

(1995) 04 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 32776 of 1994

Parawez Ahmad

APPELLANT

Vs

Joint D.C., Azamgarh and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1995) 04 AHC CK 0033

Hon'ble Judges : B. Dikshit, J

Final Decision : Allowed

Judgement

A. Dixit, J.

1. By this petition the petitioner has challenged order dated 12.9.94 passed by Joint Director of Consolidation, Azamgarh. On 14.2.95 order was passed making it clear that if considered proper the case will be disposed of finally at the stage of admission. The service on unserved respondents has been held to be sufficient by an order passed by me today and the writ petition has been finally heard as counter affidavit and rejoinder affidavit stand exchanged.

2. The facts essential to determine controversy are that chak allotted to petitioner is numbered as 274. It is joint chak with his brothers Tarwez Ahmad and Mohammad Mister, who have been impleaded as respondents in this petition. Originally, petitioner was not allotted any part of his original holding at plot No. 516 which had an area of 600 Karis. It is near Abadi. When the petitioner sought its allotment in his chak, the Settlement Officer Consolidation accepted claim of petitioner and modified petitioner's chak by allotting an area of 150 Karis of plot No. 516 in it. The ground on which this allotment was made by Settlement Officer Consolidation is that this plot is situated near Abadi and, therefore, the petitioner is entitled to it in accordance with his share in the plot. The chak of Smt. Saidun Nishan was also effected by this adjustment when an area of 890 Karis of plot No. 516m was taken out and she was allotted 101 Karis of plot No. 536m Smt. Saidun Nishan aggrieved by the order filed revision. Parwez Ahmad

still remained dissatisfied in respect of allotment and he also filed revision. He was dissatisfied as his share in plot No. 516 was 240 karis but he was allotted only 101 karis. The Joint Director of Consolidation allowed the revision filed by Smt. Saidun Nishan for the reason that she was a small tenure holder and there was no justification for allotting two chaks to Smt. Saidun Nishan. While allowing the revision filed by Smt. Saidun Nishan, the Joint Director of Consolidation dismissed the revision of petitioner and restored the order of Consolidation Officer putting parties in same position which existed on passing of order by Consolidation Officer.

3. The learned counsel for petitioner argued that petitioner has not been allotted chak on plot No. 516 or on any other plot near abadi and, therefore, petitioner is entitled for allotment near abadi. The learned counsel for contesting respondent, while opposing the petition advanced threefold arguments. Firstly, he argued that petitioner was given four chaks which could not be given as it is against the principle of compactness when compactness is to be followed in making allotment of chaks. It has been argued that the contesting respondent was a small tenure holder and was to be given one compact chak at one place instead of two chaks. Second argument is that the trees planted by contesting respondents stand over plot No. 516 and, therefore, the contesting respondent is entitled for chak at that plot. Beside justifying chak on said grounds, lastly it has been argued that substantial justice has been done between the parties and, therefore, order of Joint Director of Consolidation be upheld.

4. There is force in the argument advanced. It is not unknown that land near abadi has much value. The interference by Settlement Officer Consolidation on such a ground cannot be said to be irrelevant. As the Settlement Officer Consolidation granted relied to petitioner keeping in view this aspect, it was not open for Joint Director of Consolidation to completely ignore this aspect in deciding revisions. The Joint Director of Consolidation has taken into consideration the fact that Smt. Saidun Nishan is a small tenure holder and the impugned order can be validly justified for making allotment of a compact area to contesting respondent but it was incumbent in this case for revisional authority to meet the ground on which order was passed by Appellate Authority. This legal principle has not been followed while allowing the revision and, therefore, the revisional order suffers from a legal infirmity.

5. The learned counsel for contesting respondent tried to justify order on grounds which were not considered by Joint Director of Consolidation while allowing the revision. The Joint Director of Consolidation has not taken into consideration that there were certain trees planted by Smt. Saidun Nishan on plot No. 576 due to which she was entitled for allotment of that particular portion or that the petitioner was allotted four chaks. From above facts it cannot be said that substantial justice has been done between the parties. Similarly, claim of petitioner has not been considered and his grievance has been ignored for simple reason that contesting respondents is a small tenure holder. Certainly, it is not

necessary for consolidation authorities to allot abadi land to each and every tenure holder but every person who is holding land, which is of commercial value and near abadi or road side, is to be accommodated at such place as far as it is possible and if he cannot be accommodated then the Consolidation Authorities are required to assign reasons as to why the tenure holder cannot be accommodated. Therefore, the contention of contesting respondent that substantial justice has been done between the parties is also untenable.

6. For aforesaid reason the writ petition succeeds, the order of Joint Director of Consolidation dated 12.9.94 is quashed and he is directed to dispose of the revisions afresh in the light of observations made above. He will dispose of revisions expeditiously. The writ petition is allowed.

7. There shall be no order as to costs. Petition allowed.