

(2010) 07 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 24488 of 2003

Bindra and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 28, 5, 9(2)

Citation : (2011) 4 AWC 3452

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Advocate : Onkar Singh, for the Appellant; Vishal Khandelwal, Anuj Kumar, Adll. S.C. and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Mrs. Poonam Srivastav, J.—Heard Sri Onkar Singh, counsel for the Petitioners and Sri Vishal Khandelwal advocate on behalf of contesting Respondent No. 5.

2. The dispute relates to plot No. 219 situated in village Hariya Khera, Pargana Kandhala, tahsil Budhana, district Muzaffar Nagar which was recorded as banjar land in revenue records. During consolidation proceedings when statements were prepared with the consent of consolidation committee, exchange ratio of plot No. 219 was determined by Assistant Consolidation Officer as 20 paise. This entry was recorded in column No. 27 of C.H. Form 2A. No objection or appeal was filed by any chak holder of the village including Respondent No. 5. Subsequently provisional consolidation scheme was prepared by the Assistant Consolidation Officer u/s 19 of the U.P.C.H. Act (hereinafter referred to as the Act) and plot No. 219 was allotted in the chaks of the Petitioners as well as few other chak holders. The proceedings to carve out chak was finalised up till stage of Deputy Director of Consolidation and plot No. 219 was allotted to the Petitioners. A report was submitted by the Assistant Consolidation Officer on 23.1.1996, that possession u/s 28 of the Act has been delivered to the respective chak holders of the village. After confirmation of the provisional scheme, a time barred objection was

preferred by Respondent No. 5 on 10.6.1999 alongwith an application u/s 5 of the Limitation Act, supported by an affidavit. The Respondent No. 5 claimed that he was in possession of the said plot since last 20 years and objection u/s 9(2) of the Act is pending between Jagmal v. State. It was further asserted that it is fertile plot and exchange ratio was liable to be increased to 60 paisa in place of 20 paisa. The Assistant Consolidation Officer submitted his report on 10.5.2002 that the plot in question was recorded in the name of Respondent No. 5 on 23.2.2000. It was also specifically stated that half part of the plot is fertile and possession has already been delivered on 23.1.1996.

3. Submission of Learned Counsel for the Petitioners is that objection of Respondent No. 5 was illegally allowed by the Consolidation Officer vide order dated 20.9.2000 without opportunity of hearing to the other chak holders including the Petitioners since the plot in question was situated in the chak of the Petitioners. The Petitioners preferred an appeal before the Settlement Officer of Consolidation. Specific assertion was that portion of the plot No. 219 given to the Petitioners was made fertile and they have spent almost ` 80,000 in levelling the land and viable for cultivation. The appeal was dismissed on 10.10.2002. Revision filed by the Petitioners was also dismissed by the Deputy Director of Consolidation vide order dated 8.5.2003.

4. Perusal of the order of the Consolidation Officer, Budhana clearly states that he himself had made an inspection of plot No. 219 on 19.9.2000 and he had found that the land is equally levelled and the land is apparently fertile. Since he had made spot inspection himself, therefore, an order was passed that valuation should be increased from 20 paisa to 60 paisa. The appellate order in the appeal preferred by the Petitioners is also on the basis of spot inspection carried out by the Consolidation Officer himself. Annexure-6 to the writ petition is the grounds of revision and ground No. 6 is specific to the effect that the Consolidation Officer has not made any spot inspection whatsoever. There is no document about spot inspection on record and in absence of any such report of spot inspection, the order is liable to be rejected. However, the Deputy Director of Consolidation without considering the specific ground confirmed the order of the appellate authority, though basis of the order was spot inspection report mentioned in the order of the Consolidation Officer.

5. Counsel for the contesting Respondent has tried to emphasize that even assuming ground was taken, it has not been argued and, therefore, the Deputy Director of Consolidation did not take notice about it. In paragraph 13 of the writ petition, there is specific assertion to the effect about ground No. 6 in the memo of revision as well as the fact that Petitioners had spent approximately ` 80,000 in levelling the land which was not so when it was given to them and now the Petitioners are being deprived of their claims without even appropriate opportunity of hearing. Perusal of the order of the Deputy Director of Consolidation dated 8.5.2003, it is evident that he has failed to record any finding on ground No. 6. There was neither any objection nor an appeal preferred

by Respondent No. 5 or any other chak holders against the exchange ratio determined by the Assistant Consolidation Officer after consultation with the consolidation committee. The Petitioners were handed over possession four years before the order of the Deputy Director of Consolidation was passed. The Petitioners still continue in possession on the basis of interim order granted on 2.6.2003. Their anxiety is that huge amount of money and effort has gone into the land initially allotted to them.

6. Reliance has been placed by counsel for the Petitioners on two decisions of this Court, *Pyare Ahmad v. Dy. Director of Consolidation, Sultanpur* and *Ors. 1985 RD 210*. In this case, there was no specific assertion by the Petitioners in the writ petition that inspection memo of spot inspection is not on record. In spite of this, the Court held that when spot inspection is made, the report is liable to be kept on record whereas in the present case, there was specific objection to that effect and objections raised on behalf of the Petitioners that spot inspection report is not on record could not be ignored. For a ready perusal, an extract of the judgment is quoted below:

It is well-settled that when a spot inspection is made, the authority making the spot inspection is required to make spot inspection memo and keep it on record. Although this fact has not been overruled in the writ petition, but since it is not mentioned in these impugned orders that a spot inspection memo has been prepared and kept on record. Thus, in view of above, I find that the impugned order dated August 30, 1978, passed by the Deputy Director of Consolidation, Sultanpur, cannot be sustained and deserves to be quashed.

7. Similar view was expressed in another decision of *Rama Shankar Upadhyaya v. Dy. Director (Consolidation) and Ors. 1982 ACJ 449*. Paragraph 10 of the said judgment is quoted below:

10. Hearing on the material obtained after local inspection could be nothing else but illusory, if spot inspection memo has not been prepared and brought on record. In the absence of spot inspection memo on record, hearing would be meaningless and futile exercise for want of real evidence on record. It will also be in violation of fundamental principle of law as well as of rules of natural justice if the Judge would base his findings on spot inspection in absence of any spot inspection memo on record, because Judge can decide case only on the basis of evidence on record and not on anything outside record or on the impression carried by him in his mind and memory while making spot inspection. Parties, in the absence of spot inspection memo on record, cannot have inkling in the mind of the Judge about observation made by him on the view of the spot made at the local inspection and so they cannot possibly address him with regard to it nor the superior court will be liable to scrutinize the veracity and lucidity of the observation in the judgment about facts found on spot inspection in the absence of spot inspection memo on record.

8. In view of two decisions as well as undisputed fact that spot inspection did not

see light of the day and courts below have completely ignored the objection of the Petitioners, the judgments of the courts below are liable to be set aside. The judgments dated 8.5.2003, passed by the Deputy Director of Consolidation, Muzaffarnagar, 10.10.2002, passed by the Settlement Officer of Consolidation, Muzaffarnagar and 20.9.2000, passed by the Consolidation Officer, Budhana, district Muzaffarnagar are hereby quashed. The matter is remanded to the Settlement Officer of Consolidation for afresh decision after giving an opportunity of hearing to the parties and Settlement Officer of Consolidation shall ensure that the relevant evidence on record is given due weightage and appropriate decision shall be taken in accordance with law. The Petitioners possession shall not be disturbed till the matter is finally adjudicated. The writ petition is therefore allowed.