हस्ताक्षर है, के अनुसार चक सं०

227 खलिहान, खाद गड्ढा, रास्ता चक मार्ग, सेक्टर मार्ग व बचत में

परिवर्तन किया जाता है। पत्रावली सं० 327 पर भी यही आदेश लागू

होगा। बाद अमल दरामद पत्रावलियां दा० द० हों।

8. Being aggrieved, respondent no.2- Mata Prasad instituted an Appeal No.955 and the S.O.C. vide order dated 08.06.1998 partly allowed the Appeal. Relevant portion of the order dated 08.06.1998 is extracted here-in-under:-

"मैंने उभय पक्षों की ओर से प्रस्तुत किए गए तर्कों को सुना , ग्राम अभिलेखों एवं स्थल का अवलोकन किया जिससे बिदित हुआ कि सेक्टर मार्ग गाटा सं 0-387 में पश्चिम की ओर उत्तर दक्षिण की लम्बाई में उत्तर की सड़क से मिला स 0 च 0 अ 0 स्तर पर दिया गया था जो कि नाली के सहारे था उसे च 0 अ 0 ने पुर्नवादी के चक के पूर्व की ओर उत्तर दक्षिण की आकृति में गाटा सं 0-386 में दिया है। जिसे पुर्नवादी पूर्ववत चाहता है। यदि प्रश्नगत रास्ते को पूर्ववत किया जाता है तो चकदार को नाली एवं चकमार्ग दोनों ही जावेगी जिससे उसे हानि होगी साथ ही साथ गाटा सं 0-447 आदि पर पहुंचने का रास्ता नहीं रह जावेगा जिससे निश्चय ही अन्य ग्रामवासियों को तालाब पर जाने में कठिनाई होगी। यदि प्रश्नगत चकमार्ग को चक सं 0-184 के पूर्व एवं पुर्नवादी के चक के पश्चिम की ओर किया जाता है तो चकदार सं 0-184 के पश्चिम नाली पूर्व चकमार्ग एवं उत्तर में सड़क हो जावेगी। वह एक छोटा चकदार है जिससे उसे हानि हो जावेगी। परन्तु जो चकमार्ग च 0 अ 0 ने दिया है वह पुर्नवादी के

मकान तक नहीं पहुंचती है जिससे उसे हानि अवश्य ही है। अतः यह न्यायोचित प्रतीत होता है कि गाटा सं 0-387 में समाप्त किए गए सेक्टरमार्ग का जो मूल्यांकन सम्प्रति बचत में पड़ा हुआ है उसे चकदार सं0-184 को देकर चकदार 184 से पूर्व की ओर से उत्तर दक्षिण की लम्बाई में 3-69 पैसे की भूमि निरस्त करके चकदार सं0 227 को दे दी जावे और चकदार सं 0-227 के दक्षिण से 1-71 की भूमि निरस्त करके चकमार्ग देकर पुर्नवादी की आबादी से मिला दिया जावे। इससे सड़क से होकर चकमार्ग पुर्नवादी को अपने मकान तक मिल जावेगा और अन्य ग्रामवासियों को तालाब गाटा सं0-447 तक जाने का रास्ता भी मिला रहेगा। इस संशोधन से 1-98 की बचत उपलब्ध होगी जो 227 के गाटा सं0 432 से निरस्त करके खलिहान के दक्षिण बचत हो जावेगी। तदनुसार प्रश्नगत अपील अंशतः स्वीकार किए जाने योग्य है।

अतः आदेश हुआ कि अपील अंशतः स्वीकार की जाती है। चक सं0-184, 227, बचत एवं चकमार्ग में संशोधन अनुसार संलग्नतालिका किया जावे। संशोधित आकार पत्र 23 प्रभावित चकदारों को बितरित करके स्थल पर पुनः सीमांकन किया जावे।

पत्रावली अग्रेत्तर कार्यवाही के उपरान्त संग्रहीत हो।"

9. Challenging the order(s) dated 18.02.1998 and 08.06.1998 passed by C.O. and S.O.C., respectively, the respondent no.2- Mata Prasad filed the Revision No.2724 and after considering the entire facts of the case, the D.D.C. caused interference in the order(s) dated 18.02.1998 and 08.06.1998 passed by C.O. and S.O.C., respectively, vide order dated 10.07.1998. The relevant portion of the order dated 10.07.1998 is extracted here-in-under:-

"प्रस्तुत किये गये तर्कों के परिपेक्ष्य में अभिलेखीय परीक्षण से विदित

होता है कि

वस्तुतः प्रखण्ड मार्ग के उत्तर दक्षिण इस स्थान पर स्थित पश्चिम

की निगरानी कर्ता आदि की आबादी को दृष्टिगत रखते हुए निर्मित

किया गया था को चकबन्दी अधिकारी द्वारा चकों के समायोजन में

समाप्त करके बचत कर दिया गया था जिसे अपीलीय न्यायालय ने

इस स्थान पर समायोजित करते हुए निगरानी कर्ता के चक के दक्षिण

से चक मार्ग में प्रदिष्ट कर दिया गया है। उल्लेखनीय है कि प्रखण्ड

मार्ग के विरुद्ध पृथक से आपत्ति प्रस्तुत करने का प्राविधान है ,

उसके न प्रस्तुत होने पर प्रखण्ड मार्ग का प्रदेशन अन्तिम हो जाता

है, तथा उसे परिवर्तित करने का क्षेत्राधिकार समाप्त हो जाता है। इस

प्रकार इस प्रकरण मे उसे समाप्त करके अवर न्यायालय ने भूल की है

उनका एतद् विषयक आदेश क्षेत्राधिकार से परे है। अतः न्यायहित

तथा जनहित में उक्त प्रखण्ड मार्ग की इस स्थान पर स्थित आबादी

से सटा पूरब से उत्तर दक्षिण प्रदिष्ट था को यथावत किया जाता है

तथा यह मूल्यांकन का समायोजन निगरानी कर्ता के चक से पूरब से

प्रदिष्ट अनावश्यक चक मार्ग को समाप्त करके किया जाता है। इस

समायोजन से ग्राम प्रधान आदि ने भी सहमत व्यक्त की है।

जहां तक बुधिराम का चक हटाने तथा निगरानी कर्ता का अन्य चक

समायोजित करने का प्रश्न है वह औचित्यपूर्ण नहीं प्रतीत होता है।

क्योंकि इससे बुधिराम अपने मूल गाटा से हट जायगा। इस प्रकार

यह निगरानी अंशतः स्वीकार होने योग्य है। तदानुसार अंशतः

स्वीकार करते हुए उपर्युक्त अनुसार समायोजन किया जाता है। स्थल

पर सीमांकन किया जाय। अग्रेसर कार्यवाही के उपरान्त पत्रावली

संग्रहीत हो।"

10. A perusal of the impugned order dated 10.07.1998 passed by respondent no.1- D.D.C. reflects that the D.D.C. caused interference in the order dated 18.02.1998 and 08.06.1998 passed by the C.O. and S.O.C., respectively, on the ground of jurisdiction of C.O. As per the observations made in the impugned order dated 10.07.1998 passed by the respondent no.1/ D.D.C., the C.O. and/ or S.O.C. were not having power to interfere in the Statement of Principles prepared under Section 8-A of the Act of 1953.

11. On the issue of power/ jurisdiction of C.O., based upon which the D.D.C. passed the impugned order dated 10.07.1998, assailing the impugned order dated 10.07.1998, the counsel for the petitioners advanced his submission on the basis of observations made in the judgments passed by this Court in the case of ***Chandrika Rai vs. D.D.C, Gazipur and Others, 1995 RD 53*** and ***Sunder Lal and Another vs. D.D.C., Mahoba and Others, 2006 (100) RD 379***.

12. The petitioners' counsel relied upon the following paragraphs of the judgment passed in the ***Chandrika Rai (supra)***.

"4. The submission afore-stated, have been made with vehemence, but to be rejected as untenable in law and devoid of merits. The statement of principles prepared under Section 8A inter alia, contained details of areas, as far as they can be determined at that stage, to be earmarked for extension of 'abadi' including areas for 'abadi site' for Harijans and Landless persons in the Unit and for such other public purposes as may be prescribed. Rule 24A of the rules made under the Act provides explicitly that the statement of principles shall, inter alia, show the area to be earmarked for extension of abadi, including areas for abadi sites for Harijans and Landless Persons in the Unit for present and future needs; for Roads village and inter-village Rasta; and for water channels (Gools or Nalis) for irrigation purposes, amongst other public purposes enumerated in sub-rule (2) of Rule 24A which in my opinion, is not an exhaustive list

of public purposes as would be evident from the expression "areas to be earmarked for any other public purposes" used in Rule 24A(1)(iv) of the Rule. The Act has been enacted with the avowed object of providing for the consolidation of agricultural holding in Uttar Pradesh for the development of agriculture, and to achieve that objective, the Act aims to allot a compact area in lieu of scattered plots to a tenure holder so that large scale cultivation may pursued with its attending advantages. In my opinion, it would be a set back to overall development of the agriculture, if tenure holders are not provided with the facility of Chak Road to enable them to have access to their Chaks. It is unnecessary to emphasise the importance of Chak roads in rural areas. Suffice it to say that proper development and growth of agro-industrial activities are not feasible in absence of proper facility of transportation of agro-industrial goods produced by farmers. It is, no doubt, true that on a conjoint reading of Sections 9 and 9B of the Act, one may come to the conclusion that if no objection is filed against the statement of principles under Section 9 and the Consolidation Officer, does not suo motu make any modification or alteration in the statement of principles, the same would become final as provided under sub-section (3) of Section 9B, but the finality so given to the statement of principles is qualified with the expression "except as otherwise provided by or under this Act, "occurring in sub-sec. (3) of S. 9B. A conspectus of Ss.

19(1)(d), 19A and 20(3) read with Rules 46(1A) and 47(3) of the Rules would indicate that the tenure holders may file objection in respect of location of any Chak road shown in the statement of principles and may also claim for chak Roads not already provided for. These provisions and Section 48 of the Act provide "otherwise" within the meaning of Section 9B(3) of the Act. The purpose of explicitly stating the land earmarked for public purpose including chak road etc. in the provisional consolidation scheme drawn in C.H. form 23 and if its publication is intended to enable the tenure holders to know, inter alia, whether the Chaks allotted to them, have the facility of Chak Road and water channels etc. and to file objection if necessary, under Section 20(3) of the Act. The finality of statement of principles under Section 9B(3) is subject to the condition that there is no provision "otherwise" in the Act. The provision discussed above, in my opinion, provide for 'otherwise' and therefore, the submission that a tenure holder cannot make a claim in his objections, appeal or revision arising out of Section 20 proceeding for a Chak Road not already provided for in the statement of principle, cannot be countenanced. In fact, it is on publication of the provisional consolidation scheme under Section 20 of the Act that a tenure holder comes to know for the first time the actual location of the Chaks allotted to him as also the location of Chak road and water channel and, therefore, it is at this stage, that he gets an effective opportunity to file objections in respect of

availability or otherwise of the facility of the Chak and water channel. If such facilities are not available vis-a-vis the chak allotted to a tenure holder, he will have every right to file an objection under Section 20 of the Act claiming for the facility of chak road and water channel and consolidation officer and thereafter, the settlement officer, consolidation and Deputy Director of Consolidation, shall be well within their jurisdiction to allow the claim for chak road or water channel even in proceedings arising out of Section 20 of the Act whereupon provisional consolidation scheme shall stand amended accordingly. The submission of the counsel is liable to be rejected, yet on another ground i.e. doctrine of 'implied power'. The power to provide chak roads and water channels at the behest of a tenure holder in proceeding under Section 20 of the Act is impliedly conferred upon the consolidation authorities to be exercised, in furtherance of the objects of the Act, as a power ancillary or incidental to main power that is to say, the power to allot chaks and earmark land for public purposes under Section 9A read with Section 9B of the Act. In *Rajpati Tewari v. Deputy Director of Consolidation*, 1981 AWC 833 : (1982 All LJW 59) K.P. Singh, J. held as under:—

"..... It is not correct to contend that the Consolidation Authorities have no jurisdiction to allot a chak road to an individual tenure holder The purposes of the U.P. Consolidation of Holdings Act is to allot compact area to

individual tenure holders. Even if there are no provisions under the Act to provide road to an individual tenure holder, incidental powers of providing Chak Road, and path etc. to an individual tenure holder, is inherent in the Consolidation Authorities. If they are debarred from providing a Chak Road to an individual tenure holder, more harm is likely to occur than they may have jurisdiction to provide such roads to an individual tenure holder in my opinion, it is a necessary power in the Consolidation authorities to provide a path road etc. to a tenure holder with a view to carry out the purpose of the Act."

5. In Rishi Narain v. Dy. Director of Consolidation 1983 RD 22 : (1982 All LJW 494) the same learned Judge after quoting the afore-extracted passage from Rajpati Tiwari (supra), has held as under:

"According to me, unless there are prohibitions for not allotting road, path and Nali etc. to a tenure holder, the Consolidation authorities have inherent jurisdiction to allot same to an individual tenure holder with a view to carry out the purpose of the Act."

I am in agreement with the view taken by the learned Judge in Rajpati Tiwari and Rishi Narain (supra).

6. Sri Sankatha Rai, vehemently relied on decisions in Ram Murat v. Mata Saran, 1982 AWC 160 : (1982 All LJW 394) and in Sri Pat v. Haridwar, 1980 AWC 146. In

the first case, K.N. Mishra, J. held that application of an individual tenure holder wherein he prayed for providing Rasta to Chak of his father from village Abadi, was not at all maintainable nor such request could be considered by the Asstt. Settlement Officer, Consolidation in exercise of his powers under Section 42A of the Act. In the second case, R.S. Singh, J. held that no provision has been pointed out under the Act or the Rules framed under the Act for providing a Rasta and Nali to a private tenure holder. In the absence of any specific provision under the Act or the Rules framed under the Act for anything to be done by any authority, nothing can be done by the Dy. Director of Consolidation in exercise of his powers under Section 40(3) of the Act. In this view of the matter, the application of the petitioner for providing Rasta and Nali from one Chak to the other where he had got his pumping set was not maintainable."

7. This conclusion was arrived at by R.S. Singh, J. on the assumption that "the provisions for providing Rasta and Nali A (Gool) is provided in Section 8A of the Act read with Rule 24A of the Rules framed under the Act, "at the stage of the preparation of statement of principles and in case of unit in relations is which a notification under sub-section (1) of Section 52 has been issued before the commencement of Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1970, the Collector has been given the power to provide Chak Roads and Chak Gools, if he is of opinion that there exists no provision or

inadequate provision of Chak Roads or Chak Gools in the unit. But these provisions, according to the learned Judge, "are applicable in the case of village path or Nali (Gool) for public purposes."

8. In my opinion, wherever, Chak Road or Chak Gool is provided, keeping in view the problems of individual tenure holders, such provision subserves public purpose as well besides. serving the purpose of individual tenure holders. Chak Roads or Chak Gool so provided does not cease to subserve public purpose merely because it has been provided on consideration of application filed by the individual tenure holder vis-a-vis his difficulties. As discussed above the object of advancement of Agriculture would be frustrated if the tenure holders are not given proper and adequate facilities of Chak roads and Chak gools. Both the decisions aforesaid have been considered by K.P. Singh, J. in Rishi Narain (supra). The decisions in the aforesaid two cases relied upon by the Counsel for the petitioner, are in my opinion, per incuriam having been rendered without discussing the related provisions discussed hereinbefore. The decisions rendered in ignorance of the relevant statutory provisions are cited but to be avoided and ignored on the doctrine of per incuriam as explained by the Supreme Court in State of U.P. v. Synthetic & Chemical Ltd., JT 1991 (3) 268. That apart, a decision being abstraction of the principle from the facts and arguments of the case what is quotable as binding authority is the principle upon which the case was

decided. In the words of Sri George Jessal in Asborne v. Rowlatt, (1980) 3 Ch. D. 774 at p. 714, the only thing which makes a decision binding as an authority upon subsequent Judge is the principle upon which the case was decided. In this regard, Lord Halsbury's dicta in Quinn v. Leatham, (1981 AC 495 at p. 506) may also be usefully quoted as under:

"..... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides."

In Reg. v. Home Secretary, Ex. P. Khawaja, 1984 AC 74 (HL) it was said at page 84—

"The house will depart from a previous decision where it is right to do so and where adherence to a provisions decision may lead to injustice in a particular case A precedent may be departed from where the issue is one of statutory construction."

13. Reliance has also been placed on the following paragraphs of the judgment passed by this Court in the case of **Sunder Lal (supra)**.

"10. The consolidation operation starts with the issuance of notification under section 4 of the Act. Revision of the

field book, current annual register and determination of valuations and shares in the joint holdings is undertaken under section 8 of the Act. Thereafter a Statement of Principles is prepared under section 8-A of the Act setting forth the principles to be followed in carrying out the consolidation operation in the unit. Section 8-A further provides that statement of principles shall also contain the details of area to be earmarked for extension of Abadi including area for Abadi site for Harijans and landless persons and other public purposes, the basis on which tenure-holders will contribute land for extension of Abadi and other public purposes etc., the standard plot for each unit. Thereafter notice under section 9 is issued containing extract from the records and statements prepared under sections 8 and 8-A of the Act inviting objections. Sections 9-A to 9-C provide for filing of objections and appeal. Section 11-A of the Act creates a bar to objections in respect of claims to land, partition of joint holdings and valuation of plots, trees and other improvements which has been raised under section 9 or ought to have been raised under that section but has not been raised at any subsequent stage of consolidation proceedings.

11. After the aforesaid exercise is completed a provisional consolidation scheme is prepared by the Assistant Consolidation Officer. Section 19-A and Rule 46 of U.P. Consolidation of Holdings Rules, 1954 provides that Assistant Consolidation Officer shall prepare a

provisional consolidation scheme for the unit in CH Form 23 in consultation with the members of the Consolidation Committee and after making enquiries from as many tenures as possible. Section 19 of the Act prescribes the conditions to be fulfilled by a provisional consolidations scheme. Apart from others one of the conditions prescribed by section 19 (1) (b) is that the valuation of the plots allotted to a tenure-holder after deductions, if any, made towards public purpose shall be equal to the valuation of the plots originally held by him. Similarly, section 19 (2) (d) provides that a provisional consolidation scheme shall follow the principles laid down in the statement of principles prepared under section 8-A of the Act.

12. From the reading of the aforesaid provisions of, the Act it becomes apparent that the two stages of consolidation operation; the one under Chapter II relating to Revision and Correction of Maps and Records and Preparation of Consolidation Scheme under Chapter III are totally inter-linked. In case any illegality or irregularity is committed at the stage of section 8 and 8-A, the provisional consolidation scheme framed cannot be in conformity with the provisions of section 19-A, so as to ensure a fair and proper allotment of land to the tenure-holders, frustrating the very purpose of consolidation operations.

13. The bar created by Section 11 A of the Act as a matter

of fact operates in respect of an individual tenure holder in order to attach finality to the proceedings at that stage. The said bar would not operate in a case where there has been a large scale illegalities and irregularities committed by the Subordinate Consolidation Staffs in determining the valuation and preparation of statement of principles. The Court cannot shut its eyes to the various illegalities and irregularities pointed out in the fixation of valuation and exchange ratio and the provisional consolidation scheme by ail the three authorities and allow a few tenure holders to be benefited at the cost of the tenure holders at large in the garb of the bar created by Section 11 A.

14. In view of the above, the argument advanced by the learned counsel for the petitioners that the matter could not have been remanded to start consolidation proceedings afresh from the stage of Section 8 of the Act in view of the bar created by Section 11 A are not liable to be accepted in the facts and circumstances of the present case

15. The next submission of the learned counsel for the petitioners, that the provisional consolidation scheme ought not to have been set aside totally and in any case the power does not vest in the Deputy Director of Consolidation and in view of Section 21 (4) of the. Act the said power can only be exercised by Consolidation Officer and Settlement Officer Consolidation, has also got no force.

16 . Section 21 (4) of the Act reads as under:—

"If, during the course of the disposal of an objection or the hearing of an appeal, Consolidation Officer or the Settlement Officer, Consolidation, as the case may be, is of the opinion that material injustice is likely to be caused to a number of tenure-holders in giving effect to the Provisional Consolidation Scheme, as prepared by the Assistant Consolidation Officer, or as subsequently modified by the Consolidation Officer, as the case may be, and that a fair and proper allotment of land to the tenure-holders of the units fresh one prepared, it shall be lawful, for reasons to be recorded in writing for-

i) the Consolidation Officer to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenure-holders concerned, or to remand the same to the Assistant Consolidation Officer, with such direction as the Consolidation Officer, may consider necessary; an

ii) the Settlement Officer, Consolidation, to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenure-holders concerned or to remand the same to the Assistant Consolidation Officer, or the Consolidation Officer, as the Settlement Officer. Consolidation, may think fit, with such directions as he may consider necessary.

17. The aforesaid section empowers the Consolidation Officer to interfere with the provisional consolidation

scheme as prepared by the Assistant Consolidation Officer by setting aside or modifying the same and directing the Assistant Consolidation Officer to frame a fresh scheme if he comes to the conclusion that a fair and proper allotment of land to the tenure holders of the unit is not possible without revising the provisional consolidation scheme or getting afresh one prepared. Same powers are conferred upon the Settlement Officer Consolidation while hearing the appeal. What is therefore material is the opinion of the Consolidation Officer or Settlement Officer Consolidation that material injustice is likely to be caused to a number of tenure holders and a fair and proper allotment of land is not possible in case the provisional consolidation scheme as prepared is given effect to. The power of Consolidation Officer and Settlement Officer Consolidation to direct revision of the Provisional Consolidation Scheme or getting a fresh one prepared is of a very wide amplitude. The exercise of power would require satisfying the above two conditions and there must be an order in writing specifying reasons.

18. In the present case, the Consolidation Officer while hearing objections has recorded his satisfaction in the order dated 16-7-1992 that a fair and proper allotment of land to the tenure holders is not possible unless a fresh scheme is prepared. The Settlement Officer Consolidation has also confirmed the same vide order dated 9-6-1995. He has also recorded his satisfaction with regard to the fact that preparation of a fresh consolidation scheme was

necessary for proper allotment of land to the tenure holders. The reasons recorded in the two judgements clearly shows that the Assistant Consolidation Officer had committed various irregularities and illegalities in the proceedings at the stage of Section 8 and 8 A and also in preparing the provisional consolidation scheme. The two authorities have rightly observed that not only material injustice would be caused to a large number of tenure holders but also a fair and proper allotment of the land of the tenure holders was not possible under the Provisional Consolidation Scheme as framed. Thus the two authorities were fully justified in canceling the entire provisional consolidation scheme of the village. There were also fully justified in directing the same to be prepared afresh by the Assistant Consolidation Officer after redetermining the valuation and exchange ratio of the plots after giving all opportunity of hearing to the tenure holders.

19. In so far as the other limb of the arguments that the Deputy Director of Consolidation cannot exercise the powers conferred by. Section 21(4) of the Act is also without any force and is wholly misconceived. Section 48' of the Act which confers the revisional powers on the Deputy Director of Consolidation makes it clear that he can call for and examine the record of any case decided or proceedings undertaken by any subordinate authority for the purpose of satisfying himself as to the legality of the proceedings or as to correctness, legality or propriety of any order passed by such authority in any case or

proceedings. He is also empowered to make such order in the case or proceedings as he thinks fit. Thus there can be no doubt that the Deputy 'Director of Consolidation also has the same power as the Consolidation Officer or the Settlement Officer Consolidation while hearing revision under Section 48 of the Act and he can also exercise the powers conferred under Section 21(4) of the Act as given to the Consolidation Officer and Settlement Officer Consolidation by the said section."

14. Based upon the above referred judgments, it is stated by learned counsel for the petitioners that the C.O. was having power to interfere in the Statement of Principles prepared under Section 8-A of the Act of 1953 and accordingly in the impugned order interference is required and the petition is liable to be allowed.

15. Opposing the aforesaid as also the present petition, learned counsel for the State placed before this Court the judgment passed by this Court in the case of ***Punvasi vs. Deputy Director of Consolidation and others*** reported in ***2011 SCC OnLine All 2669 : (2011) 112 RD 664***, the relevant paragraphs referred are extracted as under:-

"8. The Deputy Director of Consolidation after having noted the submissions of either side came to the conclusion that the original holding of the respondent was reserved for "Dhobi Abadi" which could not have been done in favour of any particular community and any

appeal filed under section 11 was obviously not maintainable. The statement of principles is prepared under section 8-A quoted below:

"8-A. Preparation of Statement of Principles.—(1) The Assistant Consolidation Officer shall, in consultation with the Consolidation Committee, prepare, in respect of each unit under consolidation operations, a statement in the prescribed form (hereinafter called the Statement of Principles) setting forth the principles to be followed in carrying out the consolidation operations in the unit."

9. Nothing has been brought on record to indicate the any such statement was prepared according to the procedure prescribed therein. There is no willingness to allot abadi which has to be expressed in consultation with the Consolidation Committee. In the absence thereof any order under section 11 of the Act would tantamount to act in violation of the procedure prescribed. The conclusion of the Deputy Director of Consolidation is therefore well founded. If no objection is filed against the statement the principles then the bar of section 11-A would operate. The order dated 4.4.1988 passed by the appellate authority was an order coram non-judice.

10. The procedure to dispose of an objection against the statement of principles has to be dealt with under the provisions of section 9-B quoted here below:—

"9-B Disposal of objections on the Statement of Principles

—(1) Where objections have been filed against the Statement of Principles under section 9, the Assistant Consolidation Officer shall, after affording opportunity of being heard to the parties concerned and after taking into consideration the views of the Consolidation Committee, submit his report to the Consolidation Officer, who shall dispose of the objections in the manner prescribed.

(2) Where no objections have been filed against the Statement of Principles within the time provided therefor under section 9, the Consolidation Officer shall, with a view to examining its correctness, make local inspection of the unit, after giving due notice to the Consolidation Committee, and may thereafter make such modifications or alterations in the Statement of Principles as he may consider necessary.

(3) Any person aggrieved by an order of the Consolidation Officer under sub-section (1), or sub-section(2) may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, whose decision, except as otherwise provided by or under this Act, shall be final.

(4) The Consolidation Officer and the Settlement Officer, Consolidation shall, before deciding an objection or an appeal, make local inspection of the unit after giving due notice to the parties concerned and the Consolidation Committee."

11. *The said procedure has not been followed in the present case. An appeal under section 11 is not contemplated at all and therefore the order dated 4.4.1988 was in valid. This issue will also have to be examined which has not been done in the present case."*

16. The prayer is to dismiss the petition.

17. Considered the aforesaid and perused the record.

18. The issue before this Court is to the effect that as to whether in the present case, the bar of Section 11-A of the Act of 1953 would attract or not.

19. For coming to conclusion, it would be relevant to take note of the facts of the case of the ***Chandrka Rai (supra)***. In this case, *chak road* was not provided to one Rishikesh, who was impleaded as respondent No. 4 in the said petition and on publication of provisional consolidation scheme, he filed objection under Section 20 of the Act of 1953, wherein, he demanded the facility of *chak road* and the said objection was rejected. Thereafter, an appeal was filed, in which, the S.O.C. concerned provided *chak road* and thereafter, the order of S.O.C. was upheld by the D.D.C. Thus, on facts, this judgment would be of no help to the petitioners.

20. From the above quoted paragraphs of the judgment passed in the case of ***Sunder Lal (supra)***, it is apparent that the bar created by Section 11-A of the Act of 1953 would operate in respect of an

individual tenure holder in order to attach the finality to the proceedings at the relevant stage and the said bar would not operate in a case where there has been large scale illegalities and irregularities committed by the Subordinate Consolidation Staffs in determining the valuation and preparation of Statement of Principles and in this view of the matter, this court opined that the orders passed by the competent authorities under the Act of 1953 are justified and therefore dismissed the petition.

21. The judgment passed in the case of ***Punvasi (supra)*** specifically indicates that if no objection is filed against the Statement of Principles prepared under Section 8-A of the Act of 1953 then in that eventuality the bar under Section 11-A of the Act of 1953 would operate.

22. Considering the law enunciated aforesaid as also the undisputed fact that the petitioner no.1 as also the petitioner no.2, being the original tenure holder of Gata No. 387, failed to file objection(s) in terms of Section 9-B of the Act of 1953 and also that the pleadings/ allegation pertaining to large scale illegalities and irregularities committed by the Subordinate Consolidation Staffs in determining the valuation and preparation of Statement of Principles are missing, this Court is of the view that the bar under Section 11-A of the Act of 1953 would be attracted in the instant case and as such, the findings/ observations of the D.D.C. in the impugned order that the C.O. and/ or S.O.C. were not having power to cause interference in the Statement

of Principles prepared under Section 8-A of the Act of 1953 are justified. Accordingly, this Court finds no force in this petition.

23. The present writ petition is ***dismissed*** accordingly.

24. Cost made easy.

Order Date :- 28.3.2024
(Manoj K.)