

(2003) 12 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 24105 of 2003

Kumari

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1)

Citation : (2003) 12 AHC CK 0075

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

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition has been filed assailing the judgment dated 752003 passed by Deputy Director Consolidation, Gorakhpur by which revision of Muni Ram respondent No. 3 was allowed.

2. The facts beyond the pale of controversy are that both the parties are Bhumidhars of Plot No. 445 admeasuring 0.709 hectares situated in village Bhambhoor, Post Narkata Bazar, Gorakhpur and the petitioner is cosharer to the extent of 2/3rd whist Muni Ram is cosharer to the extent of 1/3rd. From a bare perusal or C.H. Form No. 23, it transpires that the Asstt. Consolidation Officer assigned Plot No. 448/2, admeasuring 0.228 hectares to the petitioner. At the stage of Consolidation Officer, a chunk of land to the extent of 0.032 was taken out and the was allotted land on Plot No. 448 admeasuring 0.029 and on Plot No. 464 admeasuring 0.004 total area 0.033. It is further revealed that the Deputy Director Consolidation excluded part of land to the extent of 0.131 out of Plot No. 448 and instead, assigned to her Udan Chak on Plot Nos. 604 and 603.

3. The mainstay of the arguments advanced on behalf of the learned Counsel for the petitioner is that the petitioner was having only one original holding abutting the road i.e. Plot No. 448 in which she was having 2/3rd share but she has been deprived of her only original holding by the Deputy Director Consolidation and in its place another Udan Chak in the low lying area which suffered inundation during rainy season, was assigned to her at the dictate and behest of some other

party. Per Contra, learned Counsel for the contesting Opposite Parties sided with the order stating that the Deputy Director Consolidation has done justice between the parties and the order does not wear the taint of any infirmity or error and that it was warranted in the factsituation of the case.

4. Having considered the matter all its entirety, I am of the view that the impugned order passed by the Deputy Director Consolidation is not informed with reasons warranting deprivation of the petitioner of her only original holding on Plot No. 448 on the road side in which she had her 2/3rd share/Section 19(1) of the U.P. Consolidation of Holdings Act envisages certain conditions that every tenure holder shall be allotted the plot on which exists his/her private source of irrigation or any other improvement together with such other plots may be held by him/her near. it. The principles underlying it appears to be that every tenure holder should be allotted compact area at the place where he holds largest part of his/her holding and the consolidation authorities cannot ignore the provisions without specific reasons. The section contains elaborate provisions safeguarding the right of the tenure holders and fettering any tendency to the contrary. It surfaces from the text of the order that the Deputy Director Consolidation has dealt with the aspects at issue superficially without delving deeper into the aspects whether the order would prove beneficial to one party and disadvantageous to the other having her original holding therein. Besides it does not appear from the impugned order that the authority concerned has applied its mind simulating judicial standard to the provisions of Section 19(1) of the Act. The expression ""as far as possible"" employed in Section 19(1) does suggest that the consolidation authorities have not to act arbitrarily and they are enjoined to follow the provisions and must cite specific reasons in case compliance cannot be made. The view has been consistently held good in a catena of decisions that the order of departure from provisions contained in Section 19(1) must be based on strong reason and it should be by way of exception. No reason has been assigned warranting deprivation of original holding of the petitioner. It would also appear from the impugned order that the Deputy Director has not dwelt upon the spelt that the petitioner had her tubewell and source of irrigation on the plot and further that the area assigned to her was situated in low lying area which had tendency to get inundated in rainy season and that it is not fit for yielding crops round the year. In my considered view, no reason not to speak of any cogent or convincing reason or strong reasons have been assigned for depriving the petitioner of her original holding and in the circumstances, the order does not commend to me for being sustained also for the reason that the impugned order does not lay out any errors in the orders passed by the Consolidation Officer and the Settlement Officer Consolidations.

5. As a result of foregoing discussion, the petition succeeds and is allowed. The order dated 752003 is quashed and the matter is ordered to be relegated to the Deputy Director Consolidation for considering the matter on merits and decision afresh in accordance with the after according due opportunity of hearing to the parties. It is also expected that the Deputy Director Consolidation would have

quietus to the matter expeditiously and would not allow it to suffer protraction on trivial grounds.

Pettion allowed.