
(2002) 01 AHC CK 0160
In the Allahabad High Court
Case No : C.M.W.P. No. 3953 of 2002

Moh. Kallu

APPELLANT

Vs

Dy. Director of Consolidation, Moradabad and Another

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 19, 21, 21(2), 44A

Citation : (2002) 1 AWC 753

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : M.D. Misra and R.C. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—By this writ petition the petitioner has prayed for quashing of the order dated 11.1.2002 passed by the Deputy Director of Consolidation. The writ petition arises out of the proceedings u/s 20 of the U. P. Consolidation of Holdings Act, 1953. The respondent No. 2 filed objection u/s 20 of the U. P. Consolidation of Holdings Act claiming allotment of original holding plot No. 56. The objection was rejected against which an appeal was filed. The appeal was partly allowed by the Settlement Officer of Consolidation by order dated 29.7.2000. An application to recall the order dated 29.7.2000 was filed on which the Settlement Officer of Consolidation again passed an order dated 7.4.2001. A revision was filed by the respondent No. 2 u/s 48 of the U. P. Consolidation of Holdings Act which was allowed by the Deputy Director of Consolidation on 11.1.2001 against which order the petitioner has come up to this Court in this writ petition.

2. Sri M. D. Misra appearing for the petitioner has strenuously contended that the Deputy Director of Consolidation has committed error in himself disturbing the chak of the petitioner and making re-allotment. According to his submission the Deputy Director of Consolidation does not have power u/s 48 of the U. P.

Consolidation of Holdings Act to reallocate the chak and in the present case, he ought to have remanded the matter to the Settlement Officer of Consolidation for reallocation of chaks if he is satisfied that the area of the petitioner has been increased by more than 55 per cent. Sri M. D. Misra has referred the provisions of Section 21 of the U. P. Consolidation of Holdings Act and has submitted that u/s 21 (2) of the Act the duty is cast on the Settlement Officer of Consolidation to decide the appeal after spot inspection. He has further referred the provisions of Section 21 (4) and stated that if, during the course of disposal of an objection or hearing of an appeal. Consolidation Officer or the Settlement Officer of Consolidation is of the opinion that material injustice is likely to be caused to a number of tenure-holders in giving effect to the Provisional Consolidation Scheme, as prepared by the Assistant Consolidation Officer, or as subsequently modified by the Consolidation Officer, and that a fair and proper allotment of land to the tenure-holders of the units is not possible without revising the Provisional Consolidation Scheme, or getting a fresh one prepared, it shall be lawful, for reasons to be recorded in writing to revise the Provisional Consolidation Scheme, after giving opportunity of being heard to the tenure-holders concerned. He has further submitted that Section 21 clearly indicates that the Settlement Officer of Consolidation has been clothed with power of allotment and re-allotment. He has submitted that the Deputy Director of Consolidation does not possess such power and it was not within the power of the Deputy Director of Consolidation to reallocate the chaks and disturb the chak of the petitioner. Sri Misra has further submitted that the order of the Deputy Director of Consolidation is erroneous and not in accordance with law.

3. After having heard counsel for the petitioner and perusing the record, it is clear that the Deputy Director of Consolidation, by the impugned order, has allowed the revision and has made amendment in the chak of the petitioner as well as the respondent No. 2. The legal submission which has been raised by Sri Misra is that the Deputy Director of Consolidation does not possess the power for allotment and it was necessary to remand the matter to the Settlement Officer of Consolidation, has to be considered. The U. P. Consolidation of Holdings Act is special Act which contains the provisions for implementation of the consolidation in a unit. The consolidation proceedings proceed in different stages. u/s 19 of the U. P. Consolidation of Holdings Act, the consolidation scheme is required to be prepared according to the principles referred to u/s 19. Section 19A relates to the preparation of Provisional Consolidation Scheme by the Assistant Consolidation Officer. The Provisional Consolidation Scheme is to be published and objections are to be filed. Section 21 pertains to disposal of objections to the Provisional Consolidation Scheme and subsection (2) of Section 21 provides filing of appeal. Sri Misra is correct in his submission that the Settlement Officer of Consolidation has been clothed with power to re-allocate the chak and to make spot inspection as contemplated u/s 21 (3). Section 21 (4) gives ample jurisdiction to the Settlement Officer of Consolidation to make allotment and re-allotment. The question which has been raised by him is that the Deputy Director

of Consolidation u/s 48 cannot himself make allotment and it ought to have remanded the matter. Sri Misra has further stated that the Deputy Director of Consolidation may have power with regard to title dispute and the Deputy Director of Consolidation may have right to Interfere in an order which arises out of the proceedings u/s 11 but the Deputy Director of Consolidation cannot himself make allotment arising out of the proceedings u/s 20.

4. I have considered the submissions of the counsel for the petitioner. Section 48 of the U. P. Consolidation of Holdings Act does not create any differentiation in the powers of the Deputy Director of Consolidation while deciding the revision arising out of the proceedings under Sections 11 and 21 of the Act. The power u/s 48 of the Act is in uniform and can reach in the same manner and with some scrutiny whether the order is passed by the Settlement Officer of Consolidation u/s 11 or u/s 21 (2) of the Act. Section 48 of the Act does not contemplate any differentiation nor the words u/s 48 are capable of any such interpretation. The submission of Sri Misra that the power of the Deputy Director of Consolidation differs with regard to the proceedings under Sections 11 and 21 cannot be accepted. The main thrust of Sri Misra is that the Deputy Director of Consolidation cannot himself reallocate the chafes.

5. Section 48 (1) of the U. P. Consolidation of Holdings Act provides :

"Section 48 (1).--The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings ; or as to the correctness, legality or propriety of any order (other than interlocutory order) passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard make such order in the case or proceedings as he thinks fit."

6. The last line of Section 48 of the Act, which provides that after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit, gives very wide power to Deputy Director of Consolidation. The power given to the Deputy Director of Consolidation u/s 48 of the U. P. Consolidation of Holdings Act is to be comprehended in widest terms. The revlsional power given u/s 115 of the CPC clearly shows that it is not as comprehensive as the power of Section 48. The Apex Court in Sheo Nand and Ors. v. Deputy Director of Consolidation, Allahabad and Ors. 2000 (2) AWC 1276 (SC). while considering the scope of power of Deputy Director of Consolidation u/s 48 held :

"20. The section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may effectively be adjudicated upon and determined so as

to confer finality to the rights of the parties and the revenue records may be prepared accordingly."

7. Section 44A of the U. P. Consolidation of Holdings Act also reinforces that Deputy Director of Consolidation can exercise all such power which can be exercised by Settlement Officer of Consolidation.

Section 44A was added in the Act by U. P. (Amendment) Act No. 38 of 1958. Section 44A is quoted as below :

"44A. Powers of subordinate authority to be exercised by a superior authority.-- Where powers are to be exercised or duties to be performed by any authority under this Act or the Rules made thereunder, such powers or duties may also be exercised or performed by an authority superior to It."

8. The U. P. Consolidation of Holdings Act being a special Act, the Director of Consolidation has been clothed with a very wide power. From the above discussion. It is clear that Deputy Director of Consolidation has been vested with very wide power by the Legislature and in exercise of power u/s 48 of U. P. Consolidation of Holdings Act, the Deputy Director of Consolidation can allocate, reallocate and make changes in chaks allotted by subordinate consolidation authorities.

9. Sri Misra next contended that there is wide difference in the power of the Settlement Officer of Consolidation as given u/s 11 and as given u/s 21 of the Act. According to him the power given to Settlement Officer of Consolidation u/s 11 is only to decide the appeal arising out of the proceedings u/s 9A/9B ; whereas Section 21 clothed the Settlement Officer of Consolidation with the greater power. The power of Settlement Officer of Consolidation under Sections 11 and 21 (2) are powers at different stages. Section 48 of the U. P. Consolidation of Holdings Act does not contemplate exercise of different powers by the Deputy Director of Consolidation or Director while examining the order passed under Sections 11 or 21. The question in the present case is that as to whether the Deputy Director of Consolidation could have himself made allotment of chafe or was bound to remand the matter to the Settlement Officer of Consolidation, is to be looked into, As observed above, the power of the Deputy Director of Consolidation u/s 48 does not contemplate any such distinction. The mere fact that the power of the Settlement Officer of Consolidation under Sections 11 and 21 of the Act are of different nature have no bearing on the power of the Deputy Director of Consolidation as given u/s 48 of the Act. The order of the Deputy Director of Consolidation indicates that in allotment of chak to the petitioner, difference of area was more than 55.8% and in view of the above. It was necessary to take out the area from the petitioner's chak since according to Section 19, there should not be variation of area by more than 25%, the Deputy Director of Consolidation by his order has reduced the area of chak given at plot No. 56 of the petitioner and the Deputy Director of Consolidation has not committed any error in giving the chak to the respondent

at plot No. 56 and directing the petitioner chak to be carved out at plot No. 381 etc. 1 do not find any error in the order of the Deputy Director of Consolidation. Substantial justice has been done by the Deputy Director of Consolidation in allotment while adjusting the allotment of chaks.

10. The counsel for the petitioner has next submitted that he has boring at plot No. 56 if in the allotment petitioner does not get his boring, the petitioner will be entitled to the valuation of his boring in accordance with law.

11. The writ petition lacks merit and is accordingly dismissed subject to observation as made above.