
(2005) 05 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition No. 4227 of 2001 (M/S)

Paltu

APPELLANT

Vs

Deputy Director, Consolidation and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1), 48

Citation : (2005) 3 UC 2046

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Rajiv Joshi and A.K. Sharma, for the Appellant; Learned Standing Counsel for Respondent No. 1 and Rajendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this Writ Petition, the Petitioner has challenged the judgement and order dated 23-1-1990 passed by the Respondent No. 1 Joint Director of Consolidation, Meerut, camp-Roorkee, passed in Revision No. 540, Simru v. Paltu and Ors. u/s 48 of the Consolidation of Holdings Act, whereby the learned Director of Consolidation allowed the revision, set aside the order dated 31-8-1988, passed by the Assistant Settlement Officer and ordered maintenance of Chaks in accordance with the directions given therein.

2. Brief facts giving rise to the present Writ Petition are that during the consolidation operations before the Assistant Consolidation Officer, original Respondent No. 2 Simru filed his objection dated 28-3-1988 on the ground that his Chak be allotted over the plot No. 391/1 and 155 i.e. near the plot No. 378/1 over which there is irrigation facility. The Consolidation Officer after considering the objection recorded a finding that the land, which was allotted to the Respondent No. 2 is on his original holding and his Chak was rightly allotted in accordance with the provisions of the Consolidation of Holdings Act (for short the Act) and ultimately rejected the objection of the Respondent No. 2 vide judgement and order dated 25-6-1988. Aggrieved by the order of the

Consolidation Officer dated 25-6-1988, the Respondent No. 2 preferred an appeal before the Settlement Officer Consolidation seeking that plot Nos. 155 and 154 be allotted in place of plot No. 38. The appeal was allowed vide judgement and order dated 31-8-1988. According to the Petitioner, although the prayer of the Respondent No. 2 was accepted by the Settlement Officer Consolidation, still he challenged that order before the Joint Director of Consolidation in revision under the provisions of Section 48 of the Act. In that revision, the Respondent No. 2 alleged that the total area of the original holding in his possession was 7-11-12 but he was allotted the area to the extent of 5 Bigha, 3 Biswa only, whereas the area of the Petitioner's holding was 5-5-0 but he was allotted the Chaks of total area measuring 11 Bigha, 13 Biswa and 8 biswans, i.e. more than 100% of the total area. The Petitioner has contended that the revisional court without considering the case of the Petitioner, allowed the revision preferred by the Respondent No. 2 and the plots of the Petitioner were taken out and in its place the plots of Respondent No. 2, namely plot No. 40, 153 and 154 measuring 11/2(12 Biswa) were allotted to the Petitioner vide judgement and order dated 23-1-1990.

3. It has been contended on behalf of the Petitioner that the revisional court committed manifest error inasmuch as the revision filed by the Respondent No. 2 was not maintainable and the case of the Petitioner was not at all taken into account. It was further contended that there was no justification for the Respondent No. 1 to allow the revision preferred by the Respondent No. 2.

4. I have heard learned Counsel for the parties and perused the record.

5. The Joint Director of Consolidation in his order dated 23-1-1990 observed that from the perusal of record it reveals that the revisionist late Sri Simru was allotted holding to the extent of 5-3-3 against his original holdings of 7-11-12 of Gata No. 153, 154, 155 etc. As such the area of the revisionist has gone below 30% of his original holdings. On the other hand the area of the Petitioner Paltu was increased to the extent of 102% of his original holdings. On this ground the Revisional Court ordered for correction of Chaks so as to bring them within the prescribed limits.

6. Having considered the entire case as well as the impugned order dated 23-1-1990, I find that the judgement and order under challenge does not suffer from any perversity or illegality for the reasons mentioned hereinafter and in view of the Proviso to Section 19(1) of the Act, which is reproduced here under:

Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty five per cent of the latter;

7. In my view, the Joint Director of Consolidation rightly allowed the revision-petition thereby setting aside the order dated 31-8-1988 passed by the Assistant Settlement Officer Consolidation, Saharanpur. The record shows that by the order

dated 31-8-1988 passed by the Assistant Settlement Officer (Consolidation) passed in Appeal No. 2524, Simru v. Paltu and Ors. there was increase to the extent of 100% in the holdings of the O.P.-Petitioner, for which no permission was obtained by the said Officer as per provision of law quoted above. No permission is required in a case where there is increase in the original holdings of either party, i.e. the Petitioner and the Respondent No. 2, to the extent of 25% only. It may be reiterated that the law provides that except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty five percent of the latter. In the instant case, the Assistant Settlement Officer (Consolidation) while passing the order dated 31-8-1988 ignored the Proviso to Section 19(1) of the Act, whereby the original holdings of the Petitioner were increased by 100% and this could have been done by obtaining the requisite permission alone. Therefore, the Deputy Director of Consolidation vide judgement and order dated 23-1-1990 (Annexure-IV to the writ petition) has rightly amended the Chaks of the Petitioner as well as the Respondent No. 2 in view of Section 19(1) Proviso of Consolidation of Holding Act. The Chaks of the Petitioner as well as the Respondent No. 2, as has been amended by the Revisional Authority, i.e. Deputy Director of Consolidation, thereby after the order of the Revisional Court, the increase or decrease in the area are within the metes and bounds of Proviso to Section 19(1) of the Consolidation of Holdings Act.

8. Having gone through the entire material on record including the impugned order, I find that there is no error apparent on the face of record nor there is any jurisdictional error. The Deputy Director of Consolidation being the final authority on the subject has done whatsoever was possible under the law.

9. The judgement and order, challenged under this writ petition, does not suffer from any error of law or the error apparent on the face of record or that of jurisdictional error.

10. The order under challenge does not require any interference by this Court.

11. For the reasons and discussion aforesaid, the writ petition is devoid of merit and is liable to be dismissed.

12. The writ petition is dismissed. No order as to costs.