
(2003) 08 AHC CK 0216
In the Allahabad High Court
Case No : C.M.W.P. No. 3126 of 2003

Jairaj Singh and Another

APPELLANT

Vs

Additional Collector (Administration)/Deputy Director of
Consolidation

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11A, 3(2), 4, 8, 9
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 24, 24A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117A, 132

Citation : (2003) 6 AWC 4960

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : R.N. Singh and Amarendra Singh, for the Appellant; V.K. Singh and A.K. Yadav, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Present petition has been preferred canvassing the validity of the order dated 16.10.2002, passed by Respondent No. 1-Deputy Director, Consolidation. By means of the impugned order, the Deputy Director, Consolidation allowed the revision and set aside the orders as erroneously passed by the Settlement Officer Consolidation in appeal.

2. The controversy in the instant petition revolves round plot No. 283/1 admeasuring 0.090 acres. Concededly, the Respondent Nos. 2 to 4 are the tenure holders of plot No. 283 from which stemmed plots 283/1 admeasuring 0.090 acres facing western side and 283/2 admeasuring 2.82 acres situated towards eastern side. Out of the aforesaid plots, plot No. 283/1 was marked out of consolidation operation u/s 8 of the U.P. Consolidation of Holdings Act. The Petitioner being aggrieved by the action of the consolidation authorities, preferred objection u/s 9 (2) of the U.P. Consolidation of Holdings Act and the main plant of which was that plot No. 283/1 was, with a purpose to a design,

kept off the consolidation scheme which otherwise could have been utilized for carving out road to the extent of 30 kari from west to north to facilitate his access from and to his house and that the land in and around the area was cultivatory land which could have been assessed for its valuation but the consolidation authorities proceeded against the interest of the Petitioner at the dictates of Gram Pradhan etc. The objection culminated in being rejected as being devoid of force by the Consolidation Officer vide order dated 10.2.1998. Aggrieved by the rejection of the objection, the matter was taken in challenge by the Petitioner in appeal before the Settlement Officer, Consolidation. In the appeal, spot inspection was ordered and from a perusal of the report of spot inspection submitted by the Consolidation Officer, it is explicit that there exists abadi towards west of the road and the land in question towards south and east of the land. The Settlement Officer, Consolidation in appeal, jettisoned the claim of the Petitioner holding that the plot No. 283 did not belong to the Petitioners and he had no right to prefer any objection but at the same time acting upon the application preferred by Gram Pradhan, he entered a verdict for the Appellant quipping therein that the appeal in so far as it relates to valuation and carving of road was tenable and consequently fixed 26.4.2002 for hearing on merit. This order was taken in challenge in revision by the Respondent Nos. 2 to 4 in which the Respondent No. 1 allowed the revision and reversed the order passed in appeal by the Settlement Officer, Consolidation. It is this order which has been made subject matter of impugment in the instant petition.

3. I have heard Sri Ram Niwas Singh for the Petitioners assisted by Sri Amrendra Singh and Sri Aditya Kumar Yadav, learned Counsel appearing for Respondent Nos. 2 to 4/caveatOrs. 4. The quintessence of the submission advanced across the bar by the learned Counsel for the Petitioner is that pursuant to the notification u/s 4 of the U.P. Consolidation of Holdings Act, record was published u/s 9 of the U.P. Consolidation of Holdings Act and the legal position being that anyone having interest in the land could prefer objection, the Petitioner preferred objection accordingly to include entire plot No. 283 in the consolidation scheme. It was further submitted that the revisional court erroneously passed the impugned order inasmuch as they may not be recorded tenure holders but they are one of the tenure holders recorded in the village concerned and the action of the consolidation authorities impinged upon the interest of the Petitioner. It was further submitted that the valuation of the land in question should have been assigned and the view of the authorities relating to valuation of land and inclusion and exclusion of the land in consolidation scheme cannot be countenanced. A. K. Yadav, learned Counsel for the Respondents/caveators, contended that the land was rightly chucked up out of the consolidation scheme with due regard being had to the guidelines issued from time to time by the Director of Consolidation and further that it is only the tenure holders who could press the point in question and the Petitioners not being tenure holders and their status is no more than interloper and thus, were not entitled to raise question in relation to valuation of land, inclusion or exclusion of land in consolidation.

5. In the context of the above arguments, it would be apt and proper to reckon into consideration certain provisions of the U.P. Consolidation of Holdings Act. To begin with Section 3 (2) may be referred to. It defines "consolidation" to be re-arrangement of holdings in a unit amongst several tenure holders in such a way as to make their respective holdings more compact. Explanation (vii) to Section 3 (2) denotes that for the purpose of this clause, holding shall not include such other areas as the Director Consolidation may declare to be unsuitable for the purposes of consolidation. Section 3 (2) being germane to the controversy involved in this petition may be quoted below:

Section 3 (2).--Consolidation means re-arrangement of holdings in a unit amongst several tenure holders in such a way as to make their respective holdings more compact.

Explanation--For the purpose of this clause, holding, shall not include the following:

- (i) land which was grove in the agricultural year immediately preceding the year in which the notification u/s 4 was issued ;
- (ii) land subject to fluvial action and intensive soil issued ;
- (iii) land mentioned in Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ;
- (iv) such compact areas as are normally subject to prolonged water logging ;
- (v) usar, kallar and rihala plots forming a compact area including cultivated land within such area ;
- (vi) land in use for growing pan, rose, bela, jasmine and kewra ; and (vii) such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of consolidation.

6. The Additional Director also circulated the basic principles to be kept in mind during consolidation operation vide letter dated 26th May, 1998. The relevant portion thereof is excerpted below for ready reference:

other language

7. Coming to the declaration dated 26.5.1981 made by Consolidation Commissioner, it would appear that certain criteria has been laid down within the parameters of which certain land can be declared unsuitable for consolidation. It is implicit in the declaration made by the Consolidation Commissioner that the land situated on the road side shall be chucked out of consolidation scheme in the statement of principles made u/s 8 of the U.P. Consolidation of Holdings Act read with Rule 24 of the U.P. Consolidation of Holding Rules. It has been left to the discretion of the Consolidation Committee within the parameters of the aforesaid guidelines to decide as to which part of the land should be chucked out of consolidation scheme and which should be included. Further from a

perusal of the report of spot inspection, it brooks no dispute that the land of the Respondents lies abutting the road and the houses of the Petitioners are situated on the other side of the road. On the other hand, the Petitioners being neither chak holders nor having any concern with the land in dispute were wholly incompetent to raise any objection u/s 9A and 9B of the U.P. Consolidation of Holdings Act. In the above backdrop, it is quite explicit that plot No. 283/1 admeasuring 0.090 acres was rightly marked out of consolidation scheme.

8. To proceed further, in the galaxy of the above facts, the objections do not appear to be off-shoot of impingement of any genuine interest of the Petitioners. Though objections have been phrased carefully but the underlying object seems to be to secure allotment of certain land in their chaks by the Petitioners which is rendered impermissible in the declaration relating to inclusion and exclusion of the land situate on either side of the road made by the Consolidation Department. It is also worthy of notice here that the finding of the courts below in no Delphic terms recites that the road in question cannot be widened. From the record also it is clear that it was not possible to extend the width of the road beyond 10 kari by reason of the fact that on either side of the road, there exists abadi. The road in question, as the record reveals, is longish enough and the stretch of road which passes in front of the house of the Petitioners is too small to matter. In the circumstances, it is not difficult to visualize that the intendment behind objection was other than stated therein.

9. Another question which now begs consideration is whether the Petitioner could raise any objection u/s 9 (2) of the U.P. Consolidation of Holdings Act to the effect that the valuation should have been assigned to the land in question. Before proceeding further I propose to scan the purport of Section 8A (2) and 9B (1) and 9B (2) which are abstracted below:

Section 8A (2).--The statement of principles shall also contain:

(a) details of areas, as far as they can be determined at this stage, to be earmarked for extension of abadi including areas for abadi site for harijans and landless persons in the unit, and for such other public purposes as may be prescribed ;

(b) the basis of which the tenure-holders will contri-bute land for extension of abadi and for other public purposes ; and (c) details of land to be earmarked for public purposes out of land vested in a Gaon Sabha or a Local Authority u/s 117 or Section 117A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

(d) The standard plots for each unit.

9. Issue of extracts from records and statements and publication of records mentioned in Sections 8 and 8A and the issue of notices for inviting objections:

(1) Upon the preparation of the records and the statements mentioned in Sections 8 and 8A the Assistant Consolidation Officer shall:

(a) correct the clerical mistakes, if any, and send, or cause to be sent, to the tenure holders concerned and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed showing:

(i) their rights in and liabilities in relation to the land ;

(ii) mistakes undisputed cases of succession and disputes discovered u/s 8 in respect thereof ;

(iii) specific shares of individual tenure holders in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation ;

(iv) valuation of the plots ; and

(v) valuation of trees, wells and other improvements for calculating compensation therefore and its apportionment amongst owners, if there be more owners than one ;

(b) publish in the unit the current khasra and the current annual register, the khasra chakbandi, the state-ment of principles prepared u/s 8A, and any other records that may be prescribed to show, inter alia, the particulars referred to in Clause (a).

(2) Any person to whom a notice under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under Sub-section (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the statement of principles, or the need for partition.

* * * * *

"9A (2) All cases which are not disposed of by the Assistant Consolidation Officer under Sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements, for calculating compensation therefor, and its appointment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

9B. Disposal of objections on the statement of principles.-

(1) Where objections have been filed against the statement of principles u/s 9, the Assistant Consolidation Officer shall, after affording opportunity of being heard to the parties concerned and after taking into consideration the views of the Consolidation Committee, submit his report to the Consolidation Officer, who shall dispose of the objections in the manner prescribed.

(2) Where no objections have been filed against the statement of principles within the time provided therefore u/s 9, the Consolidation Officer shall, with a view to examining its correctness, make local inspection of the unit, after giving

due notice to the Consolidation Committee, and may thereafter make such modifications or alterations in the statement of principles as he may consider necessary.

10. From a bare reading of Section 9 read with Section 9A (2) read with Section 8 of the Act, it would transpire that the Petitioners could raise objection in relation to their rights and liabilities concerning land, mistakes and disputes discovered u/s 8 in respect thereof about share of individual tenure holders or valuation of plot, valuation of trees, well and other improvements. In the instant case, the objections preferred by the Petitioners were not as a result of any right or liabilities in the land, mistakes and disputes discovered u/s 8 of the U.P. Consolidation of Holdings Act in relation to the shares of the tenure holders, valuation of trees, well and other improvements and by this reckoning, the Petitioners were wholly incompetent to raise any objection on the point whether the property should have been included in the Consolidation Scheme or not. Whatever may be the case, the objections, if any, could be preferred by the Petitioners u/s 9 (1) in its essential ingredients. So far as Section 9 (1) (b) is concerned, it leaves no manner of doubt inasmuch as Section 8A envisages statement of principles and details of areas as far as they can be determined at this stage, to be earmarked for extension of abadi including area for abadi site for harijans and landless persons in the unit and for such other public purposes as may be prescribed. The aspect of objection being that the plot No. 183/1 could not be excluded from consolidation scheme and valuation thereof should have been assigned has been considered in all its ramifications by the consolidation authorities and there is irresistible finding that the road cannot be widened as there exists houses on either side of the road. In the circumstances, the conclusion is irresistible that objection could not be held to be maintainable u/s 9A (2) or 9B of the U.P. Consolidation of Holdings Act.

11. Rule 24A (1) (ii) being also relevant is also quoted below to further untangle the knot of dispute.

Rule 24A (1).--The "statement of principles" shall be prepared in his own hand in C.H. Form 21 by the Assistant Consolidation Officer in consultation with the Consolidation Committee and after making enquiries from as many tenure-holders of the unit as he may be able to collect. The statement shall contain reasons for the principles incorporated and shall be accompanied by a copy of the map of the unit, which shall show--

(ii) The existing permanent features, such as abadi sites, canals, their distributaries along with field channels (gools), roads, groves, wells, nalas, rivers, grave-yard, cremation grounds and other areas, used for public purposes ;

12. From a perusal of the above, it is not indicated that it envisages any provision for filing of objections to include land of other tenure holders for widening the road.

13. To enforce his submissions, the learned Counsel for the Petitioner placed

credence on certain case laws. I would first notice the case of Ram Samujh v. Dy. Director of Consolidation 1996 ACJ 350, which is the sheet anchor of the arguments advanced by the learned Counsel for the Petitioners. It was a case in which question considered was whether a plot was declared as chak out and no objection raised u/s 11A of the U.P. Consolidation of Holdings Act. In this case, the Court held the view that Section 11A of the U.P. Consolidation of Holdings Act would not operate to apply to the question whether the land should be included or excluded from the chak. The ratio of this case does not apply squarely to the present case as the question involved in that case was different from the one stemming in the instant case. Yet another case cited is Ram Lakhan v. Deputy Director of Consolidation 1997 (2) AWC 2218 : 1997 ACJ 739. It was a case in which the washermen claimed reservation of certain land for washing of clothes on the basis of some circular embodied in Consolidation Manual. Again it is a case, which has no application to the facts of the present case. The other cases cited too are not intended for application to the facts of the present case and they cannot be taken aid of to their advantage. Besides the above, the learned Counsel mentioned some more case-laws in his written arguments but I would not forbear from expressing that those citations were not pressed into service in the course of oral arguments nor photocopies of those citations have been annexed to the written arguments submitted in the case.

14. As a result of the foregoing discussion, the inescapable conclusion is that a tenure holder can only raise objection in relation to inclusion or exclusion of his own land in consolidation operation or also the question whether the land should be fit for allotment of valuation only and Petitioners not being tenure holders, their objections were not tenable.

15. In the result, the petition fails and is accordingly dismissed.