

(1988) 04 AHC CK 0054
In the Allahabad High Court
Case No : Writ Petition No. 2850 of 1979

Doodh Nath

APPELLANT

Vs

DDC & Others

RESPONDENT

Date of Decision : 21-04-1988

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19

Citation : (1988) 04 AHC CK 0054

Hon'ble Judges : K.N.Misra, J

Final Decision : Dismissed

Judgement

K.N. Misra, J.—This writ petition arises out of orders passed by the consolidation authorities in proceedings relating to allotment of chaks. The petitioner Doodh Nath is Chak holder No. 88. His two sons: Mahabir Prasad and Mahesh Prasad are separate chak holders Nos. 153 and 154 respectively. As against the proposed allotment of chak petitioner Doodh Nath had filed objection asserting that he has got his tube well. He further asserted that the chak which has been allotted to the petitioner at plot Nos. 469 etc. is unfertile and has been valued at a higher exchange ratio. The petitioner had also contended that the chak which has been allotted to him on the other side of the canal cannot be irrigated by the tube well situate on plot No. 591. He therefore, asserted that a chak be allotted to him near his tube well in Sector No. 15 and the chak allotted to him on plot No. 469 be abolished. The objection filed by the petitioner was contested by the opposite party No. 4 Ambika Prasad and he asserted that the petitioner's aforesaid two sons have been allotted land in Sector No. 11 and 16 near the said tube well. It was further asserted that the chaks allotted to the parties do not call for any alteration. The aforesaid objection filed by the petitioner was heard and dismissed by the consolidation officer vide order dated 3.3.1978, He has dismissed the objection of the petitioner by a cryptic and nonspeaking order. The prayer of the petitioner for allotting a chak near his tubewell in Sector No. 15 has been rejected by the Consolidation officer apparently on the ground that his two sons have been allotted chaks near the tube well. A perusal of the order of the

consolidation officer reveals that he has not correctly mentioned the facts with regard to the extent of holding of the petitioner and his sons in his impugned order while rejecting the objection of the petitioner. Although it is mentioned in his order that the petitioner is a big tenure holder, but the valuation of the land holding of the petitioner and his sons has been mentioned only to be 37.02 annas and as against it, it is mentioned that the objector/petitioner has been allotted land of the valuation of 41.29 annas. Thus, on these facts, the learned consolidation officer observed that the petitioner has not been prejudiced in allotment of chak.

2. Aggrieved by this order, the petitioner preferred appeal which was heard and dismissed by the Assistant Settlement Officer, Consolidation vide order dated 7.4.1978. In this impugned order the Assistant Settlement Officer, Consolidation had mentioned facts with regard to the extent of the valuation of land of the petitioner and his sons in Sector Nos. 11, 15 and 16. According to it the petitioner Doodh Nath and his two sons Mahabir Prasad and Mahesh Prasad held land in their original holding in Sector Nos. 11, 15 and 16 to the extent of 116.45 and as against it they have been allotted separate chaks of the valuation of 123.06 annas. It is not disputed that land in Sector Nos. 11, 15 and 16 is near village Abadi. Land of Sector No. 10 is also located by the side of Abadi. Although in Sector No. 15, petitioner Doodh Nath and his two sons had held land of the valuation of 78.65 annas, as per the figures mentioned in the impugned order, but no chak has been allotted to them in Sector No. 15 wherein on plot No. 591/1 petitioner Doodh Nath had his tube well, although the same at the time of local Inspection made by the Assistant Settlement Officer, Consolidation was found to be not in working order as electricity was disconnected. The petitioner in the writ petition has averred that the electricity of the tube well was disconnected on account of nonpayment of electricity bill which occurred due to the fact that quite recently dacoity was committed in his house and his entire belongings were robbed. He was therefore, unable to pay the electricity bills and the disconnection was, thus, made. Learned counsel for the petitioner asserted that since the petitioner had tube well in Sector No. 15 on his aforesaid plot No. 591, and as such, the petitioner was entitled to get a chak in that sector. The Assistant Settlement Officer, Consolidation has rejected the appeal of the petitioner mainly influenced by the fact that the petitioner's two sons; Mahabir Prasad and Mahesh Prasad were allotted chaks in Sector Nos. 11 and 16 near the tube well. It was urged by the learned counsel that the view taken by the learned Asstt. Settlement Officer, Consolidation is altogether erroneous [as the allotment of chak is to be made to each tenure holder taking into consideration the extent of his own land in various sectors. The claim of the petitioner for allotment of chak in Sector No. 15 has, thus, been wrongly rejected on altogether erroneous ground that his sons have been allotted chaks in the nearby Sector No 11 and 16. The order passed by the Settlement Officer, Consolidation in appeal was confirmed by the Deputy Director of Consolidation vide order dated 18.5.1979 on similar grounds. These orders have been challenged in the present writ petition.

3. Learned counsel for the petitioner Sri Rakesh Misra has asserted that the petitioner has wrongly been allotted a chak far away from the village Abadi instead of allotting him a chak in Sector No. 15 where he had got his private source of irrigation.

4. Learned counsel for the opposite parties, Sri D.P. Dwivedi, urged that the petitioner Doodh Nath had no land in Sector No. 15. He asserted that the petitioner's son Mahabir Prasad alone had land of the valuation of 78.60 annas in Sector No. 15. In support of his contention he has referred to the order passed by the Assistant Settlement Officer, Consolidation wherein the details of land holding of the petitioner and his two sons in Sector Nos. 11, 15 and 16 is mentioned. Referring to it, learned counsel urged that as against the name of Mahabir Prasad, land of valuation of 78.60 annas in sector No. 15 is mentioned. He, thus, contended that the petitioner Doodh Nath had no land in Sector No. 15. I have perused the impugned order passed by the Assistant Settlement Officer, Consolidation very carefully and I find that the contention of the learned counsel is not acceptable.

5. In the impugned order the Assistant Settlement Officer, Consolidation has very clearly mentioned that in Sector Nos. 11, 15 and 16 Doodh Nath and his two sons held land of a total valuation of 116.45 Annas and the detail of the land which they held in these three sectors have also been given, The learned Assistant Settlement Officer, Consolidation has not taken care in giving separately details with regard to the land holding of the petitioner Doodh Nath in aforesaid three sectors No. 11, 15 and 16. He has rejected the claim of the petitioner apparently on the ground that his two sons have been allotted land in Sector Nos. 11 and 16 near tube well. This could not be valid ground for rejecting the claim of the petitioner for allotment of chak in Sector No. 15 where he had his private source of irrigation. He had his tube Well on plot No. 591. The petitioner was, therefore, entitled to get allotment of chak in Sector No. 15 at the place of his private source of irrigation. It was found at the time of spot inspection that the tube well was not functioning as electricity was disconnected. But that could not be a valid ground for refusing allotment of chak to the petitioner in Sector No. 15 nor the petitioner could be denied allotment of chak in that sector merely on the ground that his two sons, who are separate tenure holders, were allotted chak in nearby sector Nos. 11 and 16. There cannot be any legal justification for refusing to allot chak to a tenure holder at the particular place where he had held his private source of irrigation on the ground that his sons or other relations may have been allotted a chak in its vicinity. Every tenure holder would be entitled to get allotment of chak at a place where he could be allotted chak keeping in view the provisions contained in Section 19 of the U.P. Consolidation of Holdings Act. The Tenure holder would be entitled to get near village Abadi so much of land which he originally held at that place and also at the place of his private source of irrigation.

6. It was averted by the petitioner in the writ petition that he held land in Sector

No. 15. This fact has not been disputed in the counter affidavit. In paragraph 4 of the counter affidavit it has been averred that the petitioner and the answering opposite parties had their original holding in Sector No. 15. In view of this averment in the counter affidavit I am unable to accept the contention of the learned counsel for the Opposite parties that the petitioner had no land in his original holding in Sector No. 15. The petitioner was, therefore, entitled to get a chak in Sector No. 15 at the place where he had his tube well. In the impugned order the Assistant Settlement Officer, Consolidation has also mentioned the extent of land held by Ambika Prasad, Smt. Chandra Pati and Smt. Ram Dulari in Sector Nos. 10, 11, 15 and 16. It is mentioned that they held land to the extent of 216.24 annas in their original holding while they have been allotted chaks at that place to the extent of 271.62 annas. They had land of the valuation of 138.49 annas in Sector Nos. 3, 5, 7, 8, 9, 13, 14, 18, and 19. Against it they have been allotted chaks of the valuation of 65.76 annas. Learned Assistant Settlement Officer, Consolidation has not mentioned separately the extent of the valuation of land allotted to opposite party No. 4 Ambika Prasad, Smt. Chandra Pati and Smt. Ram Dulari. He should have considered the extent of land held by them separately in said sectors.

7. Besides that although in the impugned order the Assistant Settlement Officer, Consolidation has mentioned that Ambika Prasad and others have been allotted Govind land near village Abadi, but he has refused to grant relief to the petitioner with the observation that the two sons of petitioner have been allotted land in aforesaid Sector Nos. 11 & 16 and the opposite parties Ambika Prasad and others have been allotted chak far away from village Abadi. This cannot be sufficient ground for rejecting the claim of the petitioner for allotment of chak in Sector No. 15 and not shifting his chak from Sector Nos. 13 and 14. The learned Settlement Officer, Consolidation has not correctly made a comparative study and his approach to the case is altogether erroneous approach.

8. It is no doubt correct to say that while deciding the objection filed by a tenure holder against the proposed allotment of chaks, equities are to be adjusted taking into consideration the location of original landholding of the other tenure holders whose chaks are likely to be affected while determining the objection. But while doing so, just and appropriate claim put forth¹ by the tenure holder cannot be rejected merely on the ground that he is a big tenure holder as compared to the opposite parties or that his son or sortie other relation has been allotted chak near the place where the objector claims an allotment of chak as against his original holding. The learned Settlement Officer, Consolidation has, thus, fell in error in dismissing the appeal of the petitioner and has not correctly appraised the facts relating to original land held by the objector and also the other tenure holders whose chaks were likely to be affected in case any alteration in the chaks was to be made.

9. The learned Deputy Director of Consolidation also fell in similar error while rejecting the revision. Thus, the impugned orders passed by the opposite parties

No. 1, 2 and 3 cannot be sustained and deserve to be quashed.

10. Learned counsel for the opposite parties had, however, urged that a period of ten years has passed since the allotment of chaks to the parties, and as such, no interference be made with the impugned orders. I am unable to accept this contention.

11 The impugned orders which are unsustainable being bad in law and facts of the case cannot be maintained merely on the ground that long delay has occurred in the disposal of the Writ Petition which was filed in the year 1979 challenging the impugned orders. In the matter of allotment of chaks a care is to be taken by the authorities to allot chak to the tenure holders to which they are entitled as against their original holdings. If appropriate chak is not allotted to a tenure holder, he sustains irreparable loss and injury for all times to come. Thus in exercise of powers under Article 226 of the Constitution this Court is not to feel hesitant in interfering with the impugned orders which are found to be unwarranted in law and facts of the case, merely on the ground that the writ petition could not be taken up earlier for disposal. The impugned orders cannot be left to survive merely on the delay in disposal of the writ petition for no fault of the petitioner.

12. In the result, the writ petition succeeds and is hereby allowed and the impugned order dated 18.5.1979 passed by the Deputy Director of Consolidation to which the order dated 7.4.1978 passed by the Assistant Settlement Officer, Consolidation and order dated 3.3.1978 passed by the Consolidation Officer merged is hereby quashed and the Deputy Director of Consolidation is directed to restore the revision filed by the petitioner and decide it according to law and in the light of observation made above. It is expected that the Deputy Director of Consolidation will decide the case expeditiously giving due opportunity of hearing to the parties and after giving notice to such other tenure holders whose chak may be affected by any order of alteration to be made in the chak of the petitioner.

No order as to costs.

(Petition allowed)