

(2014) 04 AHC CK 0317
In the Allahabad High Court
Case No : Writ-C No. 6601 of 2002

Naresh Chand Tyagi

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 21, 48, 9

Citation : (2014) 123 RD 411

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Swaraj Prakash and Ajay Kumar Srivastava, Advocate for the Appellant; N.P. Shukla, Narendra Prasad Shukla, S.B. Rai and V.C. Srivastava, Advocate for the Respondent

Judgement

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Anjani Kumar Mishra, J.—This writ petition has been filed challenging the order dated 29.12.2001 passed by the Deputy Director of Consolidation in proceedings for allotment of chaks. Petitioner, Chak Holder No. 218 and the respondent, Chak Holder No. 244 are real brothers. The dispute primarily in the writ petition pertains to Plot No. 110 which is the original holding of the parties and this original holding has been allotted in the chak of the petitioner by the impugned order. I have heard the learned Counsel for the parties and have perused the record.

2. It is the case of the petitioner that the area of Plot No. 110 is only about 2.132 hectares on the spot. In this regard an order was passed by the Consolidation Officer on 28.11.1998 directing the area of the plot as recorded as 2.064 hectares as against the area of 2.302 hectares shown in the Settlement records. Against this order, the respondent filed an Appeal No. 592 under section 11(1) of the U.P. Consolidation of Holdings Act. By the order dated 18.1.2001 the Settlement Officer, Consolidation directed that the area as recorded as 2.302 hectares. The petitioner alleging that the order was ex parte filed a restoration

application which was allowed and thereafter the Settlement Officer, Consolidation got measurements made of the plot in question and on the basis of the measurement so made, by an order dated 7.8.2001, directed that the area of Plot No. 110 be recorded as 2.132 hectares. It is the case of the petitioner that this order has become final as it was not challenged by any one.

3. Thereafter during proceedings for allotment of chak, the Assistant Consolidation Officer proposed three chaks to the petitioners. An objection was filed under section 21 praying that the number of chaks proposed to the petitioner be reduced two. The Consolidation Officer by his order dated 29.2.2000 allowed the objection of the petitioner, abolished the third chak allotted to him on Plot No. 241/2 and adjusted the area in the second chak. Against the order passed by the Consolidation Officer the contesting opposite party preferred an appeal which was dismissed vide order dated 9.8.2000. The appellate order was challenged by Balesh Chandra, the contesting respondent, by means of a Revision Nos. 106/168/456 under section 48 of the U.P. Consolidation of Holdings Act. The Deputy Director of Consolidation by the order impugned dated 29.12.2001 allowed the revision whereby the petitioner has again been allotted three chaks. Being aggrieved the instant writ petition has been filed.

4. Among other grounds, the main contention of the petitioner is that the Deputy Director of Consolidation while passing the order impugned has relied upon the order of the Settlement Officer Consolidation dated 18.1.2001 passed in Appeal No. 592 whereby the area of Plot No. 110 recorded as 2.064 hectares was enhanced to 2.302 hectares. This order has also been implemented by means of the revisional order. It has been submitted by the learned Counsel for the petitioner that the reliance placed upon the order dated 18.1.2001 on the part of the Deputy Director of Consolidation is patently illegal inasmuch as the order dated 18.1.2001 had already been set aside on his recall application and subsequently after hearing the parties the Settlement Officer, Consolidation by his order dated 7.8.2001 had directed that the area of the Plot No. 110 be recorded as 2.132 hectares only. Thus it is submitted that the petitioner has been put to irreparable loss by the impugned order which treats the area of Plot No. 110 as 2.302 hectares while in fact the same has been finally held to be only 2.132 hectares. It is submitted that the Deputy Director of Consolidation has implemented an order which was not in existence, having been set aside by an order dated 7.8.2001 which has become final between the parties.

5. In rebuttal, the learned Counsel for the respondents had urged that the petitioner has rightly been given three chaks as he has not a small tenure holder. There is no illegality in the impugned order in so far as it allots three chaks to the petitioner which is within the power and jurisdiction of the Deputy Director of Consolidation. On the strength of these submissions he has prayed for the dismissal of this writ petition.

6. Having considered the rival submissions I am of the opinion that the Deputy Director of Consolidation while passing the impugned order has committed

manifest illegality in trying to implement an order dated 18.1.2001 which was an order passed in proceedings under section 9 of the Act. Even if it is assumed that this could have been done by the Deputy Director of Consolidation in proceedings for allotment of chaks, the fact remains that a wrong order has been given effect to.

7. Thus the Deputy Director of Consolidation has decided the revision treating the area of Plot No. 110 as 2.302 hectares while in fact the area of the plot has been finally held to be only 2.132 hectares. It is therefore abundantly clear that the petitioner will be seriously prejudiced by the allotment made in terms of the impugned order as an area of 1.170 hectares is not available on the spot.

8. In view of the aforesaid, in my opinion the impugned order dated 29.12.2001 passed by the opposite party No. 1 deserves to be set aside. Accordingly the order impugned dated 29.12.2001 is set aside. The writ petition is allowed and the matter is remanded to the Deputy Director of Consolidation for decision afresh in accordance with law, after hearing the parties, keeping in mind the observations made herein above and after treating the area of plot No. 110 to be 2.132 hectares only. However, there is no order as to costs.