
(1995) 11 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 12385 of 1988

Chhidda and Others

APPELLANT

Vs

Assistant Director of Consolidation and Others

RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 21(4), 44A

Citation : (1995) 11 AHC CK 0014

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant;

Judgement

Binod Kumar Roy, J.—The Petitioners, who are members of the Consolidation Committee of Village Tarkwalia Sahebganj, pray to quash the orders dated 27-10-1987 passed by the Assistant Director of Consolidation, Deoria (Respondent No. 1) in Revision Nos. 84. 1014. 1086. 1090. 1100, 1103. 1104, 1151. 1152 and 1256 (as contained In Annexure-2) and the order dated 12.3.1988 passed by Assistant Director of Consolidation. Deoria in Restoration Application No. 333 (as contained in Annexure-4).

2. The learned Counsel appearing on behalf of the Petitioners contended as follows: (1) Respondent No. 1 has committed an apparent error of law in rejecting the prayer for re-hearing of the revision cases through Restoration Application No. 333 inasmuch as a grievance was made on behalf of the Petitioners that local inspection by Respondent No. 1 was made behind their back and 95% of the chak holders, besides Respondent No. 1 never gave any opportunity of hearing indicating that he intends to nullify the entire scheme and thereby the order dated 12.10.1987 was passed violating the principles of natural justice. In support of his contention aforementioned, the learned Counsel took me to the record including Paragraphs 21, 24, 25 and 26 of the writ petition. (ii) The impugned order was passed by the Respondent No. 1 at the direction issued by the Joint Director of Consolidation from Headquarter at

Lucknow.

3. Sri K. Ajit, the learned Counsel appearing on behalf of Respondent Nos. 4 to 13, on the other hand, contended as follows: (i) Since the petition of recall was not filed by Petitioner No. 4 Mitthu and accordingly he cannot make a grievance before this Court that his petition has been rejected. The writ petition in so far as it relates to him is not maintainable, (ii) local inspection was made by Respondent No. 1 after due notice to all concerned. The records, which have been produced, show that the Petitioner No. 1 (who has wrongly described himself as Chhidda S/o Lai Chand is really Chhatthu), Petitioner No. 2 Briksha Prasad, Petitioner No. 3 Chokar Prasad and Petitioner No. 5 Ram Prasad Gupta all had received general notice on 10.10.1987 whereas the local inspection was also made on 12.10.1987 by Respondent No. 1 and not on 22.10.1987 as claimed by the learned Counsel for the Petitioners, (iii) the claim of the Petitioners that the impugned order was passed at the behest and at the dictates of Joint Director of Consolidation from Headquarter at Lucknow is incorrect. The relevant statement made in Paragraph 24 of the writ petition in which the Petitioners have alleged that they have come to know of this fact is not supported by the affidavit accompanied with the writ petition, which has been sworn by Petitioner No. 5 Ram Prasad Gupta, who has stated, inter alia, in his affidavit that the contents of paragraph 24 are true to his personal knowledge. Since the Petitioners have not disclosed as to from whom they have come to know of the fact alleged by them, this grievance should be discarded on the very face of it.

4. Sri P.R. Maurya, the learned standing counsel appearing on behalf of Respondent Nos. 1 to 3 adopts the argument made by Sri K. Ajit.

5. The learned Counsel for the Petitioner in reply contended as follows: (i) The records which contain the general and individual notices do not indicate that the revlsional authority ever communicated that he intended to nullify the entire consolidation scheme and on this ground alone the impugned orders are liable to be quashed. (ii) It Is true that Petitioner No. 4 Mitthu was not impleaded as a party to the recall petition but he was also not impleaded as party to any of the ten revisions nor was he noticed, yet the entire consolidation scheme has been nullified which shows that the lands allotted in his chaks have been altered without issuance of any notice and giving of any opportunity of being heard and accordingly the impugned orders are liable to be set aside.

6. Section 21(4)(ii) of the Consolidation Act runs as follows:

If, during the course of the disposal of an objection or the hearing of an appeal. Consolidation Officer or the Settlement Officer, Consolidation, as the case may be, is of the opinion that material injustice is likely to be caused to a number of tenure holders in giving effect to the Provisional Consolidation Scheme as prepared by the Assistant Consolidation Officer, or as subsequently modified by the Consolidation Officer, as the case may be, and that a fair and proper allotment of land to the tenure holders of the unit is not possible without revising

the Provisional Consolidation Scheme, or getting a fresh one prepared, it shall be lawful for reasons to be recorded in writing for.

(ii) the Settlement Officer, Consolidation, to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenure holders concerned or to remand the same to the Assistant Consolidation Officer, or the Consolidation Officer, as the Settlement Officer, Consolidation, may think fit, with such direction as he may consider necessary.

(Emphasis supplied)

Section 44A of the Consolidation Act runs as under:

44A, Powers of subordinate authority to be exercised by a superior authority.-- Where powers are to be exercised or duties to be performed by any authority under this Act or the rules made thereunder, such powers or duties may also be exercised or performed by any authority superior to it.

From a bare perusal of the aforesaid provisions, it is clear that if the authority concerned is of the opinion that material injustice is likely to be caused to a number of tenure holders in giving effect to the provisional consolidation scheme, it can be altered after giving opportunity of being heard to the tenure holder concerned.

7. Neither the impugned orders nor does the record show that before deciding to nullify the chak allotment scheme, the revisional authority ever gave notice either to the members of the consolidation committee or to the individual land holders. The re-initiation of chak allotment proceeding is bound to prejudice the Petitioners, who are land holders to whom chaks were allotted earlier and this fact was not fairly disputed during arguments. On this ground alone thus the impugned orders, as contained in Annexures-2 and 4, both are liable to be quashed.

8. In view of my findings recorded above, I need not discuss the second submission made by the learned Counsel.

9. In the result, this writ petition succeeds, the impugned orders are quashed and the revisions are remitted to the court of Respondent No. 1, who or his successor is directed to decide the revisions in accordance with law. In the peculiar facts and circumstances, however, I make no order in relation to cost.

10. This Judgment, however, shall not be interpreted to mean that if situation demands that the entire chak scheme should be revised, in that event it will be open for the authority concerned to do so but only in accordance with law.

11. Let a writ of certiorari issue accordingly.