
(2015) 05 AHC CK 0208
In the Allahabad High Court
Case No : Writ B No. 12684 of 1990

Lochan

APPELLANT

Vs

D.D.C., Mathura and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19

Citation : (2015) 128 RD 381

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : G.N. Verma, Madhu Tandon, Madur Prakash, Sunita Sharma and R.K. Srivastava, for the Appellant; A. Kulshrestha, Gautam Baghel, Pankaj Shukla, S.C. Singh, S.P. Giri, Sharad Chandra Singh and Vashistha Tiwari, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Anjani Kumar Mishra, J—Heard Sri Madhur Prakash advocate for the petitioner and Sri Anupam Kulshrestha for the contesting respondents. The instant writ petition which arises out of proceedings for allotment of chaks, challenges three orders passed by the Consolidation Officer, Settlement Officer Consolidation and the Deputy Director of Consolidation respectively.

2. The dispute between the parties relates to Plot No. 93. In the provisional consolidation scheme the petitioner is stated to have allotted chaks on Plot No. 115 and 93 which were his original holdings. Being satisfied with such allotment, no objection was filed by him.

3. It appears, that on a objection filed by another tenure holder, the Consolidation Officer by his order dated 7.12.1988 excluded certain portion of Plot No. 115 from the chak of the petitioner. In yet another objection the Consolidation Officer again passed order on 21.7.1989. By this order a portion of Plot No. 93 was excluded from the chak of the petitioner. Thus, the petitioners' chak was modified twice by the Consolidation Officer though on different

objections.

4. Aggrieved, the petitioner preferred two appeals which were dismissed. Two revisions were filed by the petitioner which have been dismissed by a common order. Hence, this writ petition.

5. Learned Counsel for the petitioner submitted that both the Plots 115 and 93 were valuable road side land and therefore, the same should not have been allotted to the contesting respondents who were not the original holders thereof. He has further submitted that the well of the petitioner exists in Plot No. 93. The total area of Plot No. 93 was 3.380 hectares and the petitioner had 1/2 share therein. His share therefore was in excess of 1.600 hectares but on account of the modification made by the Consolidation Officer, he has been proposed only an area of 0.34 hectare of this plot in his chak. Even if the entire area of this chak allotted on Plot No. 93 and its adjacent plots, is taken into consideration, the size of the chak is only 1.021 hectare which less than the original holding on the plot, by 0.5 hectare. Since this plot contained the private source of irrigation of the petitioner, the Courts below have committed manifest illegality in allotting an area, much less than the original holding of the petitioner thereon.

6. The second submission of learned Counsel for the petitioner is that the first order passed by the Consolidation Officer excluded a portion of Plot No. 115 from his chak. Since the chak had already been modified, the Consolidation Officer could not have passed another order on 21.7.1989, again modifying his chak, and therefore, the order dated 21.7.1989 amounts to review which power the consolidation Courts do not possess under the U.P. Consolidation of Holdings Act.

7. The last submission of learned Counsel for the petitioner is that both the plots namely Plot No. 115 and 93 being valuable road side land, these plots should have either been excluded from consolidation operations or should have been allotted to the petitioner, in view of the various government orders in this regard.

8. In rebuttal Sri Anupam Kulshrestha has submitted that mere is no provision under the U.P. Consolidation of Holdings Act which provides that the chak of a tenure holder cannot be modified several times at any given stage. He therefore, submits that since the two orders passed by the Consolidation Officer were passed on separate objections, the same suffer from no illegality and the second order of the Consolidation Officer does not amount to review. The submission of learned Counsel for the petitioner in this regard is therefore, not liable to be sustained.

9. The second submission of Sri Kulshrestha is that no ground was taken either before the Settlement Officer Consolidation or before the Deputy Director of Consolidation regarding dispossession of the petitioner from valuable road side land. He further submits that the roads to which the plots in question are said to abut are not important roads but are chak roads. Therefore, the submission that these plots were liable to be allotted to the petitioner, the original holder thereof or were liable to be excluded from consolidation operations in view of the

Government orders in this regard, is misplaced. The government orders have no application in the instant case.

10. He has lastly contended that the Settlement Officer Consolidation has recorded a categorical finding that the chak proposed to the petitioner has only undergone a slight modification which requires no interference.

11. I have considered the submissions made by learned Counsel for the parties and have perused the record.

12. The submission made on behalf of the petitioner that by the modification made in the chak, areas of plots which were valuable road side land had been excluded, lacks merit. The submission of learned Counsel for the respondents that the roads abutting these plots were not main roads but only chak roads and have no commercial value is borne out by the maps that have been filed by the parties with their pleadings. The contention of learned Counsel for the petitioner in this regard therefore is repelled.

13. The submission of learned Counsel for the petitioner that the Consolidation Officer cannot repeatedly pass orders modifying the chak of particular chak holder, has force. It is settled law that the consolidation Courts do not possess the power of review. Even otherwise, the litigation under the U.P. Consolidation of Holdings Act is not a voluntarily litigation but is litigation, forced upon a chak holder by law.

14. Once the chak of a tenure holder had been modified and certain area of Plot No. 115 had been excluded from his chak, it was not open for the Consolidation Officer to have passed another order, this time excluding area of Plot No. 93 from his chak, even though, this has been done at the instance of different parties. Under the schema of the Act, in my considered opinion the chak of a tenure holder should be modified only once because of the settled legal position that the consolidation Courts do not possess the power of review. The contention of learned Counsel for the petitioner in this regard is therefore, liable to be accepted.

15. The submission made by learned Counsel for the respondent, relying upon findings returned by the Settlement Officer Consolidation, wherein he has held that the chak of the petitioner has been modified slightly, also cannot be accepted. As already noticed herein above, the area of the original holding of the petitioner on Plot No. 93 was in excess of 1.5 hectare. This plot also contained the private source of irrigation of the petitioner. Against this share, the petitioner has only been proposed an area equal to 0.347 hectare in his chak, which is only about 1/3 of his original holding. Even if it is accepted that along with Plot No. 73 certain area of the adjacent plots has been excluded in the chak even then the chak allotted 1.102 hectare in area, which is again more than 0.5 hectare less than the original holding of the petitioner of Plot No. 93 which contains his private source of irrigation. The allotment therefore, is contrary to the provisions contained in section 19 of the U.P. Consolidation of Holdings Act.

16. At this stage, learned Counsel for the petitioner has submitted that this plea was not raised before the subordinate consolidation authorities and therefore, the same cannot be considered by this Court while hearing a writ petition. It is true that a point had not been raised earlier should not be permitted to be raised for the first time in the petition, but the fact remains that allotment of chaks is to be made by the consolidation authorities in accordance with the provisions of section 19 of the Act and its various sub-sections. The said provisions clearly provide that a tenure holder should, as far as possible, be allotted a chak on his largest original holding as also the holding which contains his private source of irrigation.

17. Even though, this requirement appears to have been complied with, yet, the Courts below while deciding the appeal and revision of the petitioner, have not specifically adverted to this aspect of the matter, despite this plea having been raised, both in the memo of appeal as also the memo of revision. Even otherwise, the impugned orders passed by the Settlement Officer Consolidation and the Deputy Director of Consolidation appear to be cryptic as they do not consider all the points raised.

18. In the aforesaid facts and circumstances, the orders impugned are liable to be set aside.

19. I accordingly set aside the order dated 30.3.1990 passed by the Deputy Director of Consolidation and remand the matter back for a fresh consideration in accordance with law, after hearing all concerned.

20. It is further provided that the Deputy Director of Consolidation may complete this exercise as expeditiously as possible, preferably within a period of six months from the date a certified copy of this order is filed before him since the matter is an old one having remained pending for almost 25 years. Accordingly and subject to the directions/observations as above, this writ petition is allowed in part.