

**(2016) 11 AHC CK 0065**

**In the Allahabad High Court**

**Case No : Writ Petition (Cons.) No. 683 of 2012**

Jhoori

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

**Date of Decision : 09-11-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(e), Section 19(f)

**Citation : (2017) 134 RD 401**

**Hon'ble Judges : Anil Kumar, J.**

**Bench : Single Bench**

**Advocate :** C.S.C., Kapish Srivastava, Monoj Kumar Pandey and Rajendra Singh, Advocates, for the Respondents; O.P. Srivastava, Atul Kumar Srivastava and Kapish Srivastava, Advocates, for the Petitioner

**Final Decision : Allowed**

## Judgement

Anil Kumar, J. - Heard learned Counsel for the petitioner, learned Standing Counsel and perused the record.

2. The controversy involved in the present case relates to Plot No. 470 area 0.379 on which there is a private source of irrigation as well as Tube-well. The said land belongs to the petitioner/Jhoori as well as opposite party Nos. 3/Sri Shambhoo Dayal and 4/Sri Lalit Kumar, who are real brothers. In the matter in question, an order dated 29.3.2005 passed by Deputy Director of Consolidation, Lucknow Camp, Unnao.

3. As per the case of the petitioner, the said order is an ex-parte order and is in contravention to the provisions of section 19 (e and f) of U.P. Consolidation of Holdings Act, 1958.

4. It is further submitted on behalf of the petitioner that thereafter, opposite party No. 3 moved an application for restoration before the opposite party No. 1, allowed by order dated 27.8.2010 and lastly in the matter, an order dated

31.12.2010 has been passed by Deputy Director of Consolidation, Unnao, which was challenged by the petitioner by filing Writ Petition No. 26 (Cons.) of 2011, allowed by order dated 18.1.2011 passed by this Court, which reads as under : -

"Heard Sri O.P. Srivastava, learned Counsel for the petitioner, learned Standing Counsel for the opposite party Nos. 1 and 2 while Sri Sanjay Singh appears for opposite party Nos. 3 and 4.

Petitioner has challenged the order dated December 31, 2010 passed by the Deputy Director of Consolidation, Unnao, as contained in Annexure No. 1 to the writ petition. His main grievance is that he was not heard. A general date was fixed but his version could not be put before the Deputy Director of Consolidation and, as such, this order is bad. It may be remanded back to be decided on merits. He further says that he never consented to the order dated 29.3.2005, which is a manipulated order.

The Court finds that in the interest of justice it will be appropriate that the matter may be heard afresh after giving opportunity of hearing to the petitioner as well.

Accordingly, the order dated December 31, 2010 is hereby set aside. The matter is remanded back to the opposite party No. 1 to be decided afresh expeditiously."

5. Thereafter, the matter came up for consideration before the Deputy Director of Consolidation, Unnao.

6. By order dated 19.11.2012, the said authority had dismissed the Reference Nos. 552/19 and 550/288/19, under challenge in the present writ petition.

7. Shri O.P. Srivastava, learned Counsel for the petitioner while challenging the impugned order submits that in the present case, the order dated 29.3.2005 passed by Deputy Director of Consolidation, Unnao is forged one and subsequent, specially, last order dated 19.11.2012 passed by Deputy Director of Consolidation, Unnao is also non-est in the eye of law.

8. He further submits that petitioner has got boring which exists at Gata No. 470 as while passing the impugned order, petitioner has not given any chak over the Gata No. 470, as such he has been deprived from the source of irrigation. So the impugned order is in conformity with the provisions of section 19 (e and f) of U.P.C.H. Act.

9. Learned Counsel for the respondent while supporting the impugned orders submits that so far as the argument raised by learned Counsel for the petitioner that the order dated 29.3.2005 passed by opposite party No. 1 is forged one and has got no force and during the proceedings, the signature has been put up by the petitioner.

10. It is further argued on behalf of contesting respondent that Deputy Director of Consolidation, after taking into consideration the factual position of fact that there is enmity between the parties has passed the impugned order thereby

maintaining the order dated 29.3.2005, so there is no force in the matter in question and the present writ petition is liable to be dismissed.

11. I have heard learned Counsel for the parties and gone through the records.

12. So far as the argument raised by learned Counsel for the petitioner, that the order dated 29.3.2005 passed by opposite party No. 1 is a forged one, has got no force, rather the said argument is contrary to the material on record because from the material on record, the position which emerges out is that before the Court below, Petitioner has been given an ample opportunity to put forward his case.

13. Next argument advanced by learned Counsel for the petitioner, that at Gata No. 470, there is a private source of irrigation as well as Tube-well and while passing the impugned order dated 19.11.2012, opposite party No. 1 has failed to consider the grievance of the petitioner that he has been deprived from the private source of irrigation and maintained the earlier order dated 31.10.2012 and 29.3.2005 passed by him, has got force because from the perusal of the Chak Amended Chart, the position which emerges out is that while passing the impugned order, the chak of the petitioner at Gata No. 470 area 0.99 has been taken away and in lieu thereof, he has given a chak at Gata No. 468 area 0.0027. While doing so, the reasoning given by the opposite party No. 1/Deputy Director of Consolidation, Unnao in the impugned order is to the effect that "milapkyd pdcUnh us ;g lanHkZ fnukad 29-03-2005 dks vuqeksfnr fd;k gSA ;kph >wjh o foi{kh "kEHkwn;ky lxs HkkbZ gSaA bl lanHkZ dh rkfydk esa >wjh dks ewy xkVk 470 dks ysdj pd fn;k x;k gSA"

14. From the bare reading of the reasoning given in the impugned order, the position which emerges out is that the opposite party No. 1 has passed the impugned order with the consideration that the petitioner has been additional chak at some other land in addition to original chak at Gata No. 470. The said reasoning is contrary to the facts which is evident from the "Chak Amended Chart". So the impugned orders under challenge in the present writ petition are contrary to the provisions of section 19 (e and f) of U.P.C.H. Act and liable to be set aside.

15. For the foregoing reasons, the writ petition is allowed and the impugned orders dated 29.3.2005 and 19.11.2012 passed by opposite party No. 1 are set aside. The matter is remanded back to the said authority to decide it afresh in respect to allotting the chak between the parties. The said exercise shall be done within a period of three months from the date of receiving a certified copy of this order.