
(1996) 10 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 15532 & 19061 of 1985
connected with C.M.W.P. No. 32270 of 1994

Brij Pal Singh

APPELLANT

Vs

Assistant Director, Consolidation Mathura Camp at Saharanpur
and Others

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 19(1)(f)

Citation : (1996) 10 AHC CK 0067

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—Feeling aggrieved by the order passed by the Assistant Director, Consolidation in the proceedings relating to the allotment of chaks whereunder the chaks aligned to the petitioner and his brother Dhoom Singh, the respondent No. 4 and that of the petitioner in Civil Misc. Writ Petition No. 19061 of 1985 had been affected, Brij Pal Singh has filed Civil Misc. Writ Petition No. 15532 of 1985, an Daya Ram has filed Civil Misc. Writ Petition No. 19061 of 1985.

2. During the pendency of Civil Misc. Writ Petition No. 15532 of 1985, the interim order granted in that case was modified which led to fresh proceedings giving rise to the writ petition No. 32270 of 1994 filed by Dhoom Singh which is directed against an order passed by the Deputy Director of Consolidation dated 25/8/1994 directing that the parties shall maintain status quo in respect of possession till the final disposal of Civil Misc. Writ Petition No. 15532 of 1985.

3. I have heard the learned Counsel for the parties and have perused the record.

4. During the course of hearing, the Counsel for the respondents had produced the C.H. Form 5 issued by the Consolidation authorities in respect of the original holdings of Brijpal Singh and Dhoom Singh which showed that they were cotenureholders having 1/6th share therein. A certified copy of the chak map showing the demarcation of the chaks allotted to Brijpal Singh, Dhoom Singh and

Daya Ram under the orders of the Settlement Officers, Consolidation as modified vide the order passed by the Deputy Director of Consolidation was also produced. The petitioner and Dhoom Singh as noticed by the Settlement Officer, Consolidation do not fall in the category of small tenureholders considering the extent of their holdings. However, Daya Ram does fall in that category. The demarcation of the chaks as ordered by the Deputy Director of Consolidation shows that so far as the chaks in dispute are concerned they are compact.

5. Learned Counsel for the petitioner, Brijpal Singh has strenuously urged that the impugned allotment is vitiated as the Deputy Director of Consolidation has not taken into consideration his private source of irrigation, while altering the chak. The contention is that this petitioner was deprived of the benefit envisaged under Section 19(l)(f) of the U.P. Consolidation of Holdings Act which requires that every tenureholder is as far as possible, allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in the vicinity equal to the valuation of the plot originally held by him there.

6. Learned Counsel for the contesting respondent has, however, urged that the aforesaid provision had been taken into account and its benefit duly provided to the petitioner as the second chak allotted to him satisfies the requirements of the law.

7. A perusal of the certified copy of the chak map clearly indicates that the petitioner Brijpal Singh has in fact been allotted a second chak which is near Abadi and taking into consideration the private source of irrigation, the extent of interest of the petitioner in the holdings, the provisions relied upon cannot be deemed to have been ignored. The contention of the petitioner in this regard has no substance and deserves to be rejected.

8. Learned Counsel for the petitioner has further contended that the petitioners as well as Dhoom Singh were real brothers and in this view of the matter both were entitled to have atleast one chak towards the west of Abadi as proposed by the Consolidation Officer. What has been urged is that the allotment of a single chak in Goend land amounted to providing undue gain to Dhoom Singh, the respondent No. 4 and has resulted in a loss to the petitioner which was quite unfair and unjust. It has also been contended that in fact the Deputy Director of Consolidation should not have taken into consideration the nearness of the holding in question to the Abadi of the village which was an irrelevant consideration so far as the allotment of chak was concerned. The learned Counsel for the petitioner has further urged that the petitioner should not have been deprived of his original holdings at plot Nos. 301,302etc.

9. Learned Counsel for the respondent has, however, asserted that the adjustment made by the Deputy Director of Consolidation is quite fair and the error committed by the Consolidation Officer in providing two chaks to the petitioner and Dhoom Singh at plot Nos. 280, 281, 288 etc. and at plot numbers 348, 349 etc. has been rightly rectified by the Deputy Director of Consolidation

by providing compact single chak. It has further been urged that the Deputy Director of Consolidation has taken into account the fact that both the cotenureholders are provided compact chaks at two places where their original holdings stood. The assertion is that the requirements contemplated under Section 19 of the U.P. Consolidation of Holdings Act stand duly satisfied and no justifiable ground has been made out for any interference by this Court in the impugned adjustment in the present proceeding.

10. Considering the facts and circumstances brought on record and noticed by the Deputy Director of Consolidation, it seems to me that the conclusion reached by the Deputy Director of Consolidation in regard to the impugned alterations cannot be held to be vitiated in law so as to warrant an interference by this Court in the present proceedings.

11. So far as writ petition of Daya Ram is concerned, the Deputy Director of Consolidation has observed that the chak allotted to him was an elongated one making its cultivation difficult. The adjustments made under the impugned order rectifies the defect. Daya Ram, the petitioner in Civil Misc. Writ Petition No. 19061 of 1985 has, however, urged that the impugned order has the effect of reducing the area of the petitioner's original land by more than 25% which is contrary to the provisions contained in section 19 of the U.P. Consolidation of Holdings Act. From the adjustment chart appended with the order of the Deputy Director of Consolidation, it is apparent that the total area initially allotted to Daya Ram was 2 Bigha 17 Biswas and 16 Biswansis having a valuation of 149.020. Under the impugned adjustments, the total area allotted to him is reduced to 1 Bigha 14 Biswas 10 Biswansi having a valuation of 149.020. The basis of this reduction in area has resulted on account of better quality of land having been allotted* to him. This petitioner has his original holdings having valuation ranging between 10 paise, 20 paise, 30 paise and 50 paise. But now he has been allotted the land which is valued at 100 paise also.

12. Learned Counsel for the petitioner has relied upon the provisions contained in Section 19(I)(b) of the U.P. Consolidation of Holdings Act which provisions that except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure holder shall not differ from the area of his original holding or holdings by more than 25% of the latter.

13. In the case of *Shri Nath v. Deputy Director of Consolidation and others*, 1986 Afif 941, this Court while considering the provisions of Section 19(I)(b) of the Act had indicated that where the Director of Consolidation or the Deputy Director of Consolidation who exercises the delegated powers of the Director of Consolidation under the Act, has made allotment of such a chak to a tenureholder having a difference of more than 25% in area it would not be invalid because the permission for such allotment would be inherently manifest therein. It was pointed out that the authority which is required to give permission to an allotment of chak having a difference in area by more than 25%, itself makes the allotment of such a Chak in the process of making appropriate

adjustment in Chaks of the parties while deciding a revision, it cannot be taken to be invalid and without jurisdiction and no interference would be called for by this Court in exercise of writ jurisdiction.

14. The aforesaid observations made by the Division Bench in its decision in the case of Mahadeva Singh v. Deputy Director of Consolidation & others, Civil Misc. Writ Petition No. 131 of 1986, decided on 2581981. The order of the Division Bench however, observed that aggrieved party can show that neither the Deputy Director of Consolidation has, applied his mind on the facts or the reasonings given by him are either perverse or based on no evidence.

15. In the present case, the Deputy Director of Consolidation has given cogent reasons for the alteration of the chak arid considering the reasons and the effect of alteration in the chak of Daya Ram, the impugned alteration cannot be said to be vitiated in law as claimed.

16. In view of my aforesaid conclusions, I find no justification for any interference in the impugned adjustment in the chaks, while exercising" the extraordinary jurisdiction envisaged under Article 226qf the Constitution of India.

17.The Civil Misc. Writ Petition No. 19061 of 1985 and Civil Misc. Writ Petition No. 15532 of 1985 are accordingly dismissed.

18. Since the writ petition of Brijpal Singh has been dismissed, the other writ petition filed by him is also dismissed.

19. However, the parties are directed to bear their own cost. Petition dismissed.