

(2014) 03 AHC CK 0282

In the Allahabad High Court

Case No : Writ-B No. 11418 of 2014 with Writ-B Nos. 26385 of 2012 and 52005 of 2013

Brahmdeo

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19A, 19-A(2), 20, 21(4) (i), 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117-A

Citation : (2014) 123 RD 98

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : L.P. Singh, Abhishek Kumar and Ritesh Kumar Singh, Advocate for the Appellant; Ashutosh Tiwari, Ganesh Mani Tripathi, H.R. Mishra, R.C. Upadhyay, Mahesh Narain Singh and L.P. Singh, Advocate for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri L.P. Singh, appearing for Brahmdeo and Ram Pravesh Verma, Sri Abhishek Kumar, appearing for Devendra Nath Tiwari and Yogendra Singh and Sri H.R. Mishra, Senior Advocate, assisted by Sri Ashutosh Tiwari, appearing for Veer Bahadur Singh Sport College, Gorakhpur and Sri Ganesh Mani Tripathi, for Devendra Nath, in the aforementioned writ petitions and recall application. Writ B No. 26385 of 2012 has been filed for mandamus, directing Settlement Officer Consolidation, Ballia to deliver possession over confirmed chak to the petitioners and other chak holders of village Pur, Pargana Sikanderpur East, District Ballia. Writ B No. 52005 of 2013 was filed for mandamus, directing consolidation authorities of Ballia to deliver possession over confirmed chak to the petitioner and other chak holders of village Pur, Pargana Sikanderpur East, District Ballia. This writ petition was disposed of with direction to Settlement Officer Consolidation, Ballia to insure demarcation and delivery possession over confirmed chak to the petitioner and other chak holders of village Pur, Pargana Sikanderpur East, District Ballia, within six months, by order

dated 23.9.2013. In which Ram Pravesh Verma has filed an application for recall of the order dated 23.9.2013. Writ B No. 11418 of 2014 has been filed for quashing the orders of Deputy Director of Consolidation, Ballia, dated 26.5.1999 approving the reference for reserving 106.59 acre land of village Pur for Sport College Society, Gudamma, Lucknow and 1.2.2014 of District Deputy Director of Consolidation, Ballia, rejecting the representation/recall application against the aforesaid order. Common questions of law and facts are involved in these writ petitions as such these writ petitions are consolidated and heard together and are decided by a common judgment.

2. Village Pur, Pargana Sikanderpur East, District Ballia, was placed under consolidation operation by notification u/s 4 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act) dated 27.4.1983. The village was notified u/s 9 of the Act on 27.11.1987 and u/s 20 of the Act on 29.6.1999. Provisional Consolidation Scheme of the village was confirmed on 31.3.2011. It has been stated that village Pur is a very big village and is divided into 31 hamlets. For the purposes of the consolidation it has been divided into three "units" i.e. Pur East, Pur Central and Pur West. There were total 23347 plots having total area 5643 acre, recorded in 4846 khatahs. In consolidation total number of chak holders are 5211.

3. State of U.P. requisitioned for 100 acres land through letter dated 4.7.1987 for the purposes of establishing Agriculture Research Centre. The consolidation authorities made provision for 98.57 acre land at Pur Central for Agriculture Research Centre but due to delay in framing Provisional Consolidation Scheme, the plan of establishing Agriculture Research Centre was shifted to some other place. State of U.P. again requisitioned 100 acre land through letter dated 10.5.1999 for the purposes of establishing Sport College. In pursuance of the aforesaid letter. District Deputy Director of Consolidation, Ballia wrote a letter to Deputy Director of Consolidation for reserving 100 acre land of Gaon Sabha Pur. Which was forwarded to Settlement Officer Consolidation. In pursuance thereof, a reference i.e. Reference No. 2080, was prepared by which 98.57 acre land which was earlier reserved for establishing Agriculture Research Centre together with 8.02 acre bachat land (total 106.59 acre of valuation of Rs. 2385.10) was reserved for establishing Sport College at Pur Central, which was approved by Deputy Director of Consolidation, Ballia, by order dated 26.5.1999. It may be mentioned that in Pur East Unit, total land of the valuation of Rs. 984.80 was reserved for different public purposes, in Pur Central Unit, total land of the valuation of Rs. 3486.20 (including the land of the valuation of Rs. 2385.10 for Sport College) was reserved for different public purposes and in Pur West, total land of the valuation of Rs. 406.00 was reserved for different public purposes as mentioned in the report of Deputy Director of Consolidation, dated 10.7.2003.

4. One Baljeet Kushwaha, District President of Bahujan Samaj Party, Ballia made a complaint to State Government against reservation of land for Sport College, in village. Similar applications were made by several other villagers to Deputy

Director of Consolidation and District Magistrate. On which an inquiry was conducted by Assistant Settlement Officer Consolidation, who submitted his report, which was forwarded by Deputy Director of Consolidation on 10.7.2003. Thereafter State Government, by letter dated 13.10.2003 called for comments of District Magistrate, Ballia. In the meantime Brahmdeo, the petitioner in Writ-B No. 11418 of 2014, filed a representation to District Magistrate for cancelling the reservation of land for Sport College. Thereafter, he filed Writ (PIL) No. 18263 of 2004, which was disposed of by order dated 11.5.2004, directing District Magistrate, Ballia to decide the representation of Brahmdeo within four months. It appears that due to query made by State Government as well as direction issued by this Court to District Magistrate to decide the representation of Brahmdeo, District Magistrate formed a joint committee of under the Chairmanship of Additional District Magistrate, Ballia, who after due publication to the villagers fixed a date for hearing the various complaints in the village and after hearing the villagers and examining the records submitted a detail report dated 12.6.2012 to District Magistrate.

5. In the meantime application for recall of the order dated 26.5.1999 was filed before Deputy Director of Consolidation, who by order dated 20.1.2005, recalled the order dated 26.5.1999, on the ground that Agriculture Research Centre was not heard before passing the order. Order dated 20.1.2005 was again recalled by order dated 30.8.2005. Again a recall application was filed, which was allowed by order dated 28.5.2011 and order dated 30.8.2005 was recalled. Then again a recall application was filed, which was allowed by order dated 4.9.2013. Brahmdeo filed Writ B No. 59606 of 2013 against the order dated 4.9.2013, in which inter-alia a ground was raised that although this Court by order dated 11.5.2004 directed District Magistrate to decide the representation of the petitioner but it was decided by Deputy Director of Consolidation. This Court by order dated 29.10.2013 disposed of the writ petition and directed District Magistrate, Ballia to decide the representation of the petitioner. Additional District Magistrate, in his report dated 12.6.2012, has mentioned that total 1565 chak appeals were filed in the village, which have been finally decided. 374 chak appeals, which were filed after expiry of limitation were pending. 66.60 acre of Gaon Sabha land, in which land of tank, bhita, abadi and banjar were included in the chaks of various chak holders, which were liable to be corrected. Possession over confirmed chaks would be delivered after correction of the aforementioned irregularities.

6. District Magistrate, Ballia after hearing the parties, by order dated 1.2.2014 held that at the time of preparation of Statement of Principle, the land has been reserved for public purposes with the consultation of Consolidation Committee. Allegation that all the land which was made available by contribution of the tenure holder has been reserved for Sport College was not correct. Allegation that grave illegalities had been committed while determination of valuation of different plots was also incorrect. The tenure holders have remedy to file their objection against determination of valuation of their original holdings as well as

the land allotted in their chaks. The chak appeals, which were filed within limitation had already been decided. If any irregularity is found then it can be corrected under provisions of the Act. The land which was reserved for Sport College is the gaon sabha land does not affect right of any individual. On these findings representation of Brahmdeo has been rejected.

7. The Counsel for Brahmdeo and Ram Pravesh Verma submitted that Consolidation Officer by order dated 24.6.2006 found that Provisional Consolidation Scheme as framed contained several illegalities, namely double area of 3330 plots were proposed in different chaks, 5288 plots were left as bachat land, 127 chak holders were allotted less valuation of land than the valuation of their original holdings, 133 chak holders were allotted excess valuation than the valuation of their original holdings, 26 tenure holders were not allotted chaks, 66.60 acre of Gaon Sabha land of tank, bhita, abadi and banjar were included in the chaks of various persons, CH Form-2-A, CH Form-5, CH Form-11 and CH Form-23 were not distributed to all the tenure holders. The Consolidation Officer cancelled the Provisional Consolidation Scheme but thereafter no fresh Provisional Consolidation Scheme was framed with the consultation of members of Consolidation Committee. Village Pur is a very big village and is divided into 31 hamlets and three Units. Earlier Assistant Consolidation Officer took more than 5 years in framing Provisional Consolidation Scheme and it was not possible to Consolidation Officer to re-frame it, then and there. All the tenure holders residing in different hamlets contributed their land for public purpose however entire land for public purpose is being located in Pur Central and major portion of it has been allotted to the Sport College at the cost of other the tenure holder without giving any compensation and sacrificing public purposes. Additional Collector himself, in his report dated 12.6.2012 recommended to remove irregularity in allotment of land of tank, bhita and abadi etc. before delivery of possession but nothing was done thereafter and District Magistrate has illegally rejected the representation of the petitioner and directed for delivery of possession, which is liable to be set aside. The order of this Court dated 23.9.2013, in Writ B No. 52005 of 2013 has been secured on concealment of material facts and is liable to be recalled.

8. I have considered the arguments of the Counsel for the parties and examined the record. Entire arguments was built up on the basis of order of Consolidation Officer dated 24.6.2006 and report of Additional District Magistrate dated 12.6.2012. The Consolidation Officer, while deciding about 2000 chak objections of the village found that (1) double area of the same plots had been proposed in 3330 chaks and in 5288 plots bachat land was found. (2) 127 chak holders were allotted less valuation of land than the valuation of their original holdings and 133 chak holders were allotted excess valuation than the valuation of their original holdings. (3) 26 tenure holders were not allotted chaks. (4) In 200 plots double area has been recorded in the original holding. (5) In Pur East Unit, boundaries of the chaks were not clear and several chaks were uran. (6) CH Form-2-A, CH Form-5, CH Form-11 and CH Form-23 were not distributed to all

the tenure holders and (7) 66.60 acre of Gaon Sabha land of tank, bhita, abadi and banjar were included in the chaks of various persons. The Consolidation Officer re-framed the entire Provisional Consolidation Scheme of the village removing aforementioned discrepancies in exercise of powers u/s 21(4)(i) of the Act by the order dated 24.6.2006 and directed the subordinate authorities to issue corrected extracts to the chak holders of the village. Additional District Magistrate, in his report dated 12.6.2012, found that corrected extracts have been issued to the tenure holders. Thus the illegalities in framing Provisional Consolidation Scheme has been removed. Before Consolidation Officer about 2000 chak objections were filed and decided. Total 1565 chak appeals, which were filed within time were decided and only 374 chak appeals which were filed after expiry of the limitation were pending in the village.

9. Additional District Magistrate, in his report found that (1) Corrected extracts of consolidation records have been issued to the tenure holders in compliance of the order of Consolidation Officer dated 24.6.2006. (2) The chak holders are dividing chaks at their own level. (3) Allegation that chak disputes be decided comparing settlement map and corrected map was baseless. (4) If area of any plot is not found to be correct in survey and not tally with its area as recorded in settlement records, the chak holders have remedy to file an objection in this respect. (5) 30% chak holders have raised construction without taking permission of Settlement Officer Consolidation over their chaks/original holdings. (6) 374 chak appeals, which were filed after expiry of limitation were pendings. (7) Out of total 212.66 acre banjar land, 51.82 acre has been allotted to landless persons, 15.65 acre was found double entries or recorded as rasta and abadi and 145.20 acre land was recorded as banjar land and 60.00 acre has been taken for different public purposes i.e. sector road, chak road, road, primary schools, pig house, flaying site, for bharbhuj, holika, play grounds, grave yards, washer man and other public utility land. It has been further found that an area of 2.91 acre of tank land, 5.08 acre bhita land and 3.12-1/2 acre abadi land was taken after determining its valuation.

10. From perusal of the report of Additional District Magistrate dated 12.6.2012 it is clear that out of 60.60 acre land, which has been taken from tank, bhita, abadi and banjar the area of land of 2.91 acre of tank land, 5.08 acre bhita land and 3.12-1/2 acre abadi. It is also clear that other public utility land has been reserved. Land for Sport College has been located at Pur Central while in Pur East Unit, total land of the valuation of Rs. 984.80 was reserved for different public purposes, in Pur Central Unit, total land of the valuation of Rs. 3486.20 (including the land of the valuation of Rs. 2385.10 for Sport College) was reserved for different public purposes and in Pur West, total land of the valuation of Rs. 406.00 was reserved for different public purposes as mentioned in the report of Deputy Director of Consolidation, dated 10.7.2003. Thus the allegation that entire public utility land of the village has been centralized in Pur Central is not correct.

11. So far as the arguments that the consolidation authorities have no jurisdiction to include the land of tank, bhita, abadi and banjar in consolidation area is concerned, relevant provisions in this respect is quoted below:--

Section 19A. Preparation of Provisional Consolidation Scheme by Assistant Consolidation Officer.--(1) The Assistant Consolidation Officer shall in consultation with the Consolidation Committee, prepare in the form prescribed a Provisional Consolidation Scheme for the unit.

(2) Notwithstanding anything contained in this Act, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or in any other law for the time being in force, it shall be lawful for the Assistant Consolidation Officer, where in his opinion it is necessary or expedient so to do, to allot a tenure-holder, after determination of its valuation, any land belonging to State Government or any land vested in the Gaon Sabha, or any local authority, as a result of notification issued u/s 117 or 117-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950:

Provided that where any such land is used for a public purpose it shall be allotted only after the Assistant Consolidation Officer has declared in writing that it is proposed to transfer the rights of the public as well as of all individuals in or over that land to any other land specified in the declaration and earmarked for that purpose in the Provisional Consolidation Scheme.

12. This Court in Prem Singh Vs. District Magistrate/District Deputy Director of Consolidation and Others, , Fateh Singh Vs. Deputy Director of Consolidation and Others, Shiv Mangal Singh Vs. Deputy Director of Consolidation and Others, and Munendra Viswas v. State of U.P. and others 2009 (108) RD 549 held that State land or Gaon Sabha land or any public utility land can be included in consolidation area after determining its valuation. Provisions of section 19-A(2) of the Act has overriding effect. Suppose a sector road has to be carved out through talab land then consolidation authorities have been specifically authorized to do so after determination of its valuation.

13. Thus only for the reason that some land of tank, bhita, abadi and ban-jar has been included in Provisional Consolidation Scheme, Provisional Consolidation Scheme does not suffer from inherent illegality nor on its ground demarcation of chak and delivery of possession can be stayed. District Magistrate, in his order dated 1.2.2014 specifically saved the individual right if affected from any illegality to challenge in regular proceedings under the Act. In view of the aforesaid discussions, Writ B. No. 26385 of 2012 succeeds and is allowed. The consolidation authorities are directed to insure demarcation and deliver possession over confirmed chak to the petitioner and other chak holders of village Pur, Pargana Sikanderpur East, district Ballia, within time allowed by order dated 23.9.2013 passed in being Writ B No. 52005 of 2013. The application filed for recall of the order dated 23.9.2013 in Writ B No. 52005 of 2013 is rejected. Writ B No. 11418 of 2014 has no merit and is dismissed.

Writ Petition No. 26385/12 Allowed.

W.P. No. 11418/14 Dismissed.

Recall Application Rejected.