

(2014) 09 AHC CK 0340
In the Allahabad High Court
Case No : Writ-B No. 2597 of 1978

Deonath

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (2014) 125 RD 337

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Namwar Singh, Advocate for the Appellant; P.B. Salamat, S.C,
Advocate for the Respondent

Judgement

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Anjani Kumar Mishra, J.—I have heard Sri Namwar Singh, learned Counsel for the petitioner and learned Standing Counsel for the State-respondents. None has put in appearance on behalf of contesting respondents. The petition arising out of an objection under section 20 of the U.P. Consolidation of Holdings Act and is directed against the order dated 26.11.1977 passed by the Deputy Director of Consolidation, the order dated 27.8.1976 passed by the Settlement Officer, Consolidation and the order dated 30.4.1976 passed by the Consolidation Officer, Varanasi.

2. It may be recorded that the order passed by the Consolidation Officer has not been annexed to the writ petition and, therefore, no relief can be granted in so far as the order dated 30.4.1976 is concerned.

3. Learned Counsel for the, petitioner submitted that plot No. 319 which is situated in front of his house was initially chak out but subsequently the same was valued and included in consolidation operations. This order valuing plot No. 319 was passed by another A.C.O. and it was an ex-parte order. He submits that this plot could not have been valued. In any case, since this plot was situated in

front of his house it should have been allotted in his chak. The plot was valued without any notice or information to the petitioner.

4. It is secondly submitted that petitioner has been allotted four chaks. No reason has been assigned for the same and, therefore, such allotment is patently illegal. A person can only be allotted four chaks with the permission of the Deputy Director of Consolidation in writing and in case such an allotment is made by the Deputy Director of Consolidation himself, the order in this regard should indicate cogent reasons for the allotment of four chaks.

5. A perusal of the objection filed by the petitioner, copy whereof has been filed as Annexure-8 to the writ petition indicates that basically three grievances were raised by the petitioner in the said objection. The first objection was regarding plot No. 319, an area of 0.16 whereof was chak out was discovered on distribution of C.H. Form 23 that this 16 decimal had been valued, including in consolidation proceedings and had been allotted by the contesting respondents. He has assailed such valuation on the ground that his Naad, Charni and Mandvi etc. exist on this 16 decimal area of plot No. 319.

6. Second grievance was that plot No. 184 had an area of 1.50 decimal but in C.H. Form 23 its area was shown to be less by 3 decimal. The third grievance was that 5 decimal of this plot which had been valued, be also excluded from consolidation operations and be also declared as chak out.

7. It is further set out that the order of the Appellate Court contains only the correction table, which was signed by the Settlement Officer, Consolidation. The said appellate authority is stated to have died before he could assign the reasons for the correction table and, therefore, the correction has been treated to be the appellate order.

8. The revision filed by the petitioner has been dismissed by the Deputy Director of Consolidation and hence the said writ petition.

9. As far as the submission of learned Counsel for the petitioner regarding plot No. 319 is concerned, it is clear from a perusal of the writ petition as also the objection that the petitioner does not claim title over plot No. 319. His case, at best is one of user only. Merely because the petitioner was using a portion of this plot for house hold purposes, as alleged by him, the same does not give him any right to claim that this plot should be declared as chak out and for the same reason, he cannot claim that such area should have necessarily been included in his chak. It may also be noted that in fact plot No. 184 which contains the abadi of the petitioner, has been left chak out, in almost its entirety.

10. In so far as the contention regarding the valuation of 16 decimal of plot No. 319 is concerned, the Deputy Director of Consolidation has recorded that merely because this plot was valued and included in consolidation operations subsequently, but since the A.C.O. who valued this plot had signed the order at several places, the same cannot be held to be illegal till such time it is shown

that such alteration was made to grant undue benefit to some person. I find no illegality in this reasoning and approach of the Deputy Director of Consolidation and for this reason the first submission of learned Counsel for the petitioner is repelled.

11. In support of his contention that plot No. 319 should have been included in his chak as it was situated in front of his house, learned Counsel for the petitioner has relied upon the case *Doodh Nath v. Deputy Director of Consolidation and others* 1988 R.D. 213. It has been held in this judgment that a tenure holder is entitled to get so much land near the village Abadi which he originally "held" at that place. The crucial word in this regard is "held". The word "held" will necessarily connote land belonging to the tenure holder. There is no averment in the writ petition that the petitioner was the owner of plot No. 319. His case is that of mere user and in such circumstances, his status would be nothing beyond that of a trespasser and the land was not held by him and in such circumstances, the authority cited does not help the petitioner.

12. As regards the submission that the petitioner has been allotted four chaks, it would be relevant to record that the petitioner claims to have allotted four chaks because it is his specific case that two of his chaks are separated by the chak out area of plot No. 184. Almost entire area of plot No. 184 has been declared chak out on the ground that it contains the Abadi of petitioner.

13. From such fact, it is clear that the claim of the petitioner that he has been allotted four chaks is not correct. It is just that certain area within a compact chak has been left chak out being abadi of the petitioner himself and, therefore, the contention of the learned Counsel for the petitioner in this regard lack force and it is for the same reason that the judgment cited, namely, *Mahadevo Singh v. Deputy Director of Consolidation and others* 1989 R.D. 244, also does not help the petitioner.

14. As regards the submission that the area of plot No. 184 required correction, the Deputy Director of Consolidation has categorically recorded that the contention of the petitioner in this regard is incorrect. This finding has not been challenged by the petitioner in the writ petition. In view of the above discussion, the writ petition lacks merit and is, accordingly, dismissed. There will however no order as to costs.