
(1984) 12 AHC CK 0045
In the Allahabad High Court
Case No : Writ Petition No. 5961 of 1983

Ajug Narain and Others

APPELLANT

Vs

D D C and Others

RESPONDENT

Date of Decision : 13-12-1984

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 48(1), 48(3), 9A(2)

Citation : (1984) 12 AHC CK 0045

Hon'ble Judges : K.N.Misra, J

Final Decision : Dismissed

Judgement

K. N. Misra, J.

1. This writ petition is directed against the judgment and order dated 1951983 passed by the Deputy Director of Consolidation, Sultanpur which he has passed in exercise of powers under Section 48 subclause (3) of the U. P. Consolidation of Holdings Act (for short, the Act) for giving effect to final orders passed in a case under Section 9A (2) of the Act fought out between opposite parties No. 2 and 3 and the opposite parties No. 4 to 19 in respect of land of Khata No. 28. Briefly stated, the facts of the case are as follows :

2, In the basic year Khatauni the names of opposite parties No. 4 to 9 were recorded on the land of Khata No. 28 of village Devapur, Pargana Ghanda, Tahsil Kadipur, District Sultanpur. Opposite Parties No. 2 and 3, namely, Ram Pratap and Ram Naresh, filed an objection under Section 9A (2) of the Act claiming to be cotenure holders in the disputed holding along with opposite parties No. 4 to 9. The Consolidation Officer, after taking evidence of the parties, allowed the objection of the opposite parties No. 2 and 3 and held them to be cotenure holders in the said disputed holding having 1/4th share in it. Aggrieved by that order the opposite parties No. 4 to 9 had preferred appeal. An appeal was also filed by opposite parties No. 2 and 3. Both these appeals were dismissed by common judgment and order dated 1331972 and the order passed by the Consolidation Officer was maintained. Still feeling aggrieved revisions were filed

which too were dismissed by order dated 2381973. It appears that in the meantime statement of proposals were prepared and published whereby all the tenure holders in the unit were allotted chak as against their original holdings. In respect of entire land of Khata No. 28 the opposite parties No. 4 to 9 were allotted chaks. The opposite parties No. 2 and 3, therefore, moved an application for getting the land allotted to them in respect of 1/4th share in the land of Khata No. 28. A reference was forwarded under Section 48 subclause (3) of the Act by the subordinate consolidation authorities to the Deputy Director of Consolidation. A question at that stage was raised by the opposite parties No. 4 to 9 saying that the opposite parties No. 2 and 3 were not entitled to get 1/4th share in all the plots, but they were entitled only to get share in plot No. 84/8. 96, 100, 120, 198, 228 and 229. A reference was forwarded by the subordinate consolidation authorities only in respect of 1/4th share of said plots showing opposite parties No. 2 and 3 to be cotenure holder only in these plots of said Khata No. 28. This reference was considered by the Deputy Director of Consolidation, who, by order dated 1811983, held that the opposite parties No. 2 and 3 were allowed 1/4th share in all the plots of Khata No. 28 and directed the subordinate consolidation authorities to prepare a reference in accordance with it. The Consolidation Officer, in pursuance of that order, submitted a reference under Section 48 (3) of the Act on 1371983 whereby adjustment in the chaks was proposed to be made. Aggrieved by said order dated 1811983 passed by the Deputy Director of Consolidation the opposite parties No. 4 to 9 preferred writ petition in this court and the operation of the order dated 1811983, passed by the Deputy Director of Consolidation, was stayed. Subsequently the stay order was vacated by this court vide order dated 2641983. After vacation of the stay order, reference which was submitted by the subordinate consolidation authorities was considered by the Deputy Director of Consolidation on merits and he, after giving an opportunity of hearing to all the parties whose chaks were to be affected by the order, accepted the reference making certain adjustment in the chaks of the petitioners as well as of opposite parties No. 2 to 15. The petitioner have challenged this order in the present writ petition.

3. I have heard the learned counsel for the parties and have perused the impugned orders. I have also gone through the averments contained in the writ petition as well as in the counter and rejoinder affidavits.

4. Learned counsel for the petitioner Sri H. S. Sahai urged that by the impugned order the Deputy Director of Consolidation has made alteration in the chaks of the petitioners who were not parties to the aforesaid case under Section 9A (2) of the Act. In other words he contended that the adjustment in the chaks could be made only from the chaks which were allotted to the opposite parties No. 4 to 9 and chaks of no other tenure holder could be affected by the Deputy Director of Consolidation while implementing and giving effect to the order passed in proceedings under Section 9A (2) of the Act. In reply, learned counsel for the opposite parties Sri M. R. Misra urged that opposite parties No. 2 and 3 have been allotted chaks by the impugned order out of the chak which was allotted to

Ganga Prasad (opposite party No. 5) and Ram Narain (opposite party No 6.). He further pointed out that while making adjustment in the chak of opposite parties No. 2 to 9 certain necessary adjustment in the chaks of other tenure holders was found to be necessary and the Deputy Director of Consolidation accordingly made necessary alterations in the chak of the parties. Having gone through the impugned order very carefully I find that while giving effect to the final orders passed in proceedings under Section 9A (2) of the Act, the opposite parties No. 2 and 3 were allotted land from the chak land of opposite parties No. 5 and 6, but while making adjustment in the chaks certain necessary alteration in the chaks of other persons was also found necessary in order to make proper and equitable adjustment in the chaks of the parties and so that was appropriately done. Thus, the alteration in the chaks of the petitioners and opposite parties No. 2 to 16 cannot be said to suffer from an error of want of jurisdiction in making alteration in the chaks in exercise of powers under Section 48 subclause (3) of the Act for giving effect to orders passed in proceedings under Section 9A(2) of the Act. The cases cited by the learned counsel for the petitioners reported in *Banwari and others v. Dy. Director of Consolidation, Ghazipur and others* (1979 All LJ 175), *Adya Saran v. Asstt. Deputy Director of Consolidation, Jaunpur and others* (1980 All LJ 1000) and *Balbir Kaur and others v. The Dy. Director of Consolidation and another*, (1982 All LJ 1211) do not apply to the facts of the present case. In the present case the orders passed in proceedings under Section 9A(2) of the Act were got implemented by making necessary adjustment in the chaks. Thus, it cannot be said that the Deputy Director of Consolidation, by the impugned order, has reviewed his own earlier order passed in revision under Section 49(1) of the Act arising out of proceedings under Section 20 of the Act. The Deputy Director of Consolidation in the present case has made alteration in the chaks for implementing the earlier order passed in proceedings under Section 9A(2) of the Act. Thus the impugned order passed by the Deputy Director of Consolidation under Section 48 subclause (3) of the Act cannot be said to suffer from any error of jurisdiction.

5. Learned counsel for the petitioners had next contended that the Deputy Director of Consolidation has acted illegally and with material irregularity in exercise of jurisdiction in making alteration in the valuation of plot No. 96. His contention was that the valuation of any plot could not be altered by the Consolidation authorities in proceedings under Section 20 or in proceedings under Section 48(3) of the Act. In other words his contention was that the alteration of the valuation of plot No. 96 could not be made as it was barred by Section 11A (iii) of the Act. In support of his contention learned counsel has placed reliance upon a decision reported in *Beni Madho Dubey v. The Dy. Director of Consolidation, Gorakhpur and others* (1978 All LJ 777) wherein R. M. Sahai, J. observed that Section 11A of the Act creates a bar in respect of claims to land, partition of joint holdings and valuation of plots, trees, wells etc. relating to Consolidation area. It further provides that if an objection regarding these matters could have been taken and were not taken then a tenure holder shall be

debarred from raising it at any subsequent stage of the consolidation proceedings. Learned counsel had also referred to a decision in *Hari Narain Mani v. The Deputy Director of Consolidation, Deoria and others* (1981 AWC 65) wherein H. N. Seth, J. had observed that subsection (2) of Section 20 lays down that subject to the provisions contained in Section 11A any person to whom notice has been sent under subsection (1) and any other person affected by the provisional scheme to file objections to such scheme. The provision in subsection (2) that riling of the objection under Section 20 shall be subject to the provisions contained in Section 11A, clearly implies that on objection consideration of which shall have the effect of contravening the provisions of Section 11A of the Act cannot be taken notice of in proceedings under Section 20 of the Act. Accordingly an objection regarding valuation of the various plots in the village which could have been raised under Chapter II of the Act, but was not so raised cannot be allowed to be raised at the stage of proceedings for allotment of chaks under Section 20 of the Act and the chaks have to be carved out on the basis of the valuation of plots as mentioned in the records published and finalised under Section 9 of the Act. These cases were noticed in a subsequent Case *Ram Nihore v. Deputy Director of Consolidation and others*, (1983 RD 1) (Hindi) wherein Ram Surat Singh, J. placing reliance upon earlier Division Bench decision of this Court in *Badri Prasad v. Smt. Barke and others*, (1966 RD 101) observed that the objection in respect of valuation of a plot can be raised at a subsequent stage by other tenure holders and not by the tenure holder to whom the plot originally belonged. In *Badri Prasad's* case (1966 RD 101) (supra), it was held by the Division Bench that :

"It cannot be the duty of every tenure holder to file an objection to the valuation of any plot which is wrong according to him, it is obvious that a tenure holder is expected to file an objection against the valuation of only the plots of his holding and not of other holding on the mere possibility that he might be affected by their incorrect valuation, if they are allotted to his chak."

6. A careful reading of Section 11 A (iii) of the Act would indicate that the objection to the valuation of plots, trees, wells and other improvements, if not raised by the tenure holder at the stage under Section 9, the same could not be raised by him at a subsequent stage. But there appears to be no bar in raising an objection on said matters by any other tenure holder at a subsequent stage in proceedings under Section 20 of the Act. It, thus, appears to me that the valuation of the plots can be challenged by any other tenure holder when it is proposed to be allotted to him in his chak at the stage under Section 20 or at a subsequent stage under Section 48 subclause (3) while implementing orders passed in proceedings under Section 9A (2) of the Act. I have expressed similar view in *Ram Sewak v. Dy. Director of Consolidation and others* (1982 RD 35), which is in conformity with the view expressed by the Division Bench in *Badri Prasad's* case (supra) (1966 RD 101).

7. Thus, in view of the above, I find that the Deputy Director of Consolidation

had committed no error of jurisdiction in increasing the valuation of plot No. 96 from 2 annas to 7 annas exchange ratio while allotting it in the chak of the opposite party No. 2. It is also evident from the record that the northern portion of the plot, which was stated to have been developed by the petitioners, was kept in their chak and only the southern portion of plot No. 96 was allotted in the chak of opposite party No. 2 Ram Pratap by raising its valuation from 2 annas to 7 annas. Thus, the petitioners were not at all prejudiced by the enhancement of the valuation of this plot. The opposite Party No. 2 has not raised any objection with regard to the enhancement of the valuation of this plot while making allotment in his chak. There, thus, appears to be no error in the order passed by the Deputy Director of Consolidation on the said ground urged by the learned counsel for the petitioners.

8. Learned counsel for the petitioner next urged that the chak road has been abolished and this could not be done at this stage under Section 48 subclause (3). I am unable to agree with this contention.

9. There appears to be no bar in making alteration in the chak road while making adjustment in various chaks in proceedings under Section 20 and 48 (3) of the Act. The location of the chak road, if required to be shifted while making certain modification in the chaks of the parties, can be validly shifted by the Settlement Officer, Consolidation in appeal and also by the Deputy Director of Consolidation in exercise of powers under Section 48 of the Act. Apart from it, in the present case, it does not appear that the Deputy Director of Consolidation has made any alteration in the chak road. Certain "bachat land" has been allotted in the chak of the petitioners and this could be done while making adjustment in the chaks of the parties.

10. Learned counsel for the petitioners in the end contended that after about thirteen years the alteration of chaks of the parties should not have been made because in this long period the parties have developed their land. I am unable to agree with this contention as well.

11. The Deputy Director of Consolidation has passed the impugned order for implementing the final orders passed in proceedings under Section 9A (2) of the Act. Thus, the adjustment in the chaks was required to be made for giving effect to said order and there appears to be no error of jurisdiction committed by the Deputy Director of Consolidation in making

alteration in the chaks of the parties for implementing the orders passed in proceedings under Section 9A (2) of the Act. It also appears that the Deputy Director of Consolidation, while making allotment of certain portion of plot No. 96 in the chak of opposite party No. 2 has enhanced its valuation from 2 annas to 7 annas. It was apparently done as it was asserted by the petitioners that the said plot was developed by them. The northern portion of said plot, which was said to have been developed by the petitioners, was allotted in their chaks and in respect of the southern portion of Plot No. 96, which was allotted to opposite

party No. 2, its valuation was enhanced from 2 annas to 7 annas. Thus, it cannot be said that any illegality was committed by the Deputy Director of Consolidation in making adjustment in the chaks of the parties. I have gone through the impugned order very carefully and I find that quite just and proper adjustment in the chaks of the parties has been made and no case is made out for interference by this Court in exercise of powers under Article 226 of the Constitution.

12. In the result, the writ petition fails and is accordingly dismissed. The stay order dated 10th November, 1983 is hereby vacated. No order as to costs.

(Petition dismissed.)