
(2015) 05 AHC CK 0268
In the Allahabad High Court
Case No : Consolidation No. 335 of 1994

Arjun	Vs	APPELLANT
Deputy Director of Consolidation, Faizabad and Others		RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 48

Citation : (2015) 129 RD 205

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : S.K. Mehrotra, for the Appellant; Amitabh Misra, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Matter is taken up in the revised list. None appeared on behalf of the private respondents.

2. Heard Shri I.D. Shukla, learned Counsel for the petitioner, learned State Counsel and perused the record.

3. By means of the present writ petition, the petitioner has challenged the impugned order dated 18.1.1994 passed by opposite party No. 1/Deputy Director of Consolidation, Faizabad.

4. Facts in brief of the present case are that at the time of starting of consolidation proceedings, a dispute arisen in respect of the allotment of chak before the Consolidation Officer. By order dated 10.2.1993, the Consolidation Officer has decided the matter.

5. Aggrieved by the said order, the opposite party No. 2/Shri Mewa Lal filed an appeal along with an application for condonation of delay. By order dated 25.11.1993, Settlement Officer Consolidation, Faizabad dismissed the appeal, challenged by opposite party No. 2 by filing a revision (Revision No. 1205) under section 48 of U.P.C.H. Act before the Deputy Director of Consolidation, Faizabad.

By order dated 18.1.1994, the Deputy Director of Consolidation, Faizabad has given a plot Nos. 10/2, 11/2, 12, 13, 14 and 24 to the opposite party No. 2/Shri Mewa Lal.

6. Learned Counsel for the petitioner, while challenging the impugned order submits that without giving any finding and only on the statement given by the villager, Deputy Director of Consolidation, Faizabad has passed the impugned order and while doing so, the said authority has not made any spot inspection and thus, committed material illegality in passing the impugned order as a mandatory duty has been casted upon the D.D.C. to make spot inspection prior to deciding a revision under section 48 of U.P.C.H. Act.

7. It is further submitted by learned Counsel for the petitioner that effect of the impugned order dated 18.1.1994 passed by opposite party No. 1/Deputy Director of Consolidation, Faizabad is that in Chak No. 146, he has been allotted the gata Nos. 13 and 18/2 which are not in front of his abadi/house, as such, the said order passed by the opposite party No. 1 is contrary to the principles of natural justice. In support of his argument, he has placed reliance on the judgment given by this Court in the case of Nathunee and Others Vs. Deputy Director of Consolidation and Another, wherein paragraph No. 5, relevant portion quoted herein below:---

"The Courts will have to give practical and human approach to the matter. It is not to be reminded that in the villages there are small number of persons who are having big holding and better source of agriculture which consists of modern techniques in various respects. The majority consists of holders of small land and therefore, if they are not allowed chaks considering their convenience that will cause great hardship to them for which, there cannot be any cure after close of consolidation process. In view of aforesaid, this Court need not to issue any strict guideline or cannot lay down a particular procedure/process to handle the situation but of course, this can be observed that it has to be the concern of all the consolidation authorities right from the stage of Assistant Consolidation Officer up to the Deputy Director of Consolidation to keep in mind equitable aspect and comparative hardship besides the norms as provided in section 19 of U.P.C.H. Act as that is to reflect on the future growth of a family. In the past also this Court has opined for giving consideration to the allotment of chak matters in the aforesaid manner but now again time has come to give caution to all the consolidation authorities not to pass orders in these proceedings, without application of mind, without assigning any proper reason and without considering comparative hardship if is to be faced by the parties on a particular change as that will not be in accordance with the spirit of this process for which, law is made."

8. In addition to the above said facts, learned Counsel for the petitioner has also submitted that the impugned order dated 18.1.1994 has been passed by opposite party No. 1/Deputy Director of Consolidation, Faizabad only on the ground that the case of the revisionist/Mewa Lal has been supported by the

villagers. The said statement is neither on record nor supplied to the petitioner and without verifying the said statement by making spot inspection and preparing the spot memo, the D.D.C. reversed the judgment passed by the subordinate Court. The said action is contrary to law as laid down by this Court by judgment and order dated 17.8.1981 passed in Writ Petition No. 9501 of 1980 "Sugar Singh v. Deputy Director of Consolidation and others, wherein it has been held as under:---

"The Deputy Director of Consolidation has observed that on his local inspection, he found certain trees situated by the side of plot No. 535 and the persons of the locality who had collected there on the spot had told him that those trees belong to opposite party No. 4. This observation, to my mind, cannot be treated to be an evidence and it cannot be made basis of any decision. The Deputy Director of Consolidation should have either recorded the statements of those persons on oath giving opportunity to the petitioner to cross-examine and to lead evidence in rebuttal if he wanted to place reliance upon the version of those persons with regard to the ownership of the trees situated on the plot in question or by the side of plot No. 535, I, therefore, find that the order passed by the Deputy Director of Consolidation on the aforesaid ground as illegal, erroneous and cannot be sustained."

9. And in the case of Devendrapal Singh Vs. Joint Director of Consolidation and Others, relevant portion quoted herein below:---

"I have considered the contention raised on behalf of the parties. It is noteworthy that both the parties had preferred revision petitions. The Revisional Court through the impugned judgment has dismissed the revision petition filed by the petitioner and has allowed the revision petition filed by the contesting opposite party Hardam Singh. In this contention it is proper to mention that observation made by the Revisional Court in the impugned judgment:---

".....main yah janta hun ki Sri Devendra Pal Singh baasar va unchi pahunch ke admi hain.... Aur who bahari prabhav daink dalvane me bhi saksham onge par nyay ki drishti se mujhko hardam ke prati kiye gaye vyavahar se atyanta kasht huwa....."

Emphasizing the above observations of the Revisional Court, the learned Counsel for the petitioner has contended that the Revisional Court has not applied its fair mind to the claims of the parties and has proceeded to decide the revision petition in a biased manner against the petitioner hence its judgment should be quashed. My attention has been drawn to the ruling of their Lordships of the Supreme Court reported in The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, . Vide paragraph 10 of the aforesaid ruling it has been observed as below:---

".....It is hardly necessary to emphasise that the elementary rule of natural justice that a person trying a cause, though in a quasi-judicial

proceedings, should not suffer from a personal bias, is of such great significance that its application cannot be controlled by the considerations which are confined to Ramakotaiah and would have no relevance in regard to the complaints raised by the respondents in challenging the validity of the impugned order....."

It is well known that justice is not only to be done but it should also seem to have been done. In the present case on the observations of the Revisional Court a litigant has fair objection that the presiding officer was little biased against him. The learned Counsel for the contesting opposite party has emphasized that by the impugned judgment substantial justice has been done and the opposite party has got Chak only-over his original plots, hence the petitioner cannot make any legitimate grievance and the petitioner has utterly failed to prove his claim with regard to plot No. 609. Under the Consolidation Act it is not necessary that a tenure holder must get his original plots and if for some reason the petitioner wanted a plot of the contesting opposite party, his claim should have been decided in a balanced manner giving cogent reasons and not in the fashion in which the Revisional Court has dealt with the claims of the parties. In my opinion, the impugned judgment deserves to be quashed."

10. Accordingly, it is submitted by learned Counsel for the petitioner that the impugned order being contrary to law is liable to be set aside.

11. Section 48 gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders.

12. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly. Normally, the Deputy Director, in exercise of his powers, is not accepted to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation) but where the findings are perverse, in the sense that they are supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutiny the whole case against so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him after making spot inspection/preparing the spot memo. (See Sheo Nand and Others Vs. The Deputy Director of Consolidation Allahabad and Others,

13. In the present case, the finding recorded by Settlement Officer Consolidation while refusing the case as set up by the opposite party No. 2/Shri Mewa Lal has been reversed by Deputy Director Consolidation, Faizabad with the following observations:---

14. Further, From the perusal of the impugned order passed by D.D.C., Faizabad, the position which emerges out is that he has not given any valid reasons that

under what circumstances, the finding given by the Court below/Settlement Officer Consolidation has been reversed only the reason which has been given while passing the impugned order is that the same has been done only on the statement given by the villagers while the said statement is neither on record nor supplied to the petitioner, so the case of the revisionist/Mewa Lal deserves to be allowed and on the basis of which the impugned order has been passed.

15. Thus, from the record, it is established that no valid reasons has been given by the Deputy Director of Consolidation, Faizabad while passing the impugned order, rather it is based on no evidence and has not scrutiny the whole case again to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. Hence, the impugned order is liable to be set aside.

16. For the foregoing reasons, impugned order dated 18.1.1994 passed by opposite party No. 1/Deputy Director of Consolidation, Faizabad is set aside and matter is remanded back to him to decide afresh after making spot inspection and giving opportunity of hearing to the parties concerned in accordance with law. With the above observations, the writ petition is allowed.