

(2017) 04 AHC CK 0128
In the Allahabad High Court
Case No : 874 of 2004

Buddhu

APPELLANT

Vs

Deputy Director Of Consolidation (Administration) & Anr

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Uttar Pradesh Consolidation of Holdings Act, 1953, Section 21(2)

Citation : (2017) 04 AHC CK 0128

Hon'ble Judges : Devendra Kumar Upadhyaya

Bench : Single Bench

Advocate : B.B Singh, Atiya Abid, Mohd. Abid Ali, Nishant Srivastava, Prashant Sinah Atal

Judgement

1. Heard Sri Mohd. Abid Ali, learned counsel for the petitioner and Sri Prashant Singh "Atal", learned counsel representing the respondent No.2.
2. This petition filed under Article 226 of the Constitution of India seeks to challenge the order dated 12.10.2004, passed by the Deputy Director of Consolidation, Sultanpur whereby revision petition filed by the respondent No.2 against the order dated 06.08.2004, passed by the Settlement Officer Consolidation in an appeal preferred by the respondent No.2 against the order of Consolidation Officer dated 29.10.2001 has been allowed and accordingly the chaks allotted to the petitioner as also to the respondent No.2 have been altered.
3. The Assistant Consolidation Officer had proposed two chaks to the respondent No.2. One chak proposed by the Assistant Consolidation Officer comprised of Gata No.3029 and Gata No. 3034 whereas second chak comprised of Gata No. 3048. The original holding of respondent No.2-Ram Dhani comprised of Gata No. 3168 and Gata No. 3029. Against the proposed allotment of two chaks, respondent No.2 filed objection before the Consolidation Officer, who allowed the

same by passing the order dated 29.10.2001. Perusal of the said order dated 29.10.2001, passed by the Consolidation Officer, Kadipur, Sultanpur reveals that respondent No.2 wanted both his chaks on his original holding i.e. Gata No. 3029/2. The Consolidation Officer accordingly acceded to the demand of respondent No.2 and allowed his objection by passing the order dated 29.10.2001. As per amendment chart annexed with the said order dated 29.10.2001, respondent No.2 was, thus, allotted a single chak in place of two chaks as proposed to him by the Assistant Consolidation Officer and thus, a solitary chak was allotted by the Consolidation Officer to the respondent No.2 comprising of Gata No. 3029M and Gata No. 3034M. Admittedly some portion of Gata No. 3029 was the original holding of respondent No.2 and in terms of the demand raised before the Consolidation Officer, his two chaks as proposed by the Assistant Consolidation Officer were abolished and in their place he was allotted a single chak comprising of his original holding i.e. Gata No. 3029.

4. It appears that being satisfied with the order passed by the Consolidation Officer, respondent No.2 did not raise any objection against the order passed by the Consolidation Officer for a substantial period, however, he filed an appeal under Section 21(2) of the U.P. Consolidation of Holdings Act before the Settlement Officer Consolidation on 05.08.2003 against the order passed by the Consolidation Officer dated 29.10.2001. The memorandum of appeal preferred by the respondent No.2 is on record wherein he stated that his house is situated on Gata No. 3165 and adjoining the said house situates Gata No. 3168 which is his original holding and as such Settlement Officer Consolidation ought to have proposed or allotted a chak to the petitioner near his house comprising of Gata No. 3168. The Settlement Officer Consolidation considered the aforesaid plea of respondent No.2 and dismissed the appeal by passing the order dated 06.08.2004 wherein a finding has been given that respondent No.2 was allotted only one chak which comprised of largest original holding of respondent No.2, namely, Gata No. 3029. In respect of Gata No. 3165, it was also noticed by the Settlement Officer, Consolidation that said Gata is not the original holding of respondent No.2; rather it is the original holding of chak holder No. 327. The Settlement Officer, Consolidation has, thus, dismissed the appeal primarily on the ground that Gata No.3165 is not the original holding of respondent No.2; rather it is the original holding of chak holder No. 327 and accordingly, chak holder No. 327 has rightly been allocated a chak comprising of Gata No. 3165.

5. Another factor which weighed in the mind of the Settlement Officer, Consolidation, Sultanpur while dismissing the appeal preferred by the respondent No.2 against the order of Consolidation Officer was that he was rightly allotted a solitary chak which comprised of the largest original holding of respondent No.2 by the Consolidation Officer.

6. The Deputy Director of Consolidation, however, while passing the impugned order has allowed the revision petition and has, thus, altered the chak allotted to the petitioner as also to the respondent No.2. According to the amendment chart

appended to the said order dated 12.10.2004, passed by the Deputy Director of Consolidation, respondent No.2 has been allotted a chak on Gata No.3168 which will affect the allotment of chak to the petitioner who is chak holder No. 384. The chak carved out on Gata No. 3029 in favour of respondent No.2 has, thus, been abolished.

7. It is not in dispute that initially the Assistant Consolidation Officer had proposed two chaks to the respondent No.2, however, on his demand raised before the Consolidation Officer both the chaks were abolished and in their place a solitary chak was given to the respondent No.2 i.e. Gata No. 3029. The chak to respondent No.2 was, thus, allocated according to his demand and thereafter, respondent No.2 appears to have changed his stand and accordingly filed a revision petition raising his grievance that he ought to have been allocated the chak comprising of Gata No. 3168 which is adjacent to Gata No. 3165, on which he is said to have constructed a house. The Settlement Officer, Consolidation has given categorical finding that Gata No. 3165 is not the original holding of respondent No.2 and the said finding has not been upset by the Deputy Director of Consolidation while passing the order dated 12.10.2004. He has only stated that it is said that in Gata No. 3165 there exists "Abadi" of respondent No.2. Further the learned Deputy Director of Consolidation while passing the impugned order has completely failed to appreciate that Consolidation Officer had allocated a solitary chak on the demand made by respondent No.2 and also on his largest original holding. It is also relevant that except for stating that respondent No.2 ought to have been allotted chak near his "Abadi"(though finding recorded by the Settlement Officer, Consolidation is that Gata No. 3165 is not the original holding of respondent No.2), the learned Deputy Director of Consolidation has found it appropriate to allot the chak to the respondent No.2 on Gata No. 3168. No other reason has been assigned for dis-agreeing with the order passed by the Settlement Officer, Consolidation as also by the Consolidation Officer.

8. From a perusal of the impugned order and other records available herein, I am unable to agree with the reason assigned by the Deputy Director of Consolidation while passing the impugned order. Admittedly, Gata No. 3029 is a largest original holding of respondent No.2 and the Consolidation Officer had abolished the two chaks proposed to him by the Assistant Consolidation Officer and in their place, had allocated him a solitary chak comprising of his original holding, namely, Gata No. 3029. Respondent No.2 has not been able to establish that Gata No. 3165 is his original holding, whereas finding recorded by the Settlement Officer, Consolidation is to the effect that Gata No. 3165 is not his original holding.

9. The learned Deputy Director of Consolidation had, thus, proceeded only on presumption that respondent No.2 has constructed a house on Gata No. 3165. For the reason disclosed above, I am unable to agree with the impugned order passed by the Deputy Director of Consolidation, Sultanpur.

10. The writ petition is, thus, allowed. The impugned order dated 12.10.2004, passed by the Deputy Director of Consolidation, Sultanpur, so far as it relates to

the revision petition No. 386, Ram Dhani Vs. Buddhu and others pertaining to land situate in Village Bangawan Deeh, Pargana Aldemau, Tehsil Kadipur, District Sultanpur, is hereby quashed. The authorities are directed to proceed to demarcate the chak on the spot and put in possession the parties concerned in accordance with the order passed by the Consolidation Officer on 29.10.2001 as affirmed by the order passed by the Settlement Officer, Consolidation on 06.08.2004. There will be no order as to costs.