

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:21919

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 287 of 2006

Petitioner :- Parag Memorial Educational Instit. Thru S.P.Yadav
U/A 227

Respondent :- Gram Panchayat Sarehri Thru Pradhan And 5
Ors.

Counsel for Petitioner :- Shafiq Mirza, Chandra Has
Misra, Manzar Ali Khan

Counsel for Respondent :- C.S.C., R.N. Gupta, Shiv Kumar, Suresh
Chandrashukla

Hon'ble Saurabh Lavania, J.

**C.M.Application Nos. IA/8/2023, IA/9/2023 and IA/10/2023
(Application(s) for Condonation of Delay, Setting Aside
Abatement and Substitution)**

Heard.

Considering the issue involved in the present petition as also the undisputed facts that private respondent Nos. 3 to 5 were the Members of Chakbandi, this Court finds no force in the application(s), under consideration, as such, the same are hereby rejected.

Order on Petition

Heard Mohhd. Arif Khan, learned Senior Advocate assisted by Mr. Shadab Khan, Advocate as also Mr. Akbar Ali Khan, learned counsel for the petitioner, Sri Hemant Kumar Pandey, learned counsel for the State as also Sri Shiv Kumar, Advocate, who preferred the application for impleadment, to which, the objection has been filed before this Court and the same is taken on record.

By means of the present petition, petitioner has sought the following main relief:-

"(a) To issue a writ, order or direction in the nature of prohibition prohibiting the opp. party No.6 to proceed with appeal No. 1734/1067/2003 under Section 11 of the U.P. Consolidation of Holdings Act, (Shyama Kumari and Others vs. Parag Memorial Educational Institution)."

The aforesaid main prayer has been sought on the following two grounds:-

"(i) Because the order passed by the Consolidation Officer was not challenged and had become final between the parties. The consolidation operation came to an end after the issue of notification Under Section 52 of the U.P.Consolidation of Holdings Act, on 9.6.2001. No appeal could therefore be legally filed or entertained as nothing was pending on the date of aforesaid notification.

(ii) Because opposite party no. 6 patently lacks jurisdiction to entertain and adjudicate upon the appeal."

For seeking the prayer sought, based upon the above quoted grounds, Mr. Khan, learned Senior Advocate, placed reliance on the judgment passed in ***Writ Petition No. 203 (Cons.) of 1995 (Kapil Dev vs. Deputy Director of Consolidation, Faizabad and Others), 1996 (14) LCD 550***, and the judgment passed in the case of ***Hari Ram vs. Deputy Director of Consolidation, Azamgarh & Ors. 1989 RD 281***.

Learned Senior Advocate Mr. Khan, based upon the judgments, referred above, submitted that after publication of notification under Section 52 of the U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"), the appellate authority namely Settlement Officer of Consolidation, Hardoi, was not empowered to entertain or decide the appeal preferred under Section 11 of the Act of 1953, as such, interference of this Court is required in the matter.

Opposing the present petition, learned counsels for the side opposite namely Sri Hemant Kumar Pandey as also Sri Shiv Kumar, based upon the judgment passed in the case of ***Siddh Narayan vs. The Deputy Director of Consolidation and Ors.; MANU/UP/1284/2007***, submitted that the Co-ordinate Bench of this Court, after taking note of earlier pronouncements on the issue including the judgment passed by the Division Bench of this Court in the case of ***Hari Ram vs. Deputy Director of Consolidation, Azamgarh & Ors.; 1989 RD 281***, as also the judgment passed in the case of ***Nanhki vs. Deputy Director of Consolidation, Pratapgarh and Ors. 1995 Part 1 Volume 13 LCD 1: 1994 RD 264***, the basis of the judgment passed in the case of ***Kapil Dev (Supra)***, held that the appeal would be maintainable even after publication of notification under Section 52 of the Act of 1953. The relevant paras of the judgment passed in the case of ***Siddh Narayan (Supra)*** are extracted hereinunder:-

"3. It has been urged by learned counsel for the petitioner that appeal filed by Gaon Sabha after de-notification of consolidation operation under Section 52 of the Act was not at all maintainable and his preliminary objection has wrongly been overruled. Reliance in support of the contention has been placed on the decisions of learned single Judge of this Court in the case of Raj Bahadur Singh v. Deputy Director of Consolidation, Hardoi, 1974 R.D. (Suppl.) 181 and Nanhki v. Deputy Director of Consolidation, Pratapgarh, 1994 R.D. 264 and a Division Bench of this Court in the case of Hari Ram v. Deputy Director of Consolidation, Azamgarh, 1989 R.D. 281. In so far as the cases of Hari Ram (supra) and Nanhki (supra) are concerned, the same have no application to the facts and circumstances of the present case inasmuch as in the said two cases the question before the Court was whether Deputy Director of Consolidation could have entertained and decided reference proceedings in exercise of powers conferred by Section 48(3) of the

Act even after issuance of the notification under Section 52 of the Act.

4. The question for consideration in this case is whether an appeal against the order of the Consolidation Officer could be filed, entertained and proceeded with even after notification under Section 52 of the Act has been issued.

5. It is well settled that institution of a suit or proceedings carries with it the implication that all rights of Appeal then in force remain preserved with the parties thereto till the proceedings are finally decided and that right of appeal is a vested right which accrues to the litigant from the date the lis commenced. Reference may be made to the following observation of the Hon'ble Supreme Court in the case of Garikapati v. Subbaih Choudhary, AIR 1957 S.C. 540.

"Legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic entity and are to be regarded as one legal proceeding and that the right of Appeal was not a mere matter of procedure but was a substantive right."

6. Thus, it is clear that right of a litigant to take proceedings to a higher Court, in case of an adverse order, comes into existence the moment proceeding is initiated and continues till the lis continues. The right is to be governed by the law prevailing at the time of institution of the suit, proceedings or appeal and not by the law that prevails at the time of decision or that of the filing of the appeal unless it was expressly or by necessary implication so provided.

7. Section 11 of the Act providing for appeals reads as under:

"11. Appeals:— (1) Any party to the proceedings under Section 9-A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that Section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

(2) The Settlement Officer, Consolidation, hearing an appeal under sub-section (1) shall be deemed to be a court of competent jurisdiction, anything to the

contrary contained in any law for the time being in force notwithstanding."

8. Section 52(1) and (2) of the Act around which the entire controversy revolves reads as under-.

"52. Close of consolidation operations:— (1) As soon as may be after fresh maps and records have been prepared under sub-section (1) of Section 27, the State Government shall issue a notification in the official Gazette that the consolidation operation have been closed in the unit and village or villages forming part of the unit shall then cease to be under consolidation operations:

Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix, distribute and recover the cost of operations under this Act.

(1-A) The notification issued under sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.

(2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have not been closed.

(3)....."

9. From the aforesaid it would be seen that sub-section (2) of Section 52 which has been added by amending Act No. VIII of 1963 is a deeming clause which clearly provides that for the purpose of giving effect to the orders which may be passed by a Court of competent jurisdiction either in cases of writs or proceedings pending under the Act on the date of issuance of notification under Section 52, Consolidation operation shall not be deemed to have been closed.

10. There is nothing either in Section 11 or in Section 52 of the Act which either expressly or by necessary implication takes away the right of appeal. In view of the deeming clause contained in Section 52(2) of the Act, in cases where the proceedings under the Act are pending on the date of issuance of notification under sub section (1), the consolidation operation shall not

be treated to be closed meaning thereby in such cases the provisions of the Act shall continue to remain in force as if notification under Section 52(1) notifying the close of consolidation operation has not been issued.

11. In the case in hand, against the order passed by the Consolidation Officer the contesting respondents had a right to approach the Settlement Officer Consolidation in appeal. However, before their rights to approach the appellate Court came to an end notification under Section 52(1) of the Act was issued. However, in view of the deeming clause under Section 52(2) notification issued under section 52(1) of the Act will have not have the effect of destroying the right of appeal which came to be vested in the constesting respondents inasmuch as the proceedings initiated under Section 9 of the Act had not been finally decided when notification under section 52(1) of the Act was issued.

12. The question whether an appeal or revision could be filed even after issuance of notification under Section 52(1) of the Act came up for consideration before a learned single Judge in the case of Gopi Singh v. Deputy Director of Consolidation, (1967) AWR 264. Learned single Judge while holding that the appeal would be maintainable observed as under;

"The term 'proceedings' in S. 52(2) has, in my opinion, been used in that comprehensive sense to include the entire series of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal court. When an appeal is instituted the proceeding which commenced in the trial Court continues. The appeal does not initiate afresh proceeding. On the institution of the appeal the proceedings which have become dormant on the decision by the trial court, revive and remain pending. The only difference being that it is now pending in the different court, namely the Court of appeal."

It was further observed;

"The word 'cases' in the phrase 'cases of writs filed under the Constitution', in sub-Sec. (2) will include orders passed by higher courts of appeal including the Supreme Court. Thus, sub-Sec. (2) is designed to preserve and make effective orders passed by any one or more of the hierarchy of Courts established under the Act, irrespective of whether the proceeding was pending in any particular court or in any Court

subordinate thereto, on the date of issue of the notification in sub-Sec. (1)"

13. The aforesaid view of the learned single Judge was approved by a Division Bench in the case of Dilawar Singh v. Gram Samaj, 1972 AWR 557. The same was the view of another Division Bench in the case of Ram Bahadur v. Deputy Director of Consolidation, 1973 AWR 207.

14. The same principles have been applied with equal force in case of a revision before the Deputy Director of Consolidation under Section 48 of the Act by the Division Bench in the case of Dilawar Singh (supra) wherein it was observed as under;

"The principle of a vested right of a litigant to take a proceeding to the superior Court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a court or authority to be exercised at its discretion but it does not mean that the litigant does not possess the right to approach the superior court through a petition for revision. The only basic difference between an appeal and a revision is that in case of an appeal the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound contrary to law.

15. In case of a revision that court has discretion to refuse the relief if, for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmitates which could justify an interference by the revising court..... If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be Pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists it cannot be said that the proceedings had finally come to an end. The right to approach the superior Court through an appeal or a revision can be exercised only after an adverse judgment order is passed against the party. Till then the right only remains dormant and when that right is exercised, the original proceedings become pending."

16. Even in cases where the limitation of filing recall application or appeal or revision has run out prior to date of notification under section 52 of the Act, aggrieved person can file restoration application, appeal or revision as held by the Division Bench in

the case of Ram Bahadur (supra). The Bench was of the view that proceedings for recall are on the same footing as an appeal because they have the effect of reviving the original proceedings. The same view was again reaffirmed by another Division Bench in the case of Jiwa Ram v. Deputy Director of Consolidation, 1974 (Suppl.) R.D. 40. Reference may also be made to the following decisions of the learned single judge taking the same view; Jhagru v. Deputy Director of Consolidation Basti, 1989 RD 126, Shyam Narain Rai v. Deputy Director of Consolidation Ballia, 1981 RD 307, Ram Rati v. Deputy Director of Consolidation, 1998 (2) AWC 973 : (1998 All LJ 1740) and Tara Chand v. Deputy Director of Consolidation Ballia, 2004 (96) RD 193).

17. In view of the aforesaid discussions and the law laid down by the Division Bench pronouncements in the case of Dilawar Singh (supra), Ram Bahadur (supra), Jiwa Ram (supra), the contrary decision of a learned single Judge in the case of Raj Bahadur Singh v. Deputy Director of Consolidation, Hardoi (supra) relied upon by the learned counsel for the petitioner cannot be accepted as laying down correct law and has no binding or even persuasive value.

18. In view of above, there is no illegality in the impugned orders passed by Settlement Officer Consolidation overruling the preliminary objection raised by the petitioner that the appeal would not be maintainable after issuance of notification under Section 52(1) of the Act as well as the revisional order passed by Deputy Director of Consolidation.

19. In the result, the writ petition fails and is dismissed.

20. Petition Dismissed."

It is also submitted by the learned counsel for the State that in the facts of the case particularly the fact that petitioner's Institution was situated on the Gaon Sabha Land i.e. Gata No. 850 and the Consolidation Officer concerned directed the revenue officials to record the name of petitioner's Institution over the land i.e. Gata No. 850 vide order dated 12.02.2001 and being aggrieved by the order dated 12.02.2001 the appeal was filed by the 11 appellants including the

Members of Gram Panchayat, State of U.P. as also the Members of Consolidation Committee and taking note of the facts of the case as also that Section 11-C of the Act of 1953 provides that the interest of the Gram Sabha shall be protected by the authorities under the Act of 1953, the appeal was entertainable and maintainable. To support the aforesaid contention, learned counsel for the State also placed the reliance on the judgment passed in the case of ***Chhotey Lal & Ors. vs. Up-Zila Adhikari/Sub-Divisional Magistrate and Ors.***; ***MANU/UP/1187/2004***.

On the issue of maintainability of appeal after de-notification under Section 52 of the Act of 1953, the Co-ordinate Bench of this Court in the judgment passed in the case of ***Dahari Lal & Ors. vs. D.D.c. & Ors.***, ***MANU/UP/2756/2010: 2010(6) ADJ 705***, observed as under:-

"18. Division Bench decisions of this Court in the cases of Ram Bahadur and Jiwa Ram and Anr. (supra) are cited before me by Petitioners' counsel wherein it is clearly held that in certain circumstances, restoration application or application challenging an ex parte order will be governed by Section 52(2) of the Act, therefore. Settlement Officer, Consolidation and Dy. Director of Consolidation were liable to hear objection raised on behalf of Petitioners, at least examine question on merits instead of cursorily rejecting objection without judicially examining the entire matter.

19. Sub-section (2) of Section 52 of the Act was added by U.P. Act 8 of 1953 which is an exception to Sub-section (10). Section 52 of the Act does not take away vested right of appeal which is continuation of proceedings even after denotification and appeal or revision is maintainable if delay is sufficiently explained.

20. In the case of Fateh Singh v. Dy. Director of Consolidation, Mathura and Ors. MANU/UP/2135/2004 : 2004 (96) RD 559 : 2004 (5) AWC 4167, this Court

held that provision of Section 5 of Limitation Act to consolidation proceedings is made applicable by virtue of Section 53B which reads as under:

53B. Limitation.--The provisions of Section 5 of the Limitation Act, 1963 shall apply to the applications, appeals, revisions and other proceedings under this Act or the rules made thereunder.

21. It is, therefore, incumbent on the consolidation authorities that in the event application for condonation of delay is moved and the delay is sufficiently explained then it will have an effect of obliterating different status between an appeal filed within time or filed after lapse of period of limitation. Settlement Officer, Consolidation has not even tried to look into grounds for condonation of delay but dismissed the appeal as not maintainable since appeal was filed after village stood denotified.

22. Similar view was accepted in the case of Tara Chand and Anr. v. Dy. Director of Consolidation Ballia and Ors. MANU/UP/0805/2003 : 2004 (96) RD 193 : 2004 (2) AWC 1236, that appeal can be made maintainable in the event delay is sufficiently explained. Obviously, Settlement Officer, Consolidation has completely overlooked explanation given in the application for condonation of delay. He has failed to examine the question of limitation and the reason/explanation for delay.

23. In the case of Bechan Ali v. Dy. Director of Consolidation/A.D.M. Siddharthnagar and Ors. MANU/UP/1060/2001 : 2001 (92) RD 317 : 2001 (2) AWC 1003, it was held that an appeal or revision can very well be filed even after denotification against the order which was passed prior to the date of denotification in spite of fact that limitation of filing of an appeal or revision has already expired."

This Court in the case of ***Sudarshan and Ors. vs. Chief Revenue Officer and Ors., MANU/UP/1960/2021: 2022 (154) RD 43***, on the issue involved in the petition, observed as under:-

"11. So far as maintainability of the appeal after denotification under Section 52 of the U.P.C.H. Act is concerned, in the case of Siddh Narayan (supra), a Co-ordinate Bench of this Court has already held, after considering the decision of a Division Bench of this Court, that the filing of an appeal is a statutory remedy available to the parties and the same cannot be hampered due to denotification under section 52 of

the U.P.C.H. Act. Relevant paragraphs i.e. paragraph 10, 11, 13, 14 and 15 of the aforesaid judgment is quoted below:-

"10. From the aforesaid it would be seen that sub-section (2) of Section 52 which has been added by amending Act No. VIII of 1963 is a deeming clause which clearly provides that for the purpose of giving effect to the orders which may be passed by a Court of competent jurisdiction either in cases of writs or proceedings pending under the Act on the date of issuance of notification under Section 52, consolidation operation shall not be deemed to have been closed.

11. There is nothing either in Section 11 or in Section 52 of the Act which either expressly or by necessary implication takes away the right of appeal. In view of the deeming clause contained in Section 52 (2) of the Act, in cases where the proceedings under the Act are pending on the date of issuance of notification under sub-section (1), the consolidation operation shall not be treated to be closed meaning thereby in such cases the provisions of the Act shall continue to remain in force as if notification under Section 52 notifying the close of consolidation operation has not been issued.

13. The question whether an appeal or revision could be filed even after issuance of notification under Section 52(1) of the Act came up for consideration before a learned Single judge in the case of Gopi Singh v. Deputy Director of Consolidation, MANU/UP/0345/1967 : 1967 AWR 264. Learned Single judge while holding that the appeal would be maintainable observed as under:

"The term proceedings' in Section 52(2) has, in my opinion, been used in that comprehensive sense to include the entire series of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal Court. When an appeal is instituted the proceeding which commenced in the trial Court continues. The appeal does not initiate a fresh proceeding. On the institution of the appeal the proceedings which have become dormant on the decision by the trial Court, revive and remain pending. The only difference being that it is now pending in a different Court, namely the court of appeal."

It was further observed:

"The word cases' in the phrase cases of writs filed under the Constitution', in sub-section (2) will include

orders passed by higher Courts of appeal including the Supreme Court. Thus, sub-section (2) is designed to preserve and make effective orders passed by any one or more of the hierarchy of Courts established under the Act, irrespective of whether the proceeding was pending in any particular Court or in any Court subordinate thereto, on the date of issue of the notification in sub-section (1)."

14. The aforesaid view of the learned Single judge was approved by a Division Bench in the case of Dilawar Singh v. Gram Samaj, MANU/UP/0142/1973 : 1972 AWR 557. The same was the view of another Division Bench in the case of Ram Bahadur v. Deputy Director of Consolidation, MANU/UP/0143/1973 : 1973 AWR 207.

15. The same principle have been applied with equal force in case of a revision before the Deputy Director of Consolidation under Section 48 of the Act by the Division Bench in the case of Dilawar Singh (supra) wherein it was observed as under:

"The principle of a vested right of litigant to take a proceeding to the superior Court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a Court or authority to be exercised at its discretion but it does not mean that the litigant does not possess the right to approach the superior Court through a petition for revision. The only basic difference between an appeal and a revision is that in case of an appeal the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound contrary to law. In case of a revision that Court has discretion to refuse the relief if, for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmities which could justify an interference by the revising Court If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists, it cannot be said that the proceedings had finally come to an end. The right to approach the superior Court through an appeal or a revision can be exercised only after an adverse judgment or order is passed against the party. Till then the right only remains dormant and when

that right is exercised, the original proceedings become pending."

12. In this conspectus as above, I do not find any merit in the present writ petition. Counsel for the petitioners could not substantiate his submissions as made in assailing the impugned orders passed by the S.O.C. and the D.D.C. The findings recorded by the S.O.C. with regard to non compliance of the provisions as enshrined under section 25-A of the U.P.C.H. Rules and not controverting the pleadings taken by the appellants, by filing the counter affidavit, became final between the parties, inasmuch as, the same has neither been challenged before the Revisional court nor before this Court in the present writ petition. There is no illegality, perversity or any manifest error in the impugned orders so as to warrant the indulgence of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. Present writ petition is devoid of merits and it is, accordingly, dismissed."

Upon due consideration of aforesaid and also the undisputed position that the appeal was filed after publication of notification under Section 52 of the Act of 1953 as also that to controvert the law settled by the Co-ordinate Bench of this Court in the judgment(s), referred above, no authority has been placed before this Court by Mr. Khan, learned Senior Advocate, this Court finds no force in the present petition. It is accordingly ***dismissed***. No order as to costs.

Order Date :- 13.3.2024

Vinay/-