

(2014) 04 AHC CK 0337
In the Allahabad High Court
Case No : C.M.W.P. No. 8105 of 1993

Mangal

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11-A, 19-A, 20, 20(1)

Citation : (2014) 5 ADJ 320 : (2014) 6 AWC 5662 : (2014) 123 RD 550

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : K.N. Tripathi, M.C. Singh and S.K. Mishra, Advocate for the Appellant; Arvind Upadhyay, I.R. Singh, R.N. Singh, S.N. Singh and S.S. Verma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J.—The petitioners have filed this writ petition challenging the order dated 27.2.1993 passed by the Dy. Director of Consolidation, Azamgarh (for short, DDC), in Revision No. 1049 u/s 48 of the U.P. Consolidation of Holdings Act (for short, the CH Act), arising out of the proceedings u/s 20 of the Act for allotment of chaks. The revision was preferred against the order passed in the appeal filed by Gauri Shankar, contesting respondent No. 2, which was partly allowed vide order dated 7.10.1989. The revision was filed praying that the revisionist respondent No. 2 be allotted the chak of plot No. 105 near the abadi.

2. I have heard Sri M.C. Singh, learned Counsel for the petitioner's and Sri Arvind Kumar Upadhyay, who represents contesting respondent No. 2, and have perused the record.

3. It is the case of the petitioners that they are co-owners of plot No. 105 and therein exists their tube-well. A copy of the CH Form-2-A has been annexed along with the writ petition to establish that the tube-well in plot No. 105 belongs

to the petitioners Plot No. 105 was, therefore, proposed in their chak by the Assistant Consolidation Officer (for short, ACO). The petitioners being satisfied did not prefer any objection, and their chak remain unchanged even upto the stage of the Settlement Officer, Consolidation (for short, SOC).

4. It appears from the record that four appeals were preferred by Gauri Shankar, contesting respondent, before the SOC. In two appeals of the four filed by Gauri Shankar, his claim was for allotment of plot No. 105 lying in front of his house in the abadi. In another appeal, he had prayed for allotment of chaks as proposed at the ACO stage. The SOC by his order dated 7.10.1989 allowed the appeals by a common order. Still not satisfied, Gauri Shankar preferred a revision, which has been allowed by the impugned order. Hence this writ petition by the petitioners, the opposite parties in the Court below.

5. The DDC in his order has recorded that chak No. 107 pertaining to khata No. 866 was entered as follows: The share of Basder and Mangal was shown to be $\frac{1}{3}$, that of Gauri Shankar as $\frac{1}{6}$ and $\frac{1}{2}$ share was shown as that of Munnu, etc. This $\frac{1}{2}$ share had been partitioned and separate chaks have been allotted to Munnu, etc. aforesaid.

6. After recording the aforesaid shares, the DDC has partitioned the chaks between the petitioners and respondent No. 2. The chak of the petitioners has been numbered as No. 107 and that allotted to respondent, numbered as 107-A.

7. The submission of the learned Counsel for the petitioners is that the partition could not have been effected by the DDC in proceedings pertaining to allotment of chaks. Partition under the scheme of the Act is permissible only in proceedings u/s 9. He has, therefore, submitted that the order is wholly without jurisdiction and deserves to be set aside.

8. Thus the controversy in this writ petition that requires determination is as to whether or not in proceedings of allotment of chak, the consolidation authorities have power and jurisdiction to effect a partition.

9. Learned Counsel for respondent No. 2 has supported the order impugned, saying that by the partition that has been effected by the impugned order, no prejudice is caused to the petitioners and, therefore, the writ petition calls for no interference and the order impugned deserves to be affirmed.

10. In this connection it would be relevant to refer to paragraph 6 of the counter affidavit, sworn by Gauri Shankar, wherein it has been admitted that the proceedings are pending before the Consolidation Officer as regards the partition of the shares of the parties. It has further been averred in the counter affidavit that the order impugned is not an order of allotment of chaks, but an order whereby the shares of the contesting respondent has been separated. It has further been admitted that the contesting respondent had also filed an application u/s 42-A of the Act for the same relief of partition of his share, which was misconceived and its dismissal would not affect the rights of the respondent

in any manner.

11. On a consideration of the rival submissions of the parties, this Court is of the view that the DDC in a revision, arising out of an objection u/s 20 of the U.P. CH Act, does not have power to order a partition or separation of chaks of the parties. This power necessarily has to be exercised in proceedings u/s 9 of the Act.

12. Section 9 of the CH Act is extracted below:

9. Issue of extracts from records and statements and publication of records mentioned in sections 8 and 8A and the issue of notices for inviting objections--

(1) Upon the preparation of the records and the statements mentioned in sections 8 and 8-A, the Assistant Consolidation Officer shall--

(a) correct the clerical mistakes, if any, and send, or, cause to be sent, to be tenure-holders concerned and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed showing-

(i) their rights in and liabilities in relation to the land;

(ii) mistakes and disputes discovered u/s 8 in respect thereof;

(iii) specific shares of individual tenure-holders in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation;

(iv) valuation of the plots; and

(b) valuation of trees, wells and other improvements for calculating compensation thereof and its apportionment amongst owners, if there be more owners than one;

(c) publish in the unit the current khasra and the current annual register, the khasra chakbandi, the Statement of Principles prepared u/s 8-A and any other records that may be prescribed to show, inter alia the particulars referred to in Clause (a).

(2) Any person to whom a notice under sub-section (1) has been sent, or any other interested person may, within 21 days of the receipt of notice or of the publication under sub-section (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or the need for partition.

13. Section 9-A of the Act deals with the disposal of cases relating to claims to land and partition of joint holdings and the same is also extracted below:

9-A. Disposal of cases relating to claims to land and partition of joint holdings.--

(1) The Assistant Consolidation Officer shall--

(i) where objections in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned; and

(ii) where no objections are filed after making such enquiry as he may deem necessary,

settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation.

(2) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (1), all cases relating to valuation of plots and all cases relation to valuation of trees, wells or other improvements, for calculating compensation therefor, and its appointment amongst co-owners if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under subsection (1) and the Consolidation Officer, while acting under sub-section (2), shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding.

14. Further, section 11-A of the Act creates a bar, whereby claims to land and for partition, etc. are barred from being raised subsequently, if not raised u/s 9. Section 11-A reads as follows:

11-A. Bar on objections.--No question in respect of--

(i) claims to land,

(ii) partition of joint holdings, and

(iii) valuation of plots, trees; wells and other improvements, where the question is sought to be raised by a tenure-holder of the plot or the owner of the tree, well or other improvements recorded in the annual register u/s 10.

relating to the consolidation area, which might or ought to have been raised u/s 9, but has not been so raised, shall be raised, or heard at any subsequent stage of the consolidation proceedings.

15. In case no partition is sought u/s 9 of the Act, the bar imposed by section 11-A will come into operation and such a claim at a subsequent stage will not be maintainable. It, therefore, logically follows that a claim for partition cannot be entertained at the stage of proceedings for allotment of chaks subsequent to the preparation of the Provisional Consolidation scheme as provided u/s 19-A and its publication as provided u/s 20(1). Objections at this stage can be filed only against the Provisional Consolidation scheme which are disposed of as provided u/s 21(1), which orders are subject to an appeal u/s 21(2), and thereafter revision u/s 48(1) of the Act.

16. Thus, from the perusal of the aforesaid provisions and the scheme of the Act

itself, it is abundantly clear that the partition can be effected only in proceedings u/s 9 of the Act, which proceedings are admittedly pending before the Consolidation Officer. The DDC, therefore, erred in effecting partition in a revision arising out of the proceedings for allotment of chaks which arise out of an objection u/s 20 of the Act. The order impugned, therefore, is unsustainable and is liable to be quashed.

17. Accordingly, the impugned order dated 27.2.1993 passed by the DDC, Azamgarh, is hereby quashed. The matter is remanded to him for a decision afresh on merits after hearing the parties. There will, however, be no order as to costs.

18. Since the matter is very old one, it is expected that the Consolidation Officer shall deal with the matter expeditiously and endeavour to decide the same within 6 months from the date of the production of certified copy of this order before him/her. The petition is accordingly allowed.