
(1980) 08 AHC CK 0004
In the Allahabad High Court
Case No : Civil Misc. Writ Petition No. 7873 of 1979

Adya Saran

APPELLANT

Vs

Assistant Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 06-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 20, 48, 48(1), 48(2)

Citation : (1980) AWC 670

Hon'ble Judges : B.D. Agarwala, J

Bench : Single Bench

Advocate : V.M. Sahai, for the Appellant; R.N. Singh, S.N. Singh and K.B. Garg and S.C., for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwala, J.—By this petition under Article 226 of the Constitution, Petitioner has sought for the issue of writ of certiorari, quashing judgment and order of the Assistant Director of Consolidation, Jaunpur dated September 24, 1979, passed by him upon a reference made to him by the Settlement Officer, Consolidation, in exercise of powers under Sub-section (3) of Section 48 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

2. On dispute having arisen between the Petitioner and the opposite parties in the matter of allotment of chaks u/s 20 of the Act, the matter ultimately stood decided by the Deputy Director of Consolidation by the order dated April 16, 1971 in exercise of his powers of revision u/s 48 of the Act. As a result of settlement of this dispute, the Petitioner was allotted chak No. 13 and the opposite party No. 3 was allotted Chak No. 280. Both these chaks, so allotted, were in front of the houses, respectively, of the Petitioner and the opposite party No. 3. In the year 1976, the opposite party moved two applications before the Deputy Director of Consolidation. The first application dated March 10, 1976,

stated that the opposite party was given chak of a lesser valuation of 5.22 annas. By the other application dated 24th of April, 1976, the opposite party claimed that this deficiency be made good from plot No. 623 which had been set apart for khaliyan and playground in the statement of principles prepared originally u/s 19 of the Act and it was prayed that to this extent the statement of principles be modified. On coming to know of these applications, the Petitioner objected to the same on the ground that the dispute in respect of the allotment of chaks had already become final on April 16, 1971, when the revision of the opposite party had been dismissed by the Deputy Director of Consolidation. The Petitioner further stated that even the question of lesser valuation of land having been allotted was a question which could not ought to have been raised by the opposite party in the revision u/s 48 of Act and this not having been done, it is not now open to him to raise this question on the principle of constructive res-judicata. Lastly, the Petitioner's case was that in case, any additional land was considered necessary to be allotted to the opposite party, the same may be allotted from the "Bachat Land". The Petitioner as well as the members of the Land Management Committee and the Pradhan of the Gaon-Sabha filed applications to the effect that the land of plot No. 623 be not allotted to the opposite party as the same was being used for khaliyan and play-ground for the children of the village who studied in the school of the neighbouring village. On June 11, 1976, the Deputy Director, after hearing both the parties, directed the Settlement Officer, Consolidation, to report as to whether there was any "bachat land" available in the village so that the reference may be made. The Settlement Officer, following the direction of the Deputy Director, prepared a reference dated August 17, 1978, and referred the same to the Deputy Director. In this reference, it was stated that "bachat land" of valuation of 30.35 annas were available in the village and land of valuation of 5.22 annas therefrom could be allotted to the opposite party. This reference was decided by the Assistant Director of Consolidation by the judgment and order dated September 24, 1979, which has been impugned in the present petition.

3. The Assistant Director in deciding this reference took the view that the land allotted to the opposite party was deficient in valuation of 5.22 annas and consequently it was necessary to allot land of this valuation to the opposite party. While proceeding to consider the question of allotment of this additional land he did not allot the same from the "bachat land" upon the view that 4 chaks should not be allotted to the opposite party, and he proceeded to make amendment in the chaks already allotted to the parties. What he did was that he extended chak No. 280, earlier allotted to the opposite party, towards north side extending over the portion of chak No. 13, earlier allotted to the Petitioner. The area so extended towards chak No. 13 fell in front of the house of the Petitioner. As far as the Petitioner was concerned, he extended remaining land of chak No. 13 by adding to it the land in plot No. 623 which was earlier reserved under the statement of principles for khaliyan and play-ground. He further observed that this land was not being used for these purposes and was, in fact, unnecessarily

so reserved.

4. It has been submitted by the learned Counsel appearing for the Petitioner that once the matter relating to allotment of chaks had been finally decided by the Deputy Director of Consolidation in due exercise of his powers in revision under Sub-section (1) of Section 48, of the Act, a reference under Sub-section (3) of Section 48 was not maintainable and since the order passed under Sub-section (1) of Section 48 was not open to review under the Act, an order indirectly under sub-section (3) of Section 48 could not be passed which amounts to review. Learned Counsel has then submitted that assuming the reference under Sub-section (3) of Section 48, in the circumstances, was maintainable, the Assistant Director while deciding this reference has committed a manifest error of law inasmuch as he has not applied his mind to the question as to whether the land of additional valuation could be allotted to the opposite party from the "bachat land"; and that in any case there clearly existed special circumstances which could justify the allotment of four chaks to the opposite party, thereby avoiding the modification of the Petitioner's chak originally allotted to him. Learned Counsel further submitted that the Assistant Director acted arbitrarily inasmuch as the land in front of the house of the Petitioner which had earlier been refused to be allotted to the opposite party, was by this process of reference now allotted to the opposite party without any compelling circumstance shown by the Assistant Director and here again, according to the learned counsel, the Assistant Director has committed a manifest error of law.

5. Sub-section (3) of Section 48 of the Act empowers any authority subordinate to the Director of Consolidation to refer the record of any case or proceedings to the Director of Consolidation for action under Sub-section (1) of the Act. It is true that the scope of Sub-section (1) of Section 48 which gives the powers of revision to the Director, is very wide and all questions relating to regularity of the proceedings, and correctness, legality or propriety of any order passed by the subordinate authorities, in any case or proceeding, can be gone into by the Director. Sub-section (3) of Section 48 also empowers the Director to take action under Sub-section (1) upon a reference being made to him under this sub-section. Sub-section (2) of Section 48 makes it clear in express language that powers under Sub-section (1) may be exercised by the Director also on a reference under Sub-section (3). Upon a reading of these sub-sections of Section 48, in my opinion, the position appears that though an order passed under Sub-section (1) by the Director in due course of his revisional powers assumes finality; but then power to make any order with reference to any case or proceeding as may be referred to by any sub-ordinate authority to him under Sub-section (3) continues to reside in him; but certainly this power could not be so exercised as to amount to a review of an order passed under Sub-section (1) in exercise of his revisional powers. In *Ram Pratap Singh and Another Vs. Dy. Director of Consolidation and Others*, , the order impugned there was held to be illegal and without jurisdiction as it was found to be nothing short of a review of the previous order passed in revision by the Deputy Director of Consolidation. In

Banwari v. Deputy Director of Consolidation 1979 ALJ 175, it was observed:

There is no provision in the Act or rules permitting review. What could not be done directly could not be achieved indirectly...There was no order of any competent court or authority which needed implementation. The occasion to submit any reference u/s 48(3) of the Act was therefore non-existent." These decisions, therefore, support the view taken by me above.

6. In the instant case, the application filed by the opposite party which ultimately resulted in the reference being made by the Settlement Officer, Consolidation, under Sub-section (3) of Section 48 was on the footing that the land of 5.22 annas f valuation less than to which the opposite party was entitled had been allotted and hence, this deficiency had to be made good by allotment of additional land of this valuation. It would thus be seen that the opposite party by seeking a reference did not ask for any review of the earlier order in revision under Sub-section (1) of Section 48. In a situation of the present kind, in my opinion, a reference under Sub-section (3) of Section 48 was clearly maintainable. The Authority deciding such a reference could in view of the provisions already referred to above, exercise powers under Sub-section (1) of Section 48 of the Act.

7. Learned Counsel for the Petitioner, however, appears to be correct in his submission that the Assistant Director while deciding the reference has not applied his mind to the question as to whether the Additional land of valuation 5.22 annas could be allotted out of the "bachat land". As already noticed, the reference made by the Settlement Officer, Consolidation, specifically stated that "bachat land" of valuation 30.35 annas was available for allotment. As to why no special circumstance existed justifying the allotment of four chaks to the opposite party, the order does not make it clear. It does not show as to why the fact that on account of some inadvertence or fault of the consolidation authorities or on account of the opposite party himself for not having pointed out the error earlier, land of lesser valuation had been allotted and for which certainly the Petitioner was not to be blamed, could not be taken as a special circumstance enabling the allotment of 4 chaks to the opposite party. Further the order does not show as to what was the compelling reason on account of which the land in front of the Petitioner's house, which had earlier not been allotted to the opposite party, be now allotted as a result of this reference. As already held by me earlier, the authority deciding the reference under Sub-section (3) of Section 48 could not treat and deal with the same as if it were a review of the earlier order under Sub-section (1) of Section 48. It appears clear from the reading of the impugned order that the Assistant Director of Consolidation while deciding the reference was not alive to this limitation. For all these reasons, I am unable to sustain the impugned order.

8. This writ petition is accordingly allowed. The judgment and order of the Assistant Director of Consolidation, Jaunpur, dated September 24, 1979, is quashed. The reference under Sub-section (3) of Section 48 of the Act will now

be decided afresh in accordance with law and in the light of observations made in this judgment. In the circumstances, the parties shall bear their own costs of this petition.