

Court No. - 36

Case :- WRIT - B No. - 4216 of 2024

Petitioner :- Panmati And 2 Others

Respondent :- State Of Up And 12 Others

Counsel for Petitioner :- Adya Prasad Tewari

Counsel for Respondent :- C.S.C.,Sanjay Kumar Srivastava

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the petitioner, learned counsel for the respondent no.3 and learned standing counsel for the State respondent nos. 1 and 2.
2. In view of the peculiar facts and circumstances of the present case, and order proposed to be passed hereinunder, this Court proceeds to decide the present matter finally with the consent of the counsels for the parties present, without putting notice to the respondent nos. 4 to 13 with liberty to move a recall/restoration application in case any facts or details as averred in the instant writ petition are found incorrect.
3. The present petitioners have invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India assailing the orders dated 8.8.2024 and 16.10.2024 passed by the District Deputy Director Consolidation. During pendency of the writ petition an amendment application has been filed with the prayer to assail the subsequent order dated 4.12.2024 as well passed by the District Deputy Director Consolidation. This court, vide order dated 06.12.2024, has allowed amendment application.
4. After due deliberations at length, learned counsel for the petitioners has not pressed the instant writ petition against the order dated 08.08.2024 and 16.10.2024 , and prayed to entertain the instant writ petition solely against the subsequent order dated 4.12.2024. Therefore, in light of the consent given by learned counsel for the petitioners, this court proceeds solely to examine the legality and validity of the order dated 4.12.2024.

5. Petitioners are aggrieved with the revisional jurisdiction of District Deputy Director of Consolidation who has entertained the revision directly under Section 48 of U.P. Consolidation of Holdings Act, 1953 (in brevity 'UPCH Act'). A solitary submission advanced by learned counsel for the petitioner is that the District Deputy Director Consolidation has inherent lack of jurisdiction to entertain the revision under Section 48 of UPCH Act assailing the order passed by a court subordinate, while the court of Joint/Deputy/Assistant Director of Consolidation is functional in the District, as enunciated under Rule 111 of the U.P. Consolidation of Holdings Rules, 1954 (in brevity 'UPCH Rules').

6. The facts culled out from the record are that having been aggrieved with the order passed by the Consolidation Officer in proceedings under Section 9A(2) of UPCH Act, the contesting respondents have directly preferred a revision under Section 48 of the UPCH Act. The aforesaid revision was entertained by the District Deputy Director Consolidation. During pendency of the revision, the present petitioners (respondents in the revision) have moved an application dated 5.9.2024, questioning the revisional jurisdiction of the District Deputy Director Consolidation, with a plea that under Rule 111 of UPCH Rules he has inherent lack of jurisdiction to entertain the revision while the competent authorities i.e. Joint/Deputy/Assistant Director of Consolidation are already present in the district and holding their courts. The District Deputy Director Consolidation, vide order impugned dated 4.12.2024, has rejected the application dated 5.9.2024, acknowledging his jurisdiction to entertain the revision under Section 48 of the UPCH Act, which is under challenge before this court.

7. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, precisely, question for consideration lies in a narrow compass as to whether the District Deputy Director Consolidation has got jurisdiction to entertain the revision under Section 48 of the UPCH Act, though the competent authorities to entertain

such revision as enunciated under Section 111 of the UPOCH Rules, to wit, court of Joint/Deputy/Assistant Director of Consolidation are already functioning in the district. The provision to file revision is enunciated under Section 48 of UPOCH Act and the procedure as to how the said revision will be filed and entertained is enunciated under Rule 111 of UPOCH Rules. For ready reference relevant provision of Section 48(1) of UPOCH Act and provision of Rule 111 of UPOCH Rules is quoted herein below :

"48. Revision and reference.-(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any other [other than an interlocutory order]² passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit."

"Rule 111. Sections 48 and 54. An application under Section 48 of the Act, shall be presented by the applicant or his duly authorised agent to the Joint/Deputy/ Assistant Director of Consolidation, nominated by the Director of Consolidation, Uttar Pradesh for the District or Settlement Officer (Consolidation) unit concerned or failing posting of any such Joint/Deputy/ Assistant Director of Consolidation in the district, to the District Deputy Director (Consolidation) within 30 days of the order against which the application is directed. It shall be accompanied by copy of the judgment or order in respect of which the application is preferred. Copies of judgment or order, if any, of other subordinate authorities in respect of dispute shall also be filed alongwith with the application."

8. It is no more *res-integra* that rule, regulations and bye laws made by Central and State Government and local authorities are considered as subordinate legislation, made under the authority conferred or delegated by parliament or the concerned legislation. Thus, Rules are legally binding as long as they are within the scope of Act that entrusted the power to make them and do not violate the constitution. Under Section 54 of the UPOCH Act, State Government is entrusted power to make Rules for proper implementation of the provision as enunciated under the UPOCH Act. Rule 54(2)(q) is relevant for the purposes of the instant matter wherein State Government has authorised to make Rules regarding the duty of any Officer or authority having jurisdiction under this Act. Section 54(2)(q) is quoted herein below :

"(q) the duties of any officer, or authority having jurisdiction under this Act and the procedure to be followed by such officer and authority;"

9. In furthermore thereof, bare reading of Section 48(1) of UPCH Act evinces that the Director of Consolidation is authorised to call for and examine the record in any case decided or proceeding taken by any subordinate authority. However, subordinate authorities have been defined under Explanation (1) to Section 48 wherein Settlement Officer of Consolidation, Consolidation Officer, Assistant Consolidation Officer and Consolidation Lekhpal have been treated subordinate to the Director of Consolidation. Meaning thereby, Joint/Deputy/Assistant Director of Consolidation and District Deputy Director of Consolidation are not subordinate to Director of Consolidation for the purposes so far as it relates to Section 48. Moreover, under Rule 111 of UPCH Rules, the Director of Consolidation has been authorised to nominate the Joint/Deputy/Assistant Director of Consolidation for the purposes of entertaining the revision under Section 48 of UPCH Act. Rule 111 of UPCH Rules can be recapitulated in the following ingredients :

- (i) Application under Section 48 of the Act, shall be presented by the applicant or his duly authorised agent.*
- (ii) It shall be represented before Joint/Deputy/ Assistant Director of Consolidation, nominated by the Director of Consolidation, Uttar Pradesh.*
- (iii) In absence of any such Joint/Deputy/ Assistant Director of Consolidation in the District, application under Sections 48 shall be presented before District Deputy Director of Consolidation.*
- (iv) It shall be presented within 30 days of the order against which the application is directed.*
- (v) Application shall be accompanied by copy of the judgment or order in respect of which the application is preferred.*
- (vi) Copies of judgment or order, if any, of other subordinate authorities in respect of dispute shall also be filed alongwith with the application.*

10. Ingredients as mentioned above, evinces that first ingredient regarding the presentation of application, to wit, " under Section 48 of the

Act, shall be presented by the applicant or his duly authorised agent", explicitly denotes that jurisdiction to entertain the revision first lies before Joint/Deputy/ Assistant Director of Consolidation who are nominated by the Director of Consolidation. However, in alternative, in case of absence of aforesaid authorities nominated by the Director of consolidation, the District Director of Consolidation has been authorised to entertain the revision under Section 48 of the UPOCH Act.

11. For more clarification, Section 3 (4), (4-A) and (4-B) are define the Director of Consolidation, Deputy Director of Consolidation and the District Deputy Director of Consolidation, respectively, which are quoted hereinbelow :

"[(4) 'Directors of Consolidation' means the person appointed as such by the State Government to exercise the powers and perform the duties of the Director of Consolidation under this Act or the rules, made thereunder and shall include an Additional Director of Consolidation and a Joint Director of Consolidation];

[(4-A) 'Deputy Director, Consolidation' means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director of Consolidation and Assistant Director of Consolidation];

[(4-B) 'District Deputy Director of Consolidation' means the person who is for the time being the Collector of the district);

12. As per definition mentioned above, the Director of Consolidation is appointed by the State Government to exercise the powers and perform the duties of the Director of Consolidation under the UPOCH Act or the Rules, made thereunder, shall include the Assistant Director of Consolidation and the Joint Director of Consolidation. The Deputy Director of Consolidation or District Deputy Director of Consolidation are district level authorities appointed by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government. It is further clarified in sub Section 4-A that the term "Deputy Director of Consolidation" includes the District Deputy Director Consolidation and the Assistant Director of

Consolidation. Moreover, the Collector of the District has been acknowledged and authorised to exercise the powers of the District Deputy Director Consolidation, as enunciated under sub Section (4-B). Therefore, all relevant authorities are defined separately under Section 3 of the UPOCH Act. It is apposite to mention that the definition of the Directors of Consolidation and the District Deputy Director Consolidation i.e. sub section (4) and sub section (4-B) were inserted in Section 3 by Act no.38 of 1958. However, the definition of the Deputy Director Consolidation, as enunciated under sub section (4-A) of Section 3 of the UPOCH Act was inserted by the UPOCH Act No.8 of 1963.

13. The delegation of power is explicitly defined under Section 44 of UPOCH Act wherein State Government may, by notification in the official gazette, and subject to special restrictions and conditions as may be specified in the notification; delegated his any of the powers conferred upon it by this Act to any officer or authority, and confers power of Director of Consolidation, Deputy Director of Consolidation, Settlement Officer of Consolidation and Consolidation Officer under this Act or the Rules, made thereunder on any officer or authority. Thus, Director of Consolidation in exercise of his powers conferred under this Act and Rules made thereunder is authorised to nominate Joint/Deputy/Assistant Director of Consolidation for the purposes of entertaining the revision under Section 48 of UPOCH Act, as enunciated under Rule 111 of UPOCH Rules. Rule 111 was lastly modified/amended by 21st Amendment Rules, 1980 dated 20.2.1980 published in the gazette dated 23.2.1980. In previous unamended Rule 111, the Director or any such other officer as he may appoint in his behalf was authorised to entertain the revision, however, there was no provision of alternative arrangement in absence of authorised authority to move a revision petition under Section 48 of UPOCH Act before District Deputy Director of Consolidation. However, subsequently minor changes have been made in the jurisdiction of the authorities concern while entertaining the revision under Section 48 of the

UPCH Act whereby initial jurisdiction has been conferred upon the authorities i.e. Joint/Deputy/Assistant Director of Consolidation nominated by the Director of Consolidation. And, in absence of the aforesaid authorities, who are nominated by the Director of Consolidation, jurisdiction has been conferred upon the District Deputy Director Consolidation to entertain such revision under Section 48 of the UPCH Act. There is no case of any party that Rule 111 of UPCH Rules is not in consonance or repugnant to the provisions of the Act, therefore, no other authority except the authority conferred power to entertain the revision as enunciated under Rule 111 of UPCH Rules is authorised to entertain the revision. The District Deputy Director of Consolidation cannot go beyond the scope of UPCH Act and Rules made thereunder to assume the power conferred upon him, unless there is a specific delegation of power to him to exercise jurisdiction in certain way.

14. Although sub section 4-A of Section 3 defines that the Deputy Director of Consolidation includes the District Deputy Director Consolidation and Assistant Director of Consolidation, the same cannot authorise the District Deputy Director Consolidation to entertain the revision directly even in presence of the Joint/Deputy/Assistant Director of Consolidation as enunciated under Rule 111 of the UPCH Rule. Intention of legislation is only to put those authorities on equal platform that too, for certain purposes, however, the District Deputy Director Consolidation being Collector of the District is an upper-hand for the purposes to govern the administrative conditions under the Act and has been authorised as well to transfer the cases under Rule 65 of the UPCH Rules. So far as the jurisdiction relating to judicial proceedings is concern, although they are placed at the similar footing, however, under Rule 111, the District Deputy Director Consolidation has been conferred jurisdiction in alternative, that too, in absence of the authorities nominated by the Director of Consolidation who are in fact conferred the jurisdiction to entertain the application under Section 48 of the UPCH Act.

15. In the given circumstances of the present case, it is admitted to both the parties that court of the Deputy Director Consolidation is functional in the District and in presence of the Deputy Director Consolidation, revision cannot be presented/entertained by the District Deputy Director Consolidation. Proposition of law as enunciated under Section 48(1) of UPCH Act read with Rule 111 of the UPCH Rules, has not been controverted by the learned Senior Counsel for the contesting respondent. Although the District Deputy Director Consolidation confers jurisdiction to entertain the revision in certain circumstances but his jurisdiction to entertain the revision is limited/alternative under the provisions as enunciated under Rule 111 of UPCH Rules.

16. In this conspectus as above, instant writ petition **succeeds** and is **allowed**. Order dated 4.12.2024 passed by the District Deputy Director Consolidation is **quashed** and he is hereby directed to transfer the revision in question before the competent court of the Deputy Director Consolidation available/functional in the District of Mahrajganj.

17. It is expected that the authorities concerned before whom the revision is transferred in pursuance of the order of the date shall decide the revision expeditiously.

Order Date :- 19.2.2025/vkg