



2026:AHC:64004

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 853 of 2026

Malkhan Singh

.....Petitioner(s)

Versus

State Of U.P. And 8 Others

.....Respondent(s)

Counsel for Petitioner(s) : Amit Kumar Tripathi, Manish Kumar Tiwari
Counsel for Respondent(s) : C.S.C., Krishna Kant Singh

Court No. - 54

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. Manish Kumar Tiwari, learned counsel for the petitioner and Mr. Sanjay Kumar Ray, learned Standing Counsel for the state respondents.

2. The instant writ petition has been file for the following relief:-

"(i) Issue a writ, order or direction, in the nature of notification certiorari and quash the dated 5.9.2016 to this extent that village Akhtauli mentioned at serial no.11 of the Notification should be expunged as per Rule-17 (b) of UPCH Act from the Consolidation Proceeding Annexure No.1 to the writ petition).

ii) Issue a writ, order or direction, in the of mandamus commanding the commanding the respondents to decide the representation dated 06.6.2025 and 22.12.2025 in pursuance of order dated 11.6.2025 and 2.1.2026 passed by respondent no.3, within any stipulated period as this Hon'ble Court may deem fit and proper in circumstances of the case."

3. Learned counsel for the petitioner submitted that majority of the villagers are not interested in the consolidation operation in the village

in question as such they represented before the authorities to notify the village under section 6 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the 'U.P.C.H. Act'). He placed the notice issued by authorities as well as representation/ application filed by petitioner along with villagers of the village that village be notified under Section 6 of U.P.C.H. Act. He submitted that in view of the provisions contained under Rule 17 of U.P. Consolidation of Holdings Rules, 1954 (hereinafter referred to as 'U.P.C.H. Rules), the prayer made in the instant writ petition should be allowed and notification dated 5.9.2026 should be quashed.

4. On the other hand, learned Standing Counsel for the State-respondents submitted that notification was issued in the year 2016 and the writ petition has been filed after 10 years as such it cannot be entertained. He further submitted that due to the act of the petitioner and one group of the villagers of the village in question, Consolidation operation could not proceed in proper manner in the village in question. He submitted that no interference is required against the impugned notification issued under Section 4 of UPCH Act. He further submitted that in view of the ratio of law laid down by this Court from time to time, there is no scope for interference against the notification issued under Section 6 of U.P.C.H. Act.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that notification under Section 4 of U.P.C.H. Act has been issued in respect to village in question on 5.9.2016.

7. In order to appreciate the controversy involved in the matter, perusal of Rule 17 of UPCH Rules will be necessary which is as under:-

"Rule 17. Section 6. - The [notification] made under

Section 4 of the Act, may among other reasons, be cancelled in respect of whole or any part of the area on one or more of the following grounds, viz., that -

(a) the area is under a development scheme of such a nature as when completed would render the consolidation operations inequitable to a section of the peasantry;

(b) the holdings of the village are already consolidated for one reason or the other and the tenure-holders are generally satisfied with the present position;

(c) the village is so torn up by party factions as to render proper consolidation proceedings in the village very difficult; and

(d) that a co-operative society has been formed for carrying out cultivation in the area after pooling all the land of the area for this purpose."

8. Coordinate Bench of this Court in batch of cases, leading *Writ Petition No. 337 of 1990 (Rajaram Ojha vs. Consolidation Commissioner, Lucknow & others)* decided on 31.03.2014 reported in 2015 (126) RD 124, has held that notification issued under Sections 4 & 6 of the U.P.C.H. Act are conditional legislation and the same cannot be challenged under Article 226 of the Constitution of India. Relevant paragraph nos. 8 & 9 of this judgment is quoted herein under :-

"8. Coming to the authorities cited on behalf of the State, it is appropriate to refer to the Division Bench decision of this Court in the Case of the Agricultural and Industrial Syndicate Limited v. State of U.P. 1976 RD 35. In this case it was held that the notifications issued either under section 6 of the U.P. Consolidation of Holdings Act are not in exercise of an executive function but a legislative function. This judgment records as follows "As already held, the notifications under section 4 and 6 of the Act are issued by the State Government in exercise of conditional legislative powers. It cannot be conceivably contended that this Court can issue a mandamus to the legislature to

legislate on any subject or to apply any law to any area. It was observed by the Supreme Court in The State of Bihar v. Sir Kamleshwar Singh MANU/SC/8741/2006:-

"It cannot possibly have been intended that the legislature should be under an obligation to make a law in exercise of that power, for no obligation of that kind can be enforced by the Court against a legislative body." Similarly, this Court could not pass an order which would make it obligatory on the State Government to enforce the scheme of consolidation in an area where in its opinion such scheme should not be enforced. It would amount to compel the State Government to exercise its powers of conditional legislation."

9. The Second judgment relied upon by the State is Dev Nath Kewat v. Deputy Director of Consolidation 1990 RD 175. This judgment, relying upon the ratio laid down in the case of Agricultural and Industrial Syndicate Limited (supra), has held as follows :-

"The scope of writ of mandamus is by now well settled that unless there is some denial of the statutory duty cast upon the State and authority and the State has refused to carry out the statutory duty, in that event writ of mandamus cannot be issued. In the instant case by refusing to issue notification under section 6(1) of the Act it cannot be said that the State Government has refused to carry out any statutory duty imposed upon it. In such matters no writ of mandamus can be issued. However, it is open to the petitioners to approach the State Government with their representation if so advised."

9. This Court in the case reported in 2016 (131) RD 478, Jasmit Singh Vs. State of U.P. and Others has held that the Rule 17 of U.P.C.H. Rules is not mandatory.

10. This Court in the case reported in 2015 (128) RD 666 Dalip

Singh and Others Vs. Vikram Singh and Others has held that notification issued under Sections 4 (1) & 6 (1) of U.P.C.H. Act are legislative in nature.

11. Considering the ratio of law laid down by the Division Bench as well as Single Bench of this Court on the scope of Rule 17 of U.P.C.H. Rules as well as the scope of writ petition against the notification issued under Sections 4 & 6 of U.P.C.H. Act, no interference is required in the matter.

12. The writ petition is dismissed.

March 25, 2026

PS*

(Chandra Kumar Rai,J.)