

Neutral Citation No. - 2025:AHC:106619-DB

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 618 of 2025

Appellant :- Raghunath

Respondent :- State of U.P. and 46 others

Counsel for Appellant :- H.N. Singh, Sr. Advocate, Rajesh Kumar Mishra

Counsel for Respondent :- R.C. Singh (Sr. Adv.) Achal Singh, Ram Raj Prajapati, Ankur Gaur (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. Heard Shri H.N. Singh, learned Senior Advocate assisted by Shri Rajesh Kumar Mishra, learned Advocate for the appellant, learned Standing Counsel for the State-respondents, Shri R.C. Singh learned Senior Counsel appearing for private respondents and perused the material available on record.

2. The present appeal raises a challenge to the order dated 17.04.2025 whereby the learned Single Judge has allowed Writ B No.4161 of 2018 (Laxmi Prasad Rajpoot and 38 others vs. State of U.P. and 2 others) setting aside the order dated 07.02.2018 passed by the Consolidation Commissioner, U.P., Lucknow with a further direction to the authorities to conclude consolidation operations in the village in question in accordance with the provisions of Uttar Pradesh Consolidation of Holdings Act, 1953 (in short 'the Act of 1953').

3. At the very outset, Shri R.C. Singh, learned Senior Advocate, raised following preliminary objections against maintainability of the instant special appeal:-

(i). The appeal having been filed by the appellant who was not a party to the writ petition and without seeking leave of the Court, is not maintainable;

(ii). The order impugned in the writ petition was passed by the Consolidation Commissioner exercising his revisional power as per Sections 44/48 of the Act of 1953 and, hence, the appeal raising challenge to the order of learned Single Judge passed in such a writ petition is not maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 (in short 'the Rules of the Court').

4. We have considered the preliminary objections raised on behalf of the respondents.

5. As far as the first objection regarding the appellant being non-party to the writ petition is concerned, our attention has been drawn by learned Senior Advocate appearing for the appellant that, during the pendency of the writ petition, a Civil Misc. Impleadment Application No.4 of 2019 was filed by the appellant which was allowed by the writ court by order dated 09.04.2025 and the appellant was permitted to be impleaded as respondent No.5 in the writ petition. The order allowing impleadment application being on record as Annexure 5 and having not been disputed by the learned Senior Advocate for the respondents, the first objection raised stands overruled.

6. As far as second objection is concerned, we find that the order dated 07.02.2018 impugned in the writ petition was passed by the Consolidation Commissioner not in exercise of either appellate or revisional power under the Act of 1953, rather the order was passed in pursuance of an order dated 11.08.2017 passed in a previously instituted Writ B No.36054 of 2017 filed by the appellant and 38

others, whereby the Consolidation Commissioner was directed to consider and decide application to be filed before him by the petitioners of that writ petition under Section 6(1) of the Act, 1953. Irrespective of the fact that Section 6 deals with the powers of State Government to cancel notification under Section 4 of the Act and though delegation may be made by the State Government under Section 44 of the Act of 1953 for exercise of any power conferred under the Act upon any officer as described in the provision itself, under no circumstances, the order dated 07.02.2018, impugned in the writ petition can be said to be an order passed either under appellate or revisional powers exercised by the Consolidation Commissioner. In this view of the matter, the appeal is not hit by the bar contained under Chapter VIII Rule 5 of the Rules of the Court. The second objection raised also stands overruled and the special appeal is held to be maintainable and the Court proceeds to decide the same on merits.

7. Record reflects that a notification under Section 4(2) of the Act of 1953 was issued on 30.06.1998; the same was published under Section 9 of the Act on 06.04.2001 and publication of Scheme under Section 20 was made on 29.06.2013. Neither any notification under Section 6 cancelling the notification under Section 4 was issued nor any notification under Section 52 of the Act of 1953 closing the consolidation operations was issued. In the meantime, certain writ petitions were filed by various tenure holders, details whereof are contained in a joint report dated 05.12.2017 prepared by Consolidation Officer, Sub Divisional Officer and Deputy Director of Consolidation. The same bear numbers as Writ B Nos. 25384 of 2017, 23048 of 2017, 17470 of 2017, 22686 of 2017, 22689 of 2017, 9329 of 2017, 32176 of 2014 and 36054 of 2017.

8. Out of the aforesaid writ petitions, Writ B No.32176 of 2014 was dismissed by this Court by order dated 09.06.2014 with an

observation that objections raised to the consolidation proceedings at the instance of three persons, had no force and filing of the petition was an abuse of the process of the Court. Writ B No.36054 of 2017 was disposed of by order dated 11.08.2017 permitting the petitioners of that writ petition who were 39 in number, including the present appellant, to approach the Consolidation Commissioner, Lucknow by a detailed application under Section 6(1) of the Act of 1953 with a direction to the said Commissioner to decide the same in accordance with law. The prayer made in the representation earlier submitted and annexed to the writ petition was to conduct a high-level inquiry regarding consolidation operations in the village concerned.

9. It is pursuant to the directions issued by this Court *vide* order dated 11.08.2017 that the Consolidation Commissioner decided the representation submitted by the appellant and other tenure holders by an order dated 07.02.2018 taking note of the aforesaid joint report dated 05.02.2017. The Consolidation Commissioner, after referring to the entire history of consolidation operations and also pendency of the aforesaid various writ petitions, issued a direction to the District Magistrate (DM) and District Deputy Director of Consolidation (DDC) to request for connectivity/consolidation of all the pending writ petitions and to file appropriate affidavits seeking to vacate the interim orders operating therein. It was also observed that, after the Hon'ble High Court finally decides the matters, the situation be analysed and, then, by exercising powers under Sections 48(1)/48(3) of the Act of 1953, the DM and DDC may proceed for reversion and dispossession of the tenure holders who were, for the name sake, in possession over few chaks and for return of the land to the original chak holders. Further directions were issued to institute proceedings against the officials who were instrumental in committing irregularities and submit a report before the Directorate.

10. It is the aforesaid order dated 07.02.2018 which was challenged before the learned Single Judge by filing Writ B No.4161 of 2018 which has been allowed by order dated 17.04.2025, impugned in the instant appeal.

11. Learned Senior Counsel appearing for the appellant submits that various writ petitions being pending in relation to the consolidation operations involving substantive rights of various tenure holders, learned Single Judge was not justified in allowing the writ petition without considering other matters, although the order dated 07.02.2018, impugned in the writ petition, not only referred to the pending writ petitions, as described hereinabove, but also contained a direction for the authorities to file appropriate affidavits in the pending matters and request for connecting the same so that a lawful decision is taken in all the matters and then appropriate exercise is undertaken on the spot. Submission is that the learned Single Judge has allowed writ petition only on the ground that since one of the writ petitions, being Writ B No.32176 of 2014, had been dismissed, the order impugned could not be sustained in the eyes of law.

12. *Per contra*, learned Senior Counsel appearing for the private respondents submits that Consolidation Commissioner had annulled the entire consolidation proceedings which he was not competent to do and the direction issued by him to the effect that the tenure holders being in possession over certain chaks be dispossessed therefrom and the chaks be returned to the original chak holders, is without any authority vested in him. It is further submitted that once this Court, while dismissing Writ B No.32176 of 2014, held that obstruction in governmental work of completion of consolidation proceedings at the instance of only three persons was an abuse of process, learned

Single Judge was justified in placing reliance upon the said order and, consequently, the order impugned does not call for any interference.

13. Learned Standing Counsel submits that since notifications under Section 6 or Section 52 have not been issued, consolidation operations have to be completed and, therefore, the order of learned Single Judge is perfectly in accordance with law and requires no interference.

14. We have considered the submissions advanced and perused the material on record.

15. Admittedly, neither any notification under Section 6 nor under Section 52 of the Act of 1953 has been issued, therefore, the consolidation operations have neither been closed in the village nor has the notification commencing the consolidation proceedings under Section 4 been cancelled under Section 6. Though it is true that while disposing of Writ B No.36054 of 2017 by order dated 11.08.2017, the Court had permitted the petitioners of the said writ petition to approach the Consolidation Commissioner under Section 6(1) of the Act of 1953, admittedly, the said power was not exercised by the Consolidation Commissioner while passing the order dated 07.02.2018, i.e. to say that notification under Section 4 was not cancelled by him under any purported delegated powers conferred upon him by the State Government. What has been done by the Consolidation Commissioner is that, after referring to the history of consolidation operations and also pendency of the aforesaid various writ petitions, he issued a direction to the DM and DDC to request for connecting of all the pending writ petitions and to file appropriate affidavits for vacation of the interim orders operating therein. It was also observed that action be taken after the Hon'ble High Court finally decides all the matters. The DM and DDC were also directed to proceed for reversion and dispossession of the tenure holders who

were, for the name sake, in possession over few chaks and to return the land to the original chak holders. Further directions were issued to institute proceedings against the officials who were instrumental in committing irregularities and submit a report before the Directorate.

16. It has come on record that various writ petitions filed in relation to consolidation proceedings are pending before this Court. The said fact coupled with the situation that inasmuch as seven impleadment applications in Writ B No.4161 of 2018 filed by various tenure holders, including the present appellant, were allowed by the learned Single Judge by order dated 09.04.2025, it reflects that various tenure holders have raised grievances before this Court in relation to their chaks on one or the other grounds which have to be examined while deciding the pending writ petitions.

17. We further find that the learned Single Judge, while passing the order impugned, has surprisingly not even considered the merits of the order dated 07.02.2018 impugned before him. What the Court notices from the order of the learned Single Judge is that, by referring to issuance of notification under Section 4 of the Act of 1953 and order dismissing Writ B No.32176 of 2014, the writ petition was straightaway allowed setting aside the order dated 07.02.2018 observing that the same is against the provisions contained under the Act of 1953.

18. When, through a writ of certiorari, validity of any judicial/quasi-judicial/administrative order is challenged, the same has to be tested on its own merits and merely because in one of the cases previously instituted, some observations were made in relation to petitioners of that case, the same, in itself, cannot be a ground for not even considering the merits of the matter before the writ court. This is exactly what has happened in the present case and, once it is found that various writ petitions involving grievances of various chak

holders are pending consideration, about which, not only joint report contains detailed reference but also the Consolidation Commissioner, in his order dated 07.02.2018, felt and spelt necessity to get all the pending matters connected and then to undertake an exercise at administrative level as per the directions to be issued by this Court in terms of final decision in such matters, the learned Single Judge should have examined the correctness and validity of the said reasoning and should not have cursorily allowed the writ petition by issuing a direction for completion of consolidation operations in the village.

19. We also find that when Writ B No.4161 of 2018 was entertained at the first instance, by an interim order dated 29.05.2018, the effect and operation of the order dated 07.02.2018 was directed to be kept in abeyance. Even that interim order reproduces the order dismissing Writ B No.32176 of 2014.

20. Be that as it may, once it is found that various writ petitions are pending in the same matter and by virtue of the order impugned in the present special appeal, all the pending writ petitions have virtually been rendered infructuous without there being any adjudication of the same, we deem it appropriate to set aside the order of the learned Single Judge with certain directions.

21. Accordingly, the instant special appeal is **allowed** with the following directions/observations:-

- (i). The order impugned dated 17.04.2025 passed by the learned Single Judge in Writ B No.4161 of 2018 is **set aside**;
- (ii). Writ B No.4161 of 2018 stands **restored** to its original number and status;

(iii). The interim order dated 29.05.2018 passed in Writ B No.4161 of 2018 stands **revived** and **extended** till disposal of the said writ petition;

(iv). Parties are at liberty to request learned Single Judge to connect all the pending writ petitions, pending or decided, in relation to the same controversy by taking appropriate steps;

(v). Writ B No.4161 of 2018 shall be listed before regular Bench on **18.07.2025**;

(vi). Learned counsel for the parties shall be at liberty to make a mention before the learned Single Judge for decision on priority basis.

Order Date :- 7.7.2025

Jyotsana

(Kshitij Shailendra, J) (Arun Bhansali, CJ)