
(2016) 07 AHC CK 0094
In the Allahabad High Court
Case No : Writ B No. 33602 of 2016

Hari Shankar

APPELLANT

Vs

Deputy Director of Consolidation Varanasi

RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

Citation : (2016) 132 RD 636

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : M.N. Singh, Advocate, for the Appellant; C.S.C, Manoj Kumar Yadav and Ramji Singh Patel, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Shri M.N. Singh, learned counsel for the petitioners, learned Standing Counsel for the State of U.P., Shri Manoj Kumar Yadav appearing on behalf of Gram Panchayat, Shri Vijay Kumar Rai and Shri Ramji Singh Patel, counsel for the complainant-respondents.

2. Learned counsel for the respondents do not propose to file counter affidavit. As such with the consent of the parties, this writ petition is decided finally.

3. This writ petition has been filed against the order of Deputy Director of Consolidation, Varanasi dated 13.06.2016, by which he has allowed the recall application filed by Smt. Shashi Bala and Chhedi Lal as well as Gaon Sabha, respondent Nos. 3 to 5 and recalled his earlier order dated 17.07.2014. At the same time, he dismissed the reference submitted in favour of petitioners also.

4. During the consolidation, the petitioners were allotted their first chak on Plot No. 395/1 and 390 (total area 0.187 hectares) of Village Parmanandpur, Pargana Shivpur, District Varanasi. The petitioners moved an application under section 42-A of U.P. Consolidation of Holdings Act before the Deputy Director of Consolidation alleging therein that the area 0.065 hectare of Plot No. 390 and 0.072 hectare of Plot No. 395 is double entry in Bachat land, which is a new Plot

No. 833. Due to which, the area of the chak of the petitioners has been reduced. Therefore, the deficiency in area of the petitioners be completed from other Bachat land and the final consolidation map be also corrected accordingly. On this application, report has been called for by the Deputy Director of Consolidation. The Subordinate Authority submitted report dated 31.05.2012, showing the deficiency in the chak of the petitioners as well as discrepancy in the map also. The report has been treated as a reference by Deputy Director of Consolidation and who by the order dated 17.07.2014 accepted the reference. Subsequently, three recall applications were filed one by Shashi Bala and other by Chhedi Lal and third by Gaon Sabha. The matter was heard by Deputy Director of Consolidation. Deputy Director of Consolidation by the impugned order found that the chak as allotted to the petitioners on Plot No. 395 and 390 has been developed as residential plots and were sold. The area of various sale deed executed by the petitioners to different persons comes to 15,967 Sq. ft. while area of the land left for road was 4300 Sq. ft. Thus, the petitioners have already sold 20267 Sq. ft. which is according to the area of 0.187 hectare allotted to the petitioners in their first chak. Thus, there was no deficiency in the area of chak of the petitioners and reference in this respect has been illegally allowed by Deputy Director of Consolidation without giving any opportunity of hearing of State of U.P. and Gaon Sabha. On this finding, he allowed the recall application and set aside the order dated 17.07.2015. At the same time, reference has also been dropped. Hence the writ petition has been filed.

5. It may be mention that Deputy Director of Consolidation on the application of the petitioners, by order dated 13.06.2016, directed the Subordinate Authorities to make spot inspection according to present settlement map and submit his report, but without obtaining a fresh report, he has decided the matter.

6. I have considered the arguments of learned counsel for the parties. Deputy Director of Consolidation in his order has referred that the sale deed has been executed in favour of Bankey Lal son of Rajeshwari Singh in respect of Plot No. 319/15/1 of area 2062.5 Sq. ft.

7. A perusal of CH form No. 23 of the petitioners shows that Plot No. 319/15 is not allotted in first chak of the petitioners rather it was allotted in the second chak of the petitioners. The first chak was on Plot No. 390 and 395. Plot No. 319 may not be adjoining to this plot. Thus, the Deputy Director of Consolidation relied upon sale deed, which is not relevant for deciding the controversy in this respect.

8. In the result, the writ petition succeeds and is allowed. The order of Deputy Director of Consolidation dated 13.06.2016 is hereby set aside. The matter is remanded to Deputy Director of Consolidation, who shall decide the recall application of the parties afresh after hearing the parties in accordance with law, expeditiously, without granting any unnecessary adjournments to either of the parties, preferably within a period of three months.

9. Deputy Director of Consolidation has already directed the Subordinate Authority to make spot inspection by order dated 13.06.2016. As such, it would be appropriate that a fresh report may be obtained accordingly.