

(2015) 04 AHC CK 0047

In the Allahabad High Court

Case No : Writ B No. 59621 of 2012 and Civil Misc. Review Application No. 70940 of 2014

Parmeshwar Dutt Shukla

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11-A, 19(1)(e), 19(1)(g), 20, 8-A

Citation : (2015) 127 RD 666

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Vinay Kumar, Akhilanand Pandey and S.C. Verma, for the Appellant; K.K. Chaurasiya and Yogesh Kumar Saxena, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Vinay Kumar Rai, for the petitioner, in review application.

2. The writ petition was filed against order of Deputy Director of Consolidation, dated 01.11.2012, passed in chak allotment proceedings, under U.P. Consolidation of Holdings Act-1953 (hereinafter referred to as the Act), which dismissed after hearing the parties by judgment dated 28.11.2013. The petitioner filed Special Leave Petition (Civil) No. 542 of 2014, which was got dismissed as withdrawn with liberty to file review application. Now review application has been filed along with delay condonation application. Delay has been condoned.

3. Plot Nos. 225/1, 225/2, 225/3, 255 and 467 of village Kashipur, pargana Haveli, district Mirzapur were the original holdings of the petitioner. The petitioner was proposed three chaks i.e. first chak on plot Nos. 443, 467 and 468 of the area 0.360 hectare, second chak on plot Nos. 342, 343 and 344 of an area of 0.246 hectare and third chak on plot Nos. 325, 326, 327 and 328 of an area of 0.408 hectare. Plot No. 443 of village Kashipur, pargana Haveli, district Mirzapur

was the original holdings of Smt. Shail Kumar (respondent-2) and plot Nos. 241, 468 and 469 of village Kashipur, pargana Haveli, district Mirzapur were the original holdings of Ram Sunder (respondent-3), who is father of Smt. Shail Kumari. Smt. Shail Kumari was proposed one chak on plots 467 and 468 of the area 0.484 hectare and Ram Sunder was proposed one chak on plots 442, 468 and 469 of an area of 0.484 hectare. The dispute between the parties is in respect of allotment of the chak on northern side of plot No. 468, which was the original holding of Ram Sunder, and plot 467, original holding of the petitioner.

4. Smt. Shail Kumari (respondent-2) filed a time barred objection (registered as Case No. 334) under Section 20 of the Act, on 20.05.2011, claiming for allotment of her chak in the northern side of plot No. 468, by the side of "nali". It has been stated that she was allotted chak on plots 467 and 468 of the area 0.484 hectare. Plots 468 and 469 were original holdings of her father. At the time of preparation of Provisional Consolidation Scheme, she was given impression that her chak on plots 468 etc. was carved out, in the northern side by the side of "nali". On 15.05.2011, when the consolidation staff went on spot for demarcation of the chaks of the tenure holders, then she came to know that her chak was carved out in the southern side of plot No. 468. Soil of southern portion of plot No. 467 is mixed with stones and is not cultivable land.

5. The petitioner contested the objection of respondent-2 and filed counter objection dated 21.07.2011. He has stated that 468 and 469 were the original holding of Ram Sunder, who was allotted a separate chak No. 468 on plots 442, 468 and 469. At the time of preparation of Provisional Consolidation Scheme, the petitioner herself demanded her chak in the southern side on plots 467 and 468 and she was satisfied with her proposed chak and did not file any objection within time, although the village was notified under Section 20 on 27.01.2009. After delivery of possession on the confirmed chaks, she filed a highly time barred objection on 20.09.2011. No cause has been shown for condonation of inordinate delay. The objection was heard by Consolidation Officer, who by order dated 21.08.2011, held that on spot inspection it was found that in the northern side of plot No. 468, the nali, trees, well and boring of Ram Sunder were existing. However, respondent-2 was allotted chak in the southern side due to which, the tube-well etc of respondent-2 was left. Due to allotment of chak to the petitioner in the southern side, she would not able to irrigate her chak. In case, respondent-2 is allotted chak in eastern side of plot No. 468, then the petitioner and respondents both would get chak on their original holdings. On these findings, the delay was condoned and objection of respondent-2 was allowed and an area of 0.250 hectare was taken from the chak of the petitioner and allotted in chaks of respondents-2 and 3 and in lieu of it, the petitioner was allotted an area of 0.250 hectare on plot No. 467, which is his original holdings.

6. The petitioner filed an appeal (registered as Appeal No. 203/2010-11) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, Mirzapur, who by order dated 21.05.2012 held that respondent-2 had knowledge

about carving of chaks from very beginning and Provisional Consolidation Scheme of the village was confirmed on 27.04.2011, demarcation of the chaks and delivery of possession was completed up to 30.06.2011 and chak revisions of the village had already been decided from the stage of Deputy Director of Consolidation, by the time when the objection was filed by respondent-2. There was no reason to condone the inordinate delay in filing of the objection. Due to order of Consolidation Officer, the chak of the petitioner has become in the shape of narrow strip instead of rectangular, which would cause difficulties in cultivation and is against the object of consolidation. On these findings, the appeal was allowed and order of Consolidation Officer was set aside.

7. Respondent-2 filed a revision (registered as Revision No. 781/2011-12), from the aforesaid order. The revision was heard by Deputy Director of Consolidation, who by order dated 01.11.2012, found that respondent-2 and 3 were allotted chaks on plots 443, 468 and 469, in north-south by order of Consolidation Officer. Consolidation Officer allotted chak to the parties on their original holdings. Settlement Officer Consolidation, allotted plot Nos. 443 and 468 to the petitioner which were original holdings of the respondents, which was illegal. The allegations of the petitioner that Consolidation Officer has not condoned the delay and he was not allotted chak by the side of chak road were incorrect. There is chak road in the north and east of the chaks of the parties. On these findings, the revision was allowed and order of Settlement Officer Consolidation was set aside and order of Consolidation Officer dated 01.08.2011 was reinstated.

8. The petitioner challenged the order of Deputy Director of Consolidation in this writ petition. During arguments, the counsel for the petitioner has pressed the grounds before this Court namely (i) Consolidation Officer has illegally condoned the delay without recording any findings regarding sufficiency of cause for delay. Notification under Section 20 took place on 27.01.2010, Provisional Consolidation Scheme was confirmed on 27.04.2011, possession over the confirmed chak were delivered up to June 2011, while she came to know about position her chak on 15.05.2011 and objection was filed on 20.09.2011. Respondent-2 did not plead about existence of well, pumping set and trees in northern side of plot 468. Valuation of these developments were not determined at the stage of Section 8-A but no objection was filed under Section 9 of the Act. Similarly, valuation of plot 467 was not challenged under Section 9 of the Act, plea that it was low quality land cannot be considered in chak allotment proceeding. This Court relying upon the judgment of Supreme Court in *Shanti Prasad Gupta v. DDC and others*, 1981 (Supple) SCC 73, held that delay in filing objection has been condoned by Consolidation Officer. This Court had no jurisdiction to reassess sufficiency of the cause for condonation of delay. Rule of pleading as contained in C.P.C. has not been applied in the proceedings under the Act. Consolidation Officer, during spot inspection noticed existence of well, pumping set and trees in northern side of plot 468 as such findings has been rightly recorded in that respect. Relying upon several judgments of this Court, it has been held that valuation of the land of third person can be challenged by a chak holder at the stage of Section 20 as it

is only when land is allotted in his chak, he could know about its valuation. On these findings, the writ petition was dismissed.

9. Now the petitioner has been filed this review petition and set forth thirty six grounds in it although in the writ petition only six grounds were taken by the same counsels. Some of the grounds of review petition are undignified. Although, in the objection of the petitioner (filed as Annexure-5) to writ petition, everywhere (six times), date of filing of objection respondent-2 was mentioned as 20.09.2011 and on that basis it was vehemently argued before me that although date of knowledge of chak was disclosed as 15.05.2011 but no explanation of delay during 15.05.2011 to 20.09.2011 was given. Now in the review petition it has been alleged that it was a typographical error. Had it been typographical error, no argument on its basis could have been raised. Such a practice is highly deprecated and is not excepted from an advocate, practicing in High Court.

10. The counsel for the review applicant submitted that the petitioner took plea in his appeal before Settlement Officer Consolidation that by the order of Consolidation Officer, width of the chak of the petitioner has been become in narrow strip and uncultivable, which has been accepted by Settlement Officer Consolidation, who allowed the appeal. In paragraph-12 and ground (b) of the writ petition, this fact has been pleaded by the petitioner but the Court has not taken any notice of it. In the writ petition, actual width has not been disclosed nor ground (b) was pressed. Now in the review petition, width of the chak of the petitioner has been disclosed as 80 karies. One kari (link) is equal of 7.92 inch. Thus $80 \times 7.92 = 637.6 \text{ inch} = 53 \text{ feet } 1.6 \text{ inch}$. The Consolidation Officer has not accepted the arguments of the petitioner in this respect. It is correct to say that tractor cannot take turn in the width of 53 feet. Section 19(1)(g) provides that every tenure holder, as far as possible, allotted chak in conformity with the process of rectangulation in rectangulation units. Chak of the petitioner is in rectangular form. There is no illegality.

11. In this case, plot 467 (area 0.648 acre) was the original holding of the petitioner. Allegation of respondent-2 was that southern side of this plot 467 was mixed with stone and not cultivable land. Entire area of this plot was valued at the rate of 90 paisa. Although plot 443 was single original holding of respondent-2 but she was allotted totally uran chak on plots 467 and 468 taking an area of 0.360 hectare of plot 467, in southern side. The petitioner was allotted chak in northern side on plots 443 (area 0.084 hectare), 467 (area 0.140 hectare) and 468 (area 0.136 hectare). Plot 443 and 468 were original holdings of respondents-2 and 3, who are daughter and father. Issue as to whether, valuation of the plot can be challenged by a third person, at the stage of Section 20 of the Act, has been specifically considered by this Court in *Badri Prasad Vs. Smt. Barko and Others*, (1967) 37 AWR 75 and *Gaon Samaj, Didhauni Vs. Deputy Director, Consolidation, UP Lucknow Camp At Jaunpur and others*, (1968) 38 AWR 603 in which it has been held that a third party could only notice about the valuation of any plot, when it is allotted in his chak therefore he can

challenge it at the stage of Section 20 of the Act, as only after allotment of the plot in his chak, actual cause of action to challenge valuation will arise to him. Bar contained under Section 11-A will not apply upon a third person. This judgment has been followed in *Ram Samujh v. DDC and others*, 1996 (87) RD 311, *Budhi Ram (D) through L. Rs. and Another Vs. Deputy Director of Consolidation and Others*, (2006) 3 AWC 2740 and *Sheo Chand and Others Vs. Deputy Director of Consolidation, Azamgarh and Others*, (2013) 120 RD 334. As such these judgments have relied upon in this case also.

12. The arguments that respondent-2 did not plead about existence of well, pumping set and trees in northern side of plot 468. Valuation of these developments were not determined at the stage of Section 8-A but no objection was filed under Section 9 of the Act. There was no development nor it was recorded in CH Form 2-A, findings in this respect is illegal, is not accepted. Copy of CH Form-2-A of plot 469, which was original holding of Ram Sunder has been filed along with review application, in which an area of 0.010 hectare was noted as abadi and 0.005 hectare was noted as naveen parati. Total area of plot 469 was 0.106 hectare out of which valuation of 0.091 hectare was determined as proved from CH Form-23 and an area of 0.015 hectare of plot 469 was left chak out as such its valuation was not determined. In which existence of well, pumping set and trees were found during spot inspection. There is no substance in the arguments in this respect.

13. Plots 443, 467 and 468 were original holdings of respondents-2 and 3. Under Section 19(1)(e) of the Act, respondents-2 and 3 were entitled for allotment of chak on their original holding. While plot 467 was original holding of the petitioner, southern portion of which contains stones and uncultivable. Its allotment in the chak of respondent-2 was causing grave injustice to respondent-2. She cannot be deprived of her good fertile land in the garb that chak of the petitioner will become in shape of long strip. The Consolidation Officer has not committed any error in allotting chaks of respondents-2 and 3 on their original holdings and adjusting equity between the parties.

14. In view of the aforesaid discussion, there is no error apparent on the face of record in the judgment dated 28.11.2013. The review petition has no merit and is dismissed.