
(2010) 12 AHC CK 0194
In the Allahabad High Court
Case No : Writ-B No. 3159 of 1974

Lakhan Singh

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (2011) 112 RD 215

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Though the case has been taken up in the revised but no one has appeared on behalf of the Respondents.

2. Heard Sri K.S. Chauhan, learned Counsel for the Petitioner.

3. This petition arises out of chak allotment proceeding. Against the chak proposed at the stage of Assistant Consolidation Officer, Nawab Singh father of the contesting Respondents No. 3 to 5 filed objection u/s 20 of U.P. Consolidation of Holdings Act (for short the "Act") alleging that he has been allotted chak on inferior quality of land and plot No. 86 which is near his plot containing tubewell has not been included in the chak. Consolidation Officer allowed the objection and made adjustment affecting the chaks of the Petitioner and certain other persons though they were not impleaded as party in the objection and adjustment was sought only against one Sheo Nath Singh. The order passed by the Consolidation Officer was challenged in five appeals. Out of which one appeal was filed by the Petitioner.

4. The grievance of the Petitioner in the appeal was that shape of his chak was made irregular and his original holding has been excluded from his chak. The Settlement Officer vide order dated 11.3.1970 allowed the appeal filed by the Petitioner and again made adjustment.

5. The contesting Respondents went up in revision on the ground that Settlement Officer Consolidation without any reason has excluded certain area of plot No. 86 from their chak and in lieu thereof they have been allotted plot No. 69 which was of very inferior quality. Deputy Director of Consolidation vide order dated 14.12.1973 allowed the revision making adjustment in the chak of the Petitioner. On 10.1.1974 the Petitioner moved a restoration application for recalling the order dated 14.12.1973 on the ground that it was passed ex-parte and no notices or summons were ever served upon him and he had no knowledge about the proceeding. Deputy Director of Consolidation vide order dated 25.4.1974 dismissed the restoration application as not maintainable treating it to be a review application. In the mean time, the contesting Respondents had moved an application before the Deputy Director of Consolidation on the allegation that they have been deprived of their source of irrigation existing on plot No. 93 and as such, the area of the said plot and plot No. 87 may be allotted so that they may not be deprived of their private source of irrigation and the valuation may be deducted from plot No. 70/2 and plot No. 69 allotted in their chak. On the aforesaid application, the Deputy Director of Consolidation passed an order directing the Consolidation Officer, Mainpuri to prepare a reference and forward the same so that the source of irrigation of the Petitioner may be included in their chak. Accordingly, the Assistant Consolidation Officer submitted a report to the Consolidation Officer who forwarded the reference to the Deputy Director of Consolidation who in its turn accepted the same vide order dated 26.4.1974 despite objection being raised by the Petitioner that the same may amount to review for which he has no power and his chak becomes L-shape.

Aggrieved by the aforesaid order of the Deputy Director of Consolidation rejecting his recall application and allowing the application of the contesting Respondents, the Petitioner has approached this Court.

6. It has been urged by learned Counsel for the Petitioner that the recall application filed by the Petitioner on the ground that no notices or summons were ever served upon him and he had no notice or knowledge of the proceeding, has wrongly been dismissed merely treating it to be a review application without even adverting to the averments made in this regard in the affidavit. It has further been contended that the application moved by the Respondents, as a matter of fact, amounted to review which has been allowed by the Deputy Director of Consolidation for which he is not vested with any power.

7. I have considered the argument advanced by learned Counsel for the Petitioner and perused the record.

8. A perusal of the recall application filed by the Petitioner goes to show that it was categorically pleaded that no notices or summons were ever served upon the Petitioner and the order has been passed ex-parte without hearing him and it was only on 9.1.1974 when he came to know about the fact then he made inquiry and filed the recall application. The Deputy Director of Consolidation without even referring to the allegations made in the application and affidavit

filed in support thereof by one line lacunic order dismissed the application as not maintainable treating it to be a review application. It was incumbent upon the Deputy Director of Consolidation to have considered the averments made in the application and affidavit and returned the finding. In the absence of any finding recorded by the Deputy Director of Consolidation that the Petitioner was served with notice or was heard the recall application has wrongly been rejected treating it to be a review application.

9. Furthermore after passing of the order dated 14.12.1973 the application filed by the contesting Respondents for including the source of irrigation in their chak on which a reference was called for and order has been passed again making changes in the chaks of the parties, as a matter of fact, amounted to review of the order for which there was no jurisdiction vested in the Deputy Director of Consolidation. A Full Bench of this Court in the case of Smt. Shivraji v. Deputy Director of Consolidation, Allahabad and Ors.,¹ has categorically held that the consolidation authorities are not vested with any power of review of its earlier order.

10. In view of aforesaid facts and discussions, the impugned orders dated 14.12.1973 allowing the revision and 25.4.1974 dismissing the recall application filed by the Petitioner as well as order dated 26.4.1974 making adjustment in the chak of the Petitioner after final decision of the revision are not liable to be sustained and are hereby quashed.

11. In normal course, the matter ought to have been remanded back to the Deputy Director of Consolidation to consider the revision afresh but keeping in view the fact that parties are litigating in allotment of chak matter since 1970 and since then almost 35 years have passed a remand at this stage would open a fresh round of litigation between the parties. A perusal of the judgment of the Settlement Officer Consolidation goes to show that it is a just and equitable judgment making proper adjustment in the chaks of the parties and the same is liable to be affirmed and is hereby affirmed.

12. The petition stands allowed.

13. However, there shall be no order as to costs.