Supreme Court of India
Attar Singh And Ors. vs The State Of U.P. on 17 December, 1958
Equivalent citations: AIR 1959 SC 564, 1959 Supp (1) SCC 928, 1959 Supp 1 SCR 928
Author: Wanchoo
Bench: S Das, K S Rao, K Wanchoo, N Bhagwati, B Sinha
JUDGMENT Wanchoo, J.

1. This petition under Article 32 of the Constitution challenges the constitutionality of the Uttar Pradesh Consolidation of Holdings Act, (U.P. V of 1954), as amended by U.P. Acts No. XXVI of 1954, No. XIII of 1955, No. XX of 1955, No. XXIV of 1956 and No. XVI of 1957, (hereinafter called the Act). The applicants are four brothers holding land in village Banat, tahsil Kairana, District Muzaffarnagar. A notification was issued under section 4 of the Act in respect of 223 villages in tahsil Kairana, declaring that the State Government had decided to make a scheme of consolidation in that area. This was followed up by necessary action under the various provisions of the Act resulting in a statement of proposals under section 19. Objections to these proposals were filed by the petitioners and others, which were decided in April 1956. The petitioners went in appeal to the Settlement Officer (Consolidation), which was decided in August 1957. It was thereafter that the present petition was filed in this Court.

2. The petitioners challenge the constitutionality of the Act on various grounds, of which the following five have been urged before us :-

(1) Section 6 read with section 4 of the Act gives arbitrary powers to the State Government to accord discriminatory treatment to tenure- holders in different villages by placing some villages under consolidation while excluding others, thus offending Article 14 of the Constitution.

(2) Sections 8, 9 and 10 read with section 49 of the Act provide a procedure for the correction and revision of revenue records for villages under consolidation, which is vitally different from that applicable to villages not under consolidation, and there is thus discrimination which offends Article 14 of the Constitution;

(3) Sections 14 to 17 read with section 49, confer arbitrary powers on the consolidation authorities under which they can deprive a tenure- holder of his land or rights therein and the tenure-holder has been deprived of the protection of courts available to other tenure-holders in villages not under consolidation, thus creating discrimination which offends Article 14.

(4) Sections 19 to 22, read with section 49, again create discrimination on the same grounds as sections 14 to 17, and are, therefore, hit by Article 14; and (5) Section 29-B, which provides for compensation gives inadequate compensation and is, therefore, hit by Article 31(2) of the Constitution.

3. Before we take these points seriatim, it is useful to refer to the background of this legislation. As far back as 1939, the U.P. Consolidation of Holdings Act No. VIII of 1939, was passed. It was, however, of little effect, because it could only be applied when more than one-third of the

proprietors of the cultivated area of a village applied for an order of consolidation of the village. It was, therefore, felt that some kind of compulsion would be necessary in order to achieve consolidation of holdings in villages. That consolidation would result in improving agricultural production goes without saying and it was with the object of encouraging the development of agriculture that consolidation schemes with a compulsory character were taken up in various States, after the recommendation of The Famine Inquiry Commission, 1944, in its Final Report; (See page 263). The State of Bombay was the first to pass an Act called the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, (Bom. LXII of 1947). This was followed by the impugned Act in Uttar Pradesh. The object of the Act is to allot a compact area in lieu of scattered plots to tenure-holders so that large scale cultivation may be possible with all its attendant advantages. Thus, by the reduction of boundary-lines saving of land takes place and the number of boundary-disputes is reduced. There is saving of time in the management of fields inasmuch as the farmer is saved from travelling from field to field, which may be at considerable distances from each other. Proper barriers such as fences, hedges and ditches can be erected around a compact area to prevent trespassing and thieving. It would further be easier to control irrigation and drainage and disputes over water would be reduced considerably where compact areas are allotted to tenure-holders. Lastly, the control of pests, insects and plant-disease is made easier where farmers have compact areas under cultivation. These advantages resulting from consolidation of holdings are intended to encourage the development of agriculture and larger production of food grains, which is the necessity of the day.

4. With these objects in mind, the Act was passed by the U.P. Legislature in 1953 and received the assent of the President on March 4, 1954. It was published in the gazette on March 8, 1954, and declarations under section 4 were made for the major part of the State of Uttar Pradesh, including the petitioners' village, in July, 1954.

5. The scheme of the Act is as follows :-

When consolidation of a village is taken up, the first thing that is done is to correct the revenue records, and sections 7 to 12 deal with that. Then comes the second stage of preparing what are called statements of principles; (see sections 14 to 18). Objections to these principles are entertained and decided and thereafter the principles are confirmed under section 18. Then comes the third stage (vide sections 19 to 23), which deals with the preparation of the statement of proposals. Objections to this are also invited and disposed of, and then proposals are confirmed under section 23. After the proposals have been confirmed, we come to the last stage in which the confirmed proposals are enforced; (see sections 24 onwards). It will be clear therefore from the objects of the Act and the advantages that accrue from its implementation that it is a piece of legislation, which should be a boon to the tenure-holders in a village and should also lead to the development of agriculture and increase of food-production. It is in this setting that we have to examine the attack that has been made on the constitutionality of the Act.

Re. 1 : Section 6 of the Act gives power to the State Government at any time to cancel the declaration made under section 4 in respect of the whole or any part of the area specified therein. When such declaration is made the area ceases to be under consolidation operations and section 5 which

provides for the effect of a declaration ceases to operate. It is urged that section 4 gives arbitrary power to the State Government to cancel the declaration, even with respect to a part of the area covered by it and thus discriminates between villages which are under consolidation and those which are not under consolidation. The learned Additional Solicitor General counters this argument in two ways : (i) Section 6 is nothing more than a restatement of the power which the State Government otherwise possessed under the General Clauses Act; and (ii) the high status of the authority to whom the power is given, namely, the State Government, and the rules framed under the Act laying down a standard for the Government to follow, remove any flavour of arbitrariness which the terms of the section might import. It is not necessary to express any opinion in this case on the said contention, for, even if it be accepted, the result would be only that section 6 would be struck down. The petitioners would be in the same position with section 6 on the Statute or without it. It may be that, if a citizen in whose favour an order of consolidation has been made but subsequently cancelled, comes to court with a grievance that the order of consolidation was for his benefit but was cancelled in exercise of a power under a void section, this question might arise for consideration. It may also be that the petitioners' right might be infringed if section 6 were not severable from the other provisions of the Act which enable the Government to direct consolidation of holdings. The power of cancellation cannot be said to be so inextricably mixed up with the power to order consolidation as to prevent the operation of one section without the other. Nor can it be said that the Legislature would not have conferred the power on the Government to consolidate holdings without at the same time conferring on them the power to cancel the said order of consolidation. The said provisions are clearly severable. In the circumstances, as the petitioners' case is not affected by section 6 of the Act, we leave this open to be decided in an appropriate case.

Re. 2 : This deals with the first state of revision and correction of maps and records, which has to take place before the actual consolidation scheme is put into force. Section 7 provides for the examination of the revenue records by the Assistant Consolidation Officer an he is enjoined to test the accuracy of the village map, khasra and the current annual registers by making a partal in accordance with the procedure to be prescribed. After he has done the partal, he is to prepare a statement showing the mistakes discovered in the map, khasra and khatauni, and the number and nature of disputes pertaining to land records under the Uttar Pradesh Land Revenue Act, 1901. Then under section 8 he submits a report to the Settlement Officer (Consolidation) in this connection with his opinion whether any revision of such maps and records is needed. On receipt of this report, the Settlement Officer may either order the Assistant Consolidation Officer to proceed with the correction of maps and records, which we presume he will order when there are not too many mistakes, or recommend to the State Government for revision of maps or records in accordance with the provisions of Ch. IV of the U.P. Land Revenue Act, 1901, which he will presumably do if there are too many mistakes found. If the Assistant Consolidation Officer is ordered to make the corrections he will make a further partal, if necessary, and correct the map or the entries in annual register in accordance with the procedure to be prescribed. The procedure is prescribed in rule 22 and among other things it lays down that the Assistant Consolidation Officer shall issue a notice to all persons affected by the provisional entries proposed by him; objections are invited and parties are examined and heard and their evidence taken and then the Assistant Consolidation Officer makes the corrections. His order is open to appeal within twenty-one days under section 8(4) to the Consolidation Officer, and the order of the latter is made final.

6. It is urged that this procedure is vitally different from the procedure prescribed under the U.P. Land Revenue Act and that under section 49 of the Act the jurisdiction of the civil and revenue courts with respect to any matters arising out of consolidation proceedings is barred, thus depriving those affected by the orders of the Consolidation Officer the right to file a suit as they could have done under the provisions of the U.P. Land Revenue Act; (see sections 40, 41, 51 and 54). There is no doubt that there is some difference between the procedure provided under the Act and that which the tenure-holders would have been entitled to if their village was not under consolidation. But if consolidation is a boon to the tenure-holders of a village, as we hold it is, and if it is to be put through within a reasonable period of time, it is necessary to have a procedure which would be shorter then the ordinary procedure under the U.P. Land Revenue Act or through a suit in a civil or revenue court. The procedure that has been provided cannot be any means be said to be arbitrary or lacking in the essentials of principles of natural justice. The Assistant Consolidation Officer gives notice to the persons affected, hears their objections and gives them an opportunity to produce evidence. Thereafter he decides the objections and one appeal is provided against his order. This should, in our opinion, be enough in the special circumstances arising under the Act to do justice to those who object to the correction of records. All that has happened is that the number of appeals is cut down to one and that in our opinion is not such a violent departure from the ordinary procedure as to make us strike down the provisions contained in Ch. II of the Act as discriminatory, in the peculiar circumstances arising out of a scheme of consolidation which must, if it has to be of any value, be put through within a reasonable period of time. Whatever difference there may be may well be supported as a permissible classification on an intelligible differential having a reasonable relation to the object sought to be achieved by the Act. Further section 12 provides that where there is dispute as to title and such question has not already been determined by any competent Court, the Consolidation Officer has to refer the question for determination to the Civil Judge who thereafter will refer it to the arbitrator. The arbitrator then proceeds in the manner provided by rule 73 and gives a hearing to the parties and takes evidence both oral and documentary before making his award; and section 37 of the Act makes the Arbitration Act applicable to the proceedings before the arbitrator in the matter of procedure. Taking, therefore, the scheme of Ch. II and remembering that if consolidation is to be put through there must be a more expeditious procedure, there is in our opinion rational basis for classification which justifies the procedure under Ch. II of the Act read with the Rules in villages where consolidation scheme is to be effective. The attack, therefore, under Article 14 of the Constitution on the provisions of Ch. II fails.

Re. 3 and 4 : The contentions on these heads may be taken together. They attack the provisions of Ch. III dealing with the Statement of Principles and Statement of Proposals. The statement of principles is first published and objections are invited. Under section 17 the Assistant Consolidation Officer decides the objections after hearing the parties, if necessary, and taking into account the view of the Consolidation Committee. He then submits a report to the Consolidation Officer who after hearing the objectors and taking such evidence as may be necessary passes final order and confirms the statement of principles; (see rule 43-B). Similarly, when statements of proposals are published, objections are invited to them, and the same procedure is followed in the decision of these objections as in the case of the objections to the statement of principles. In the case of the statement of proposals also, there is similar provision to refer disputed question of title to the Civil Judge, who, in his turn, refers it to the arbitrator. Section 22 also provides that where such question

has been referred to the arbitrator, all suits or proceedings in the court of first instance, appeal, reference or revision, in which the question of title to the same land has been raised, shall be stayed. Section 22(3) makes the decision of the arbitrator final. There is no provision for appeal in Ch. III though in fact two persons hear the matter, namely, the Assistant Consolidation Officer and the Consolidation Officer. But the main attack is on the provisions of section 22(2) on account of which it is said that even where a party has obtained a decree which might be under appeal, the jurisdiction of the ordinary courts is taken away and the decision of the arbitrator is made final. That is undoubtedly so. But if the consolidation scheme has to be put through in a reasonable period of time such a provision is, in our opinion, necessary; but for it the consolidation schemes may never be really put through for there will be little purpose in making consolidation where a large number of disputes are pending in the courts. Reasons which we have given in dealing with the second point apply with equal force to these two points also, and we are of opinion that there is a rational basis for a classification which has a nexus with the object of the Act, and therefore, the attack under Article 14 on the provisions of Chapter III also must fail.

Re. 5. Under this head, the inadequacy of compensation provided under section 29-B of the Act is raised. It may be mentioned that the Act, as originally passed, did not contain any provision for compensation. Thee were a number of writ applications in the Allahabad High Court and that court held that inasmuch as some property was taken away under section 14(1)(ee) for public purposes and no compensation was provided, that provision was void under Article 31(2) as it stood before the Constitution (Fourth Amendment) Act, 1955 (hereinafter called the Fourth Amendment). Appeals by the State Government from that decision of the Allahabad High Court are pending before us and we shall deal with them separately. The legislature then enacted section 29-B laying down the principles on which compensation would be paid for lands taken away under section 14(1)(ee) after the decision of the Allahabad High Court. This section was put by Act XVI of 1957 in the original Act with retrospective effect from the date from which the original Act was enforced. It is urged that the compensation provided therein is inadequate, and, therefore, the provision should be struck down under Article 31(2), as it was before the Fourth Amendment. Arguments were also addressed on the question whether section 29-B would be saved by the Fourth Amendment. We, however, think it unnecessary to go into these arguments for we have come to the conclusion that in the circumstances of this case the compensation provided under section 29-B is adequate. Assuming that the case is governed by Article 31(2) as it was before the Fourth Amendment, section 29-B provides for payment of cash compensation equal to four times the value determined at hereditary rates to a bhumidar and two times the value to a sirdar. The difference between the two rates has not been attacked for the rights of a bhumidar are much higher than the rights of a sirdar. The bhumidar is the owner of the land while the sirdar is merely a tenant; but the argument is that the amount provided is inadequate, and that it is certainly not the fair market value of the land.

7. Let us see what section 14(1)(ee) provides. It lays down the basis on which the tenure-holder will contribute towards the land required for public purposes and the extent to which vacant land may be utilised for the said purpose. We are here concerned with the first part, namely, the contribution of tenure-holders towards land required for public purposes. In this case the petitioner had lands in one chak of the rental value of Rs. 20-6-0 and they have been allotted lands of the rental value of Rs. 20-5-0 instead. In another chak, in place of land the rental value of which is Rs. 148-10-0 they have

been allotted land of the rental value of Rs. 147-13-0. Thus out of the land valued at Rs. 169-0-0, they have been allotted land of the value of Rs. 168-2-0, and land valued at Annas 0-14-0 has gone to the common pool. The percentage is just over a half per cent. It hardly ever exceeds one per cent. Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of lands are collected from various tenure-holders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of section 14(1)(ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under rule 41(1) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4) threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) panchayatghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land. The question then is whether in these circumstances it can be said that the tenure-holders have been given adequate compensation by section 29-B for the small bits of land acquired from them for public purposes. This case must be distinguished from other cases where lands are acquired under the Land Acquisition Act, for here the benefit is direct to the tenure-holders while in ordinary cases of land acquired for public purposes, if there is any benefit to the person from whom the land is acquired, it is indirect and remote. It is contended on behalf of the State in the circumstances that the compensation which the tenure-holders get is not merely the cash compensation which they receive under section 29-B but also the advantage which they receive by these small bits taken from them being consolidated into a larger area of land in which they will have benefits, the nature of which is indicated in form CH-21, over and above the advantage of having their scattered holdings consolidated into a compact block. The question, therefore, is whether in these circumstances the provision of actual cash compensation under section 29-B can be said to be inadequate. We are of opinion that taking into account the peculiar conditions in cases of this kind and remembering that the land taken from each individual tenure-holder may be a small bit and it is then consolidated into a large area by adding some other lands taken from other tenure-holders, and the whole is then used for advantage of the whole body of tenure-holders, it cannot be said that the cash compensation, added to the advantages which the tenure-holders get in the large area of land thus constituted and on account of getting a compact block for themselves, is inadequate. Therefore, assuming that Article 31(2) applies as it was before the Fourth Amendment, it cannot be said that the compensation which the tenure-holders will get under section 29-B is inadequate in the circumstances. This ground of attack also therefore fails.

8. There is no force in this petition and it is hereby dismissed with costs.

9. Petition dismissed.