
(2013) 10 AHC CK 0161
In the Allahabad High Court
Case No : W.P. No. (Conso) 447 of 2001

Parsadi

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 124 RD 496

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Mohan Singh, Counsel for the petitioners and Sri Umesh Kumar Srivastava, for contesting respondent-4. The writ petition has been filed against the orders of Consolidation Officer (respondent-3) dated 2.11.1998, Settlement Officer Consolidation (respondent-2) dated 19.5.2000 and Deputy Director of Consolidation (respondent-1) dated 29.3.2001, passed in chak allotment proceedings, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

2. Plots 31 (area 0.260 hectare), 32 (area 0.170 hectare) and 117/2 (area 1.682 hectare) of village Mishripur, pargana Mohana, district Lucknow, were the original holdings of Parsadi (petitioner-1) (chak holder No. 126) and Ghurroo (petitioner-2) (chak holder No. 56). Plot 117/2 is a roadside land, situated on Lucknow-Delhi National Highway and lying within the limits of Lucknow Development Authority. Several commercial activities in the locality were going on and this plot is a land of commercial value. Smt. Mala Dwivedi (respondent-4) (chak holder No. 210) purchased an area of 0.050 hectare of plot 117/2. The dispute between the parties is with respect to allotment of plot 117/2, in the chak of respondent-4. Out of total area of 1.682 hectare of plot 117/2, an area of 0.050 hectare was left as achak, an area of 0.046 hectare, was taken for carving out a rasta through it, an area of 0.709 hectare was proposed in the chak of Parsadi (petitioner-1), an area of 0.657 hectare was proposed in the chak of

Ghurroo (petitioner-2) and an area of 0.220 hectare was proposed in the chak of Smt. Mala Dwivedi (respondent-4), by Assistant Consolidation Officer.

3. The petitioners filed an objection (registered as Case No. 15) u/s 21 of the Act, claiming that plot 117/2 was a roadside land, situated on Lucknow-Delhi, National Highway, and is a land of commercial value. Allotment of an "uran" chak of an area of 0.220 hectare, of this plot to Smt. Mala Dwivedi (respondent-4) and carving out a rasta, over an area of 0.046 hectare through it was illegal. They further stated that plot 199, which was original holding of respondent-4 was an "usar" land and was illegally valued at a very high rate of 80 paisa, and allotted in the chak of petitioner-1. Thus, Assistant Consolidation Officer gave undue advantage to respondent-4, inasmuch as "usar" land of respondent-4 was valued at a very high rate and allotted in the chak of petitioner-1 and in lieu of it roadside land, having commercial value of the petitioner was allotted in the chak of respondent-4.

4. The objection of the petitioners was contested by Smt. Mala Dwivedi (respondent-4), who has stated that plot 199, which was her original holdings has been reserved for Ambedkar park, extension of Harijan abadi, rasta and other public purposes. Due to which she was allotted an area of 0.220 hectare of plot 117/2, which was adjacent to her original plot 120. She has also purchased an area of 0.050 hectare of plot 117/2. Thus allotment of the chak to her on plot 117/2 was perfectly legal. The objection was heard by Consolidation Officer (respondent-3), who by his order dated 2.11.1998, held that more than 80% of the area of plot 117/2 had been allotted in the chaks of the petitioners. In order to connect the land reserved for Ambedkar park and extension of Harijan abadi to the main highway, an area of 0.046 hectare of plot 117/2 was taken for carving out "rasta" due to which plot 117/2 was divided. The portion of plot 117/2 falling north of rasta has been allotted to the petitioners and remaining land falling towards south to the rasta was allotted to respondent-4, who also had her original holding of plot 120, adjacent to it. In respect of the dispute raised by the petitioners that plot 199 has been valued at a very high rate although it was the "usar" land and ought to have been valued at the rate of 20 paisa, it has been held that the matter had already been decided by his predecessors by order dated 3.5.1997 as such he has no jurisdiction to examine its validity. On these findings objection of the petitioners was dismissed.

5. The petitioners filed an appeal (registered as Appeal No. 241/58), from the aforesaid order. The appeal was heard by Settlement Officer Consolidation (respondent-2), who by order dated 19.5.2000 held that the chaks of the petitioners and respondent-4 both were adjacent to highway as such no change was required in it. On these findings the appeal was dismissed. The petitioners filed a revision (registered as Revision No. 666) from the aforesaid order. In the revision, the petitioners argued that against the order of Consolidation Officer dated 3.5.1997, an appeal was filed and was pending before Settlement Officer Consolidation but he instead of deciding both the appeals together decided the

appeal filed against the order dated 2.11.1998, separately, due to which justification for valuing plot 199 at the rate of 80 paisa has been overlooked. There was already a rasta in the eastern side of plot 199, which provided a way to Ambedkar park and Harijan abadi and carving out a rasta through valuable commercial land of plot 117/2 of the petitioner was illegal. The revision was heard by Deputy Director of Consolidation (respondent-1), who by order dated 29.3.2001, held that the rasta through plot 117/2 has been carved for connecting Bakshi talab and Kumhrawan Marg in straight way, on which Ambedkar park and Harijan abadi situate. Total area of plot 117/2 was 1.632 hectare, an area of 0.709 hectare of plot 117/2 was allotted in the chak of Parsadi (petitioner-1), an area of 0.657 hectare of plot 117/2 was allotted in the chak of Ghurroo (petitioner-2) and an area of 0.220 hectare of plot 117/2 was allotted in the chak of Smt. Mala Dwivedi (respondent-4) and an area of 0.046 hectare taken for carving out rasta. Thus out of total area 1.632 hectare an area of 1.366 hectare has been allotted in the chaks of the petitioners. In case, demand of the petitioners is accepted then the rasta which was provided to Ambedkar park and land reversed for Harijan abadi would be abolished. In the geographical location of plots 117/2 and 120, an area of 0.220 hectare of plot 117/2 which was falling in south of rasta and adjacent to plot 120 was allotted to respondent-4. In case, the petitioners are allotted the land falling in south of the rasta, then their chak would become on two side of the rasta. On these findings, the revision was dismissed. Hence this writ petition has been filed.

6. The Counsel for the petitioners submitted that the petitioners were small tenure holders having total area of 2.010 hectare land of their original holding. Plot No. 117/2 was a largest plot of their holding and was a roadside land, situated on Lucknow-Delhi, National Highway and has been included within the limits of Lucknow Development Authority where several commercial activities are going on and this plot is a land of commercial value. Respondent-4 cleverly got valued her plot 199 at a very high rate of 80 paisa although it was an "usar" land its valuation could not be more than 20 paisa, and got it allotted in the chak of the petitioners. Thus, on the one hand respondent-4 got valued her low quality original land at the high rate and on the other hand, obtained her chak on the original holding of the petitioners, which was land of commercial value. The Consolidation Commissioner U.P. has issued a Circular No. C-37/G-452/81 dated 1.5.1981, directing the consolidation authorities to keep the roadside land of commercial value as chak-out (out of consolidation area) as valuation of commercial land cannot be fixed in ratio of agricultural land. This Court has consistently held that the roadside land having commercial value would be allotted to the original tenure holder in order to prevent injustice to them as the valuation of land of commercial value cannot be determined in the ratio of the valuation of the agricultural land. The object of the consolidation is to allot a compact area to the tenure holders so that the scattered agricultural plots be consolidated at one place. The purpose for fixing the exchange ratio is that tenure holder can be allotted the land of equal valuation. In this process, it is

always considered suitable to keep those land out of consolidation (chak-out), of which, valuation in the ratio of agricultural land could not be determined. The respondents in the garb of providing a straight rasta to the land reserved for Ambedkar park and extension of Harijan abadi have illegally carved out a rasta through plot 117/2 although there was already a rasta in the eastern side of plot 199, which connect the land reserved for Ambedkar park and extension of Harijan abadi. Allotment of 0.220 hectare land of plot 117/2 in the chak of respondent-4 and an area of 0.046 hectare for "rasta" was illegal and in utter disregard to the Circular of Consolidation Commissioner U.P. as well as consistent decisions" of this Court, due to which, grave miscarriage of justice has been caused to the petitioners. The orders of consolidation authorities are illegal and liable to be set aside.

7. The Counsel for the petitioners placed reliance on the judgments of this Court in Parvez Ahmad v. J.D.C. and others 1995 RD 346 (HC), Dina Nath Tewari v. DDC and others 2000 RD 365 (HC), and Ram Adhar Singh and Another Vs. Deputy Director of Consolidation and Others,

8. In reply to the aforesaid arguments, the Counsel for the contesting respondent submitted that respondent-4 purchased an area of 0.050 hectare of plot 117/2. Plot 120, which is adjacent to plot No. 117/2, was the original holding of respondent-4. u/s 19 of the Act, as far as possible, the tenure holders are entitled to allotment of chak, on their original holdings or in the vicinity of the original holding. Allotment of an area of 0.220 hectare of plot 117/2 in the chak of respondent-4, which was adjacent to plot No. 120 was fully in consonance of the principles provided u/s 19 of the Act. In the process of allotment of chak, it is not possible to allot chaks exactly on the original holdings of the tenure holders. In the process of rectangulation of the chaks and carving out sector lines/chak road, some portion of the original holdings of one tenure holder usually goes in the chak of other tenure holder. The consolidation authorities are required to observe that the tenure holders are allotted chaks substantially in the vicinity of their original holding. Deputy Director of Consolidation recorded a finding that out of total area of 1.632 hectare of plot 117/2 and area of 1.366 hectare was allotted in their chaks, giving frontage on the roadside. By allotting a part of plot 199 in the chaks of the petitioners, this land has also come on roadside. Thus no injustice has been caused to the petitioners. The equity has been adjusted between the parties. The chak allotment matter was examined by all the consolidation authorities who did not find any illegality in the proposed chaks of the parties. In exercise of writ jurisdiction, this Court cannot reappraise the evidence on record like a first Appellate Court as held by Supreme Court in Surya Deo Rai v. Ram Chandra Rai 2003 (52) ALR 707 (SC), Ranjeet Singh Vs. Ravi Prakash, and Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LR. and Others, Substantial justice has been done by the statutory Tribunal between the parties and no interference is required.

9. I have considered the arguments of the Counsel for the parties and examined

the record. Supreme Court in *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others*, held that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errors. Thus Supreme Court held that High Court must exercise writ jurisdiction to keep subordinate Courts and Tribunals within the bounds of their authority.

10. Due to development of commercial activities on roadside land, the valuation of agricultural land of roadside was gone very high. This situation was realized by the Director of Consolidation, U.P. that similarity in quality of agricultural land had become irrelevant for roadside land with the other similar land which was not on the roadside. The object of consolidation is to allot a compact area of chak in place of scattered plots, of equal valuation. In order to achieve the object, the consolidation authorities used to make survey of the various plots of the village along with members of Consolidation Committee and other villagers and standard plot is located fixing its exchange ratio at the rate of 100 paisa. The valuation of other plots are determined in comparison to the standard plot. While allotting the chak to a tenure holder, equal valuation of land is required to be allotted and efforts are also made to allot similar area although area of the allotted chak may differ up to some extent (25% has been fixed u/s 19 of the Act). The agricultural land containing groves are usually left out of consolidation area as determination of its exchange ratio in comparison to standard plot was not possible, due to which, the tenure holders may suffer grave injustice. When the value of roadside land having commercial activities was hiked, Consolidation Commissioner U.P. issued a Circular No. C-37/G-452/81 dated 1.5.1981, directing the consolidation authorities to keep the roadside land of commercial value also, chak out (out of consolidation area) as valuation of commercial land cannot be equated in the exchange ratio of agricultural land. This situation also drew attention of this Court time to time and this Court also held that either in following the directions issued by Consolidation Commissioner U.P., the roadside land be kept out of consolidation area or be allotted to the original tenure holder. Some of the cases in this respect are noted here as *Parvez Ahmad v. J.D.C. and others* 1995 RD 346 (HC), *Mukut Nath v. DDC and others* 1998 RD 148, *Dina Nath Tewari v. DDC and others* 2000 RD 365 (HC), *Damodar v. DDC and others*

2004 RD 290, Nand Kishore v. DDC and others 2004 RD 447, Chhedi Lal v. DDC and others 2004 RD 619, Imlaq v. DDC and others 2004 RD 629, Smt. Akhtari v. DDC and others 2005 RD 586, and Ram Adhar Singh and Another Vs. Deputy Director of Consolidation and Others,

11. Respondent-1 held that out of total area of 1.632 hectare of plot 117/2, an area of 0.709 hectare of plot 117/2 was allotted in the chak of Parsadi (petitioner-1), an area of 0.657 hectare of plot 117/2 was allotted in the chak of Ghurroo (petitioner-2) and an area of 0.220 hectare of plot 117/2 was allotted in the chak of Smt. Mala Dwivedi (respondent-4) and an area of 0.046 hectare taken for carving out rasta. This finding has not been challenged by the petitioners. It is also admitted to the parties that plot 117/2 situate on the side of Lucknow-Delhi National Highway. The petitioners only challenge the allotment of an area of 0.220 hectare of plot 117/2 in the chak of Smt. Mala Dwivedi (respondent-4) and an area of 0.046 hectare for rasta, on the ground that plot 117/2 was a roadside land and in view of circular of Consolidation Commissioner as well as settled legal position by this Court, entire area of this plot was liable to be allotted to the petitioners. Assistant Consolidation Officer in violation of the Circular of Consolidation Commissioner U.P. No. C-37/G-452/81 dated 1.5.1981, as well as the law laid down by this Court allotted an area of 0.1220 hectare of plot 117/2 in the chak of respondent-4 and carved out a rasta through plot No. 117/2 over an area of 0.046 hectare. Respondents-1 to 3 justified the proposed allotment for two reasons that the "rasta" carved out through plot 117/2 for connecting the Ambedkar park and Harijan abadi left in plot 199 is straight way to the highway and respondent-4 was having her original holding of plot 120 adjacent to plot 117/2. The land left for Ambedkar park or Harijan abadi do not have any privilege. While balancing the equities between the parties, the consolidation authorities have to look as to whether any approach road was available to the land left for Ambedkar park or Harijan abadi. The chak map, filed as Annexure-4 to the writ petition, clearly shows that a "rasta" on the eastern side known as Bakshi talab to Kumhrawan Marg is available by the side of the land left for Ambedkar park and Harijan abadi. This point was specifically argued before respondent-1 but he has illegally failed to record any reasons for not accepting this arguments.

12. Respondents-1 to 3 justified the allotment of an area of 0.220 hectare of plot 117/2 in the chak of respondent-4 on the ground that original holding plot 120 of respondent-4 is adjacent to plot 117/2 and the land falling in the south of the road was more suitable for allotment in the chak of respondent-4 than in the chak of the petitioners as due to allotment of this portion in their chak would amount to allotment of two chaks. Respondents-1 to 3 have deliberately failed to examine that the area of 0.050 hectare of plot 117/2 purchased by respondent-4 and an area of 0.025 hectare of plot No. 120 of respondent-4 was left as chak out. As against 0.246 hectare of plot 120 of respondent 4 (which was included in consolidation area), she was allotted an area of 0.672 hectare on plot 120. Thus undue advantage was given to respondent-4, by allotting the roadside original

holding of the petitioners in her chak. Respondents-1 to 3 have illegally failed to examine the relevant consideration and justified their action on irrelevant consideration, which was contrary to the Circular of Consolidation Commissioner as well the principles established by this Court.

13. The petitioners have specifically argued plot 199 of respondent-4 was an "usar" land and was illegally valued at a very high rate of 80 paisa and allotted in the chak of petitioner-1. Thus respondent-4 cleverly, on the one hand, got valued her plot 199 at a very high rate of 80 paisa although it was an "usar" land its valuation could not be more than 20 paisa and get rid of it and got it allotted in the chak of the petitioners and at the same time obtained her chak on the original holding of the petitioners, which was the land of commercial value. The respondents have illegally failed to examine the point raised before them. In case, the valuation of plot 199 is reduced to 20 paisa from 80 paisa then total valuation of respondent-4 would be reduced nearly four times which will result in allotment of lessor area to her. In the same way the area of the chak allotted to the petitioners on plot 199 will increase. The action of respondents was most arbitrary and illegal due to which respondent-4 was given undue advantage causing grave injustice to the petitioners. In view of the aforesaid discussions, the orders of Consolidation Officer (respondent-3) dated 2.11.1998, Settlement Officer Consolidation (respondent-2) dated 19.5.2000 and Deputy Director of Consolidation (respondent-1) dated 29.3.2001, suffer from error apparent on the face of record and are illegal. In the result, the writ petition succeeds and is allowed. The orders of Consolidation Officer (respondent-3) dated 2.11.1998, Settlement Officer Consolidation (respondent-2) dated 19.5.2000 and Deputy Director of Consolidation (respondent-1) dated 29.3.2001 are quashed. The matter is remanded to Deputy Director of Consolidation (respondent-1) to decide the revision afresh in accordance of law. Since the matter is very old, he shall make effort to decide the revision expeditiously, without granting any unnecessary adjournments to either of the parties, preferably within a period of four months from the date of producing a certified copy of this order.