
(2010) 05 AHC CK 0102
In the Allahabad High Court

Govind

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Citation : (2011) 3 AWC 2509

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard Sri V.C. Mishra Senior Advocate assisted by Sri Vivek Mishra learned Counsel appearing for petitioner and Sri K.R. Sirohi Senior Advocate assisted by Sri R.B.D. Mishra learned Counsel appearing for respondent No. 3.

2. Counter and rejoinder affidavits have been exchanged. Counsels for respective parties agree that since pleadings are complete, writ petition may be decided finally.

3. The dispute arises out of proceedings of allotment of chaks. Petitioner is aggrieved by orders dated 21.1.2003 passed by Dy. Director of Consolidation, Baghpat, and 7.12.2002 passed by Settlement Officer Consolidation Baghpat, which has resulted in change of chaks.

4. Grievance of petitioner is that he has been deprived of his private source of irrigation and shape of his chak has also become irregular which has rendered cultivation difficult and impractical. Settlement Officer Consolidation Baghpat, while deciding appeals of different chak holders disturbed chak carved out at the stage of Assistant Consolidation Officer and Consolidation Officer and made substantial alteration without even issuing notice or affording an opportunity of hearing to petitioner.

5. Sri V.C. Mishra learned Senior Advocate has demonstrated from the two

judgments impugned in the instant writ petition that both are without application of mind. He has placed the complete order of S.O.C. to substantiate that in the entire discussion, not a word has been mentioned about petitioner's holdings on his chak as well as any consideration about his claim and prejudice caused to him. Besides, the order was passed behind his back without an opportunity to place his case.

6. Learned Counsel for petitioner has tried to demonstrate that though entire order is silent so far discussion about petitioner's case is concerned but in the operative portion as well as Sanshodhan Talika appended to the order makes a considerable modification and alteration in allotment of chak. The original holding of petitioner plot Nos. 1944 and 1947 in chak No. 230 has been changed to plot Nos. 1936 and 1958, and petitioner has been given Udan chak whereas respondent No. 3 Ilam Singh son of Khem Chand having chak No. 76, has been given his original holding plot Nos. 1944 and 1947.

7. Learned Counsel for petitioner has also placed annexure No. 4, which is the map prepared by Consolidation Authority in support of his argument that his chak No. 230 is "L" shaped chak and other chak on plot No. 1945 is a triangular chak, thus irregular shape has rendered cultivation difficult and has resulted in huge loss.

8. Submission of petitioner's counsel is also in respect of irrigation facility which was available to him on his original holding but he has been deprived of the same. He has annexed annexure No. 7 to the writ petition, which is an agreement with two other persons regarding installation of tube well in which all the three persons were co-sharers. However, this document is not relevant at this stage for the reason that it is not pertaining to contesting respondent or even consolidation authority.

9. Sri V.C. Mishra Senior Advocate appearing for petitioner has placed annexure No. 2 "grounds of revision" No. 46 of 2002 filed before Dy. Director of Consolidation Baghpat in support of his argument that there was a specific assertion in the "ground" regarding Gata Nos. 1944 and 1947, which were changed to 1936 and 1958 as well as two plots are situated at a distance and are Hawaii chak but revisional court's order is cryptic and short, and without considering a single grounds of revision, finding has been recorded cursorily that revisionist will not suffer any problem in cultivation, therefore, revisional court has refused to interfere in the revision.

10. Sri K.R. Sirohi Senior Advocate appearing for respondent No. 3 has objected each and every arguments advanced on behalf of petitioner. He has primarily raised an objection that in case request of petitioner is allowed, it will result in disturbing chaks of the entire village and all those persons have not been arrayed as respondents, therefore, writ petition is not maintainable.

11. Next submission is that contesting respondent is facing irreparable loss because of institution of writ petition and grant of ex parte interim order.

Contesting respondent was dispossessed from his original holding at the time when possession was being transferred but he was not able to get possession of the plot allotted as a consequence of interim order, therefore, he has incurred huge loss.

12. Sri K.R. Sirohi Senior Advocate appearing for contesting respondent has repudiated arguments of Sri V.C. Mishra Senior Advocate appearing for petitioner and placed annexure No. 5 which is C.H. Form No. 23 in support of arguments that petitioner's right does not stand prejudiced whatsoever. No doubt, original Gata Sankhya proposed at the stage of Assistant Consolidation Officer was plot Nos. 1945, 1946, 1947. His original holding is only plot No. 1947. He has got more than one hectare area on the original holding plot No. 1947, therefore, he should have no grievance. Subsequently, certain area was taken away from plot Nos. 1944 and 1947 at the stage of S.O.C. He has been given plot Nos. 1936 and 1958 but these are not Udan chak and are in same continuation.

13. Map annexed to the writ petition is not disputed by learned Counsel appearing for contesting respondent and argument advanced on behalf of petitioner is repelled, he states that there is no irrigation facility available on those plots. It is a bald assertion made in writ petition about the so-called irrigation facility and the agreement annexed as annexure No. 7.

14. I have gone through the entire record and given a careful consideration to arguments advanced on behalf of the counsel appearing for respective parties. So far first objection of respondent's counsel that effected persons of village have not been arrayed as party, therefore, writ petition is not maintainable, cannot be accepted.

15. Grievance of petitioner is only in respect of those plots which have been allotted to contesting respondent. Petitioner claims it to be his original holding though it is true that part of the order of S.O.C. where case of appellant Ilam Singh chak holder of chak No. 5 is discussed and pointed out by Sri V.C. Mishra Senior Advocate appearing for petitioner does not relate to the contesting respondent.

16. Present respondent No. 3 Ilam Singh as shown in Sanshodhan Talika is son of Khem Chand. He has been given chak No. 76 and chak No. 5. Therefore, it appears that there are two different Ilam Singh in the village and S.O.C. has not discussed anything regarding respondent No. 3 as well. Nevertheless this alone is not sufficient to discard objection of petitioner that he has been shifted and dispossessed from his original holding without even giving him an opportunity to canvass his claim. The order of revisional court is without application of mind.

17. Specific grounds raised by the counsel appearing for petitioner is that petitioner's chak is in "L" shaped or irregular chak not allotted on his original holding, is not altogether irrelevant. So far existence of tube well is concerned, the same can be considered afresh by S.O.C. after hearing petitioner and respondent No. 3 and also on getting a spot inspection made. Though writ

petition was filed in the year 2003, a considerable time has elapsed but petitioner is still in possession of plots, which were allotted to him by Assistant Consolidation Officer on the basis of an interim order, therefore, I am of the view that matter be decided by S.O.C. Baghpat afresh, after taking all the aspects into consideration. S.O.C. Baghpat shall ensure that right of respondent No. 3 also does not stand prejudiced on account of the reason that he was made to remain out of possession for a long time. He shall endeavour to decide objection expeditiously, preferably within a period of three months from the date a certified copy of this order is produced before him.

18. The Judgment and orders dated 21.1.2003 passed by Dy. Director of Consolidation, Baghpat, and 7.12.2002 passed by Settlement Officer Consolidation Baghpat, are hereby quashed. The writ petition is allowed.

19. Parties shall appear before S.O.C. Baghpat within a period of one month from today who shall fix a date and decide the matter within the prescribed period without granting any undue adjournment to either parties.