
(1983) 07 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8878 of 1983

Jagdeo and Others

APPELLANT

Vs

Assistant Director Consolidation

RESPONDENT

Date of Decision : 19-07-1983

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19A, 20, 21(1), 23(1), 23(3)

Citation : (1983) 07 AHC CK 0005

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

Bench : Single Bench

Advocate : Vijai Manohar Sahai, for the Appellant;

Judgement

K.N. Misra, J.—The Petitioners in this writ petition have challenged the order dated 7th June, 1983, passed by the Assistant Director of Consolidation Banda, by which he has directed that measurements of chaks and delivery of possession over the chaks to" the tenure-holders be got made by the consolidation officer and its compliance report be submitted to him so that further proceedings regarding hearing and disposal of pending revisions u/s 48 of the Uttar Pradesh Consolidation of Holdings Act (hereinafter to be referred to as the Act) arising out of chak allotment proceedings be done by him. In the impugned order he has observed that the pending revisions can be legally and appropriately decided only after measurement and demarcation of the chaks allotted to the tenure-holders.

2. I have heard learned Counsel for the Petitioners Sri Vijay Manohar Sahai and Sri B.L. Yadav, learned Standing Counsel at some length on merits. It has been averred in the writ petition that against proposed allotment of chaks made by the Assistant Consolidation Officer, several tenure holders including the Petitioners filed objections u/s 20 of the Act. The Consolidation Officer dismissed the objections of the Petitioners and so aggrieved by that order the Petitioners filed appeals before the Settlement Officer, Consolidation Some other tenure holders

had also filed appeals being aggrieved by the order passed by the Consolidation Officer. These appeals were dismissed and thereupon the Petitioners and several other tenure holders filed revisions which are pending for disposal before the Assistant Director of Consolidation arrayed as the opposite party. The Petitioners have further averred that till today several tenure holders in village Tindwara, district Banda are in possession over their respective original plots of their holdings and the chaks have not yet been demarcated in pursuance of the orders passed by the Settlement Officer, Consolidation. The proposed allotted chaks have not yet become final as the revisions arising out of proceedings u/s 20 of the Act are still pending for disposal. The Petitioners have asserted that on their original plots they have sown kharif crop, namely, Paddy, Jwar, Arhar, Urad etc. and the plants have grown more than six inches and as such the Petitioners will be put to a great loss and suffering if they would be dispossessed at the present moment. Other tenure holders have also sown Kharif crop on their respective original plots of their holdings.

3. Learned Counsel for the Petitioners urged that the Assistant Director of Consolidation has erred in directing demarcation of chaks and delivery of possession over the same to the tenure holders without proceeding to decide pending revisions on merits. His further contention was that the hearing and disposal of pending revisions could not be legally deferred till demarcation and delivery of possession over the proposed chaks allotted to the tenure holders. There is no provision in the Act or the Rules framed thereunder providing that the revisions cannot be heard until demarcation of the chaks in pursuance of the impugned order was made. The Assistant Director of Consolidation, thus, acted illegally and with material irregularity in exercise of jurisdiction resulting in grave miscarriage of justice in deferring the hearing in the pending revisions and directing delivery of possession over the allotted chaks although against proposed allotment of chaks, objections by several tenure holders were filed and the same have not yet been finally disposed of.

4. Learned Chief Standing Counsel urged that the writ petition deserves to be dismissed straightaway on, the ground that the Petitioners have not impleaded the tenure holders who would be put into possession over their allotted chaks on demarcation of their respective chaks in pursuance of the impugned order. Thus, without impleading all the tenure holders of the unit, the writ petition cannot be entertained and disposed of on merits. I have given my anxious consideration to these arguments but i am unable to agree to the said contentions of the learned Chief Standing Counsel.

5. It is not disputed that the impugned order has not been passed in any particular pending revision. By the impugned order the Assistant Director of Consolidation has issued a general order for demarcation of chaks and delivery of possession so that after demarcation of chaks pending revisions be disposed of, which according to him, can be legally disposed of only after demarcation of chaks. Since the impugned order has not been passed in any particular case nor

it has been passed on a motion being made to that effect by any tenure holder and, as such the writ petition cannot be said to suffer from defect of non-impleadment of necessary parties. While seeking quashing of general order of such a nature the Petitioners cannot be said to be obliged to implead all the tenure-holders of the village nor does it" appear to be necessary on the facts and circumstances of the case. In pursuance of the impugned order demarcation and delivery of possession over the respective chaks allotted to the tenure holders has not yet been done and as such no lis arises with regard to demarcation of chaks for the present between the Petitioners and other tenure holders of the unit so as to join them in the writ petition. Thus in this view of the matter, I find that the writ petition does not suffer from defect of non-joinder of necessary parties.

6. Reverting to the arguments touching merits of the impugned order I find that the Assistant Director of Consolidation transgressed the power vested in him as a revisional Court u/s 48 of the Act in passing the impugned order. There is no provision u/s 48 of the Act providing that the hearing and disposal of pending revisions will not be made until demarcation and delivery of possession over the proposed allotment of chaks is made. Thus, the Assistant Director of Consolidation acted illegally and with substantial irregularity in deferring the hearing of the pending revisions and in ordering demarcation of chaks to be made although the proposed allotment have not yet become final as revisions arising out of objections filed u/s 20 of the Act against the proposed allotment have not yet been finally disposed of. There appears to be no legal bar in disposal of the revisions without affecting demarcation and delivery of possession over the proposed chaks to the tenure holders. The Assistant Director of Consolidation appears to have laboured under some wrong notion of law that the pending revisions arising out of proceedings for allotment of chaks cannot be legally and appropriately disposed of until demarcation of chaks is made. Such an order could not be passed in exercise of powers u/s 48 of the Act, which in effect authorises the Director of Consolidation only to call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and therefore make such order in the case or proceedings as he thinks fit after allowing the parties concerned an opportunity of being heard. The impugned order, even if it be said to be of the nature of an administrative order, could not be legally passed with reference to powers exercisable u/s 48(1) of the Act directing demarcation and delivery of possession over the proposed allotted chaks to the tenure holders as a pre-requisite compelling condition for making hearing in the revisions. The disposal of the pending revisions, in no manner, could be legally deferred merely on the ground that demarcation of the proposed chaks has not yet been done.

7. It is next to be scrutinised, whether such an order could be passed with reference to any other provisions of the Act.

8. A reference may be made to Sub-section (3) of Section 23 of the Act which provides that, "where the allotments made u/s 19-A are not modified under Section. 21 and are confirmed under Sub-section (1) the extracts contained in the notice issued u/s 20 shall, except as provided by order under this Act, be treated as final allotment order of the tenure holders concerned." It is further provided under Sub-clause (ii) Sub-section (3) of Section 23 of the Act that revised extract specifying the modified allotment as confirmed under Sub-section (1) shall be issued by (a) the Consolidation Officer, where the allotments are not modified by the Settlement Officer, Consolidation and, (b) by the Settlement Officer Consolidation, where he has modified the allotments and the same shall be, except or otherwise provided by order under this Act, the final allotment orders for the tenure holders concerned. The aforesaid under lined (here italicised) portion "except or otherwise provided by or under this Act" undisputedly refers to the orders that may be passed in revision u/s 48 of the Act or u/s 42-A of the Act relating to correction of clerical or arithmetical errors apparent on the face of the record in respect of allotment of chaks contained in the extracts issued to the tenure holders. It is, thus, evident that even confirmed Provisional Consolidation Scheme made u/s 23 of the Act would be subject to orders passed in revision u/s 48 of the Act or on an application u/s 42-A of the Act filed by the tenure holders. In the present case it is not disputed that aggrieved by the proposed allotment of chaks several tenure holders including the Petitioners had filed objections and appeals and aggrieved by those orders they preferred revisions which are still pending to be disposed of. With regard to delivery of possession, Section 24 provides that the Settlement Officer Consolidation shall fix a date to be notified in the unit, from which the final Consolidation Scheme shall come into force and on and after the said date a tenure holder shall be entitled to enter into possession of the plots allotted to him. Thus, according to this provision it is the Settlement Officer, Consolidation who is authorised to fix a date to be notified in the unit from which the Final Consolidation Scheme shall come into force and the tenure holders will thereupon be entitled to enter into possession over the plots allotted to them. Without such thing having being done, the Assistant Director of Consolidation, could not direct demarcation and delivery of possession to the tenure-holders over their respective allotted chaks as has been ordered by him to be done by the impugned order. The impugned order does not indicate that the Provisional Consolidation Scheme has been confirmed and published in the unit and it is also not clear from the impugned order that the Settlement Officer, Consolidation has fixed and notified a date in the unit from which the final Consolidation Scheme has come into force and that the tenure holders were, thus, entitled to enter into possession over the chaks allotted to them. Section 28 of the Act further provides that if a tenure holder or Land Management Committee, to whom chak or lands have been allotted under the Final Consolidation Scheme have not gained possession, then they can apply to the Assistant Consolidation Officer within six months of the date on which the final Consolidation Scheme has come into force for being put into actual physical possession of the chaks or lands

allotted to them. The Assistant Consolidation Officer shall, thereupon, deliver possession to the allottee/applicant and while so doing he shall have all powers as regards contempt, resistance and the like as are exercisable by a civil Court in execution of a decree for delivery of possession of Immovable property.

9. The aforesaid provisions, thus, make it clear that the Assistant Director of Consolidation, in exercise of powers u/s 48 of the Act has nothing to do with regard to the confirmation of the Provisional Consolidation Scheme nor with regard to fixing and notifying in the unit a date from which the Final Consolidation Scheme shall come into force, entitling the tenure-holders to enter into possession over the plots allotted to them. He has also no concern nor he can exercise jurisdiction in getting the final allotment orders executed on an application moved by any tenure holder or by Land Management Committee complaining that he has not received actual physical possession over the allotted chak land. It is the Assistant Consolidation Officer who can, u/s 28 of the Act, exercise that power which, is exercisable by a civil Court in execution of a decree for delivery of possession of immovable property. In this view of the matter I find that the impugned order passed by the Assistant Director of Consolidation, opposite party No. 1, cannot be sustained under any provisions of the Act and so it suffers from manifest error of law and jurisdiction and deserves to be quashed.

10. Before parting with the case I may observe that since the Assistant Director of Consolidation has exhibited utter ignorance of law and procedure and has passed the impugned order, which is erroneous and unsustainable, I think it would be appropriate that all the pending revisions u/s 48 of the Act arising out of orders passed in proceedings u/s 20 of the Act concerning land in respect of village Tindwara, District Banda, shall not be heard and disposed of by him.

11. In the result, the writ petition succeeds and is hereby allowed and the impugned order dated 7-6-1983 passed by the Assistant Director of Consolidation, Banda, is hereby quashed. The District Director of Consolidation is directed to decide the pending revisions u/s 48 arising out of allotment of chaks in respect of land situate in village Tindwara, District Banda either" himself or the same may be disposed of by some other Assistant or Deputy Director of Consolidation. The pending revisions shall not be disposed of by Assistant Director of Consolidation, Sri Kanwar Singh who has passed the impugned order.

12. In the circumstances of the case I make no orders as to costs.