

(1994) 02 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5576 of 1985

Jagar Nath alias Baij Nath

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 04-02-1994

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (1994) 1 AWC 538 : (1994) RD 284

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : Namwar Singh, for the Appellant; R.S. Maurya, Yatindra Singh and V.K.S. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

S.R. Misra, J.—The Petitioner is aggrieved by orders of the Consolidation Authorities in proceeding u/s 20 of the U.P. Consolidation of Holdings Act, and hence this petition.

2. The case of the Petitioner is that he is small tenure holder. The original plots held by him were 624/2. area 1 bigha 15 biswa and 5 dhoor with 1/3 share; 251, 268/1, 268/2 and 268/3 area 1 bigha, 7 biswa 13 dhoor with 1/8 share and plot No. 618, area 7 biswa situate in village Pathara, pargana Jamania, district Ghazipur,

3. The Petitioner was not allotted any chak on his original holding. He. therefore, filed an objection before the Consolidation Officer against the proposed allotment made by Assistant Consolidation Officer. Appeal and revision also met the same fate and, therefore, the Petitioner has come before this Court by means of the present petition.

4. Sri Namwar Singh learned counsel for the Petitioner vehemently contended that the plots of the Petitioners, namely plot nos." 624 and 618. as well as other plots were situated near Abadi. Despite his request and demand, the Petitioner

has not been allotted a single inch of land on his original holding, nor any land has been allotted to him which may be said to be near his original holding. Thus, the judgments and orders of the Respondents are liable to be set aside by this Court.

5. Two counter affidavits have been filed—one by Sri Kailash Upadhyay and the other by Sri Dev Das Upadhyay. Apart from hearing learned counsel for the Respondents, I have also gone through the aforesaid two counter affidavits and have carefully considered the whole materials available on record.

6. On behalf of Respondent No. 6, it has been contended that he has been allotted a chak on plot nos. 618 and 619. Respondent No. 9 is co-sharer of a larger area in plot No. 618 as compared to Petitioner. So far as plot No. 619 is concerned, this is not a plot owned by Petitioner and, as such, according to the learned counsel for the Respondents, no adjustment or variation, so far as chak of Respondent No. 6 is concerned, is called for.

7. From the impugned orders, one thing is clear that the Consolidation Authorities have not followed principle prescribed for allotment of chak, in the present case. The principle of consolidation is that as far as possible allotment of chak should be made in such a way that the tenure holder get his chaks near his original holding, and, in case this is not possible, specific and sufficient reasons must be recorded" for the same. The Consolidation Authorities have not considered as to why Petitioner should not be allotted a chak near his original holding, plot No. 624/2. They have also not considered the question as to whether allotment of chak, or, share in a plot to a co-sharer, ipso facto will deprive the other co - tenure holder to get a chak near his own original holding. The order of the Deputy Director of Consolidation cannot be sustained in law for the reasons that he has ignored to consider the aforesaid aspects of the matter and, also for the reasons that the Petitioner has not been allotted a chak on his original holding, and the plots not owned by him have been included in his chak; no chak has been allotted to him near abadi, or, in the abadi particularly in view of the facts "that the Petitioner has specifically claimed that his plots were situated near abadi, and, lastly on the ground that while deciding the revision, the Deputy Director of Consolidation completely ignored the very purpose of Consolidation.

8. In the result, the writ petition succeeds and is allowed. The impugned order dated 22-1-1985 passed by Respondent No. 1 is quashed and the Respondent No. 1 is directed to decide the revision afresh in accordance with laws and in the light of observations made above. So far as Respondent No. 6 is concerned, plot included in her chak namely, plot nos. 618 and 619 will not be disturbed. Stay order, if any, is vacated. Parties shall bear their own costs.