
(2008) 04 AHC CK 0119

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32759 of 1994

Jamuna and others

APPELLANT

Vs

D.D.C., Azamgarh and others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2008) 04 AHC CK 0119

Hon'ble Judges : S.K.Singh, J

Judgement

S.K. Singh, J.—Heard Sri C.K. Rai, learned Advocate in support of this petition and Sri O.P. Singh, learned Advocate who appeared for the respondents.

2. Challenge in this petition is the order passed by the Deputy Director of Consolidation by which revision filed by the respondents have been allowed and changes in the chak of the petitioners has been made.

3. Proceedings are under section 20 of the U.P.C.H. Act which is in respect to allotment of plots in the chaks of the parties.

4. Submission of learned Counsel for the petitioners is that on account of judgment of the Deputy Director of Consolidation petitioners have suffered prejudice inasmuch as the chak of the petitioners has become multi cornered and at the same time plots which were given in the petitioners chak which remain confirmed up till stage of the appellate authority has been disturbed without assigning any cogent reason and without considering the hardship and inconvenience which the petitioners are to suffer. Submission is that the judgment of the Deputy Director of Consolidation is one sided and the relief which has been given to the respondents is on just their asking and that too in an illegal manner. Lastly it is submitted that in respect to plot No. 261 which was reserved for primary pathshala in the statement of principle, no objection was filed by the owner of that plot, as provided in law under section 9B of the U.P.C.H. Act, therefore, at the stage of the Deputy Director of Consolidation by making an observation that reservation to plot No. 137 is unjust is also totally

illegal and without jurisdiction. Submission is that although there is an observation in the judgment that spot has been seen and the matter has been heard thereafter but that is incorrect. It is on these facts order of Deputy Director of Consolidation has been argued to be interfered.

5. In response to the aforesaid, submission of Sri Singh is that spot has not been inspected. Plot No. 137 is not irrigated land but was wrongly given to the respondent and therefore, that was taken out and that was rightly reserved for primary, school in which no illegality can be found. Submission is that at the adjoining place there was a hospital and, therefore, no fault in the adjustment is there.

6. In view of the aforesaid, this Court has examined the merits in the claim of the parties.

7. There is no dispute about the fact that in respect to plot No. 201 which was reserved in the statement of principle for the purpose of primary school no objection was filed by the tenure holder under section 9B of the U.P.C.H. Act. Consolidation Officer has given a finding that as no objection was filed as provided in law the claim of the respondents cannot be allowed. The Deputy Director of Consolidation while allowing revision of the respondents has given reasons that plot No. 137 given in the chak of the revisionist is his original plot this Court is agreed that whether this can be a valid reason for given relief under the provisions of the U.P.C.H. Act, Under section 19 there is no bar in allotting the original plot of one tenure holder to the other. Needless to say that mandate of section 19 of the U.P.C.H. Act is not to the effect that each and every regional plot of a chak holder is to be given in his chak.

8. Deputy Director of Consolidation has not given cogent reasons for allowing the revision. At the same time the observation of the Deputy Director of Consolidation that after making spot inspection it was found that plot No. 261 is not required to be reserved for primary school also appears to be on just whims of the Deputy Director of Consolidation. At the stage of the revision this exercise, in the manner it has been done cannot be said to be permissible. There is a purpose for making reservation at the initial stage. Reservations are made for various public purposes i.e. pasture land, playground etc. The tenure holder has a right to file objection and then at that stage things are to be varied if they are required to be varied. On a perusal of the judgment of the Deputy Director of Consolidation this Court is convinced that in a very arbitrary manner the land which was reserved for primary school having not been objected has been varied by another reason that at a near place there is a school and thus that can have hardly any justification. While allowing the revision claim of the revisionist might be accepted to be correct and acceptable but at the same time the comparative inconvenience and the hardship which other side is to form is also to be kept in mind. There is absolutely no reason for disturbing the chak of the petitioners and it is just a charge on account of allowing of the revision and petitioners have been affected. Thus the judgment of the Deputy Director of Consolidation

happens to be clearly one sided. The Revisional Court was deciding the revision between two parties. On the facts, this Court is not satisfied that Revisional Court has decided the revision in accordance with law by as signing any reason for disturbing the present petitioners as making of the adjustment is after balancing the equity between the parties. This Court is of the view that straightway final adjustment is not to be made by the Court as that can be said to be the jurisdiction of the Revisional Court, if required, after making spot inspection. Thus the Revisional Court is to ensure that fresh exercise is done after giving opportunity to both sides.

9. Accordingly for the reasons given above judgment of the Deputy Director of Consolidation is quashed. The Revisional Court is to decide the revision preferably within a period of four months from the date of receipt of certified copy of this order.