

(1982) 12 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7403 of 1979

Pauhari

APPELLANT

Vs

Sahaik Sanchalak Chakbandi and Another

RESPONDENT

Date of Decision : 22-12-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19

Citation : (1984) RD 344

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : S.R. Misra and H.R. Misra, for the Appellant; S.K. Verma and S.C., for the Respondent

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings for allotment of Chaks. The Petitioner was allotted a Chak at the stage of consolidation officer and that chak was confirmed in appeal but in revision his chak has been disturbed, hence he has approached this Court under Article 226 of the Constitution.

2. The learned Counsel for the Petitioner has contended before me that the Asstt. Director of Consolidation committed errors of law in disturbing the chak of the Petitioner. According to him the Petitioner's area has been reduced more than permissible in law.

3. Second contention raised on behalf of the Petitioner is that the Petitioner has not been allotted a chak at the largest part of his original holding.

4. Third contention raised on behalf of the Petitioner is that the Petitioner had improved the chak allotted at the stage of the consolidation officer but while disturbing the chak of the Petitioner the revisional Court has not taken into account the improvements made by the Petitioner.

5. Last contention raised on behalf of the Petitioner is that the revisional Court did not make local inspection.

6. The learned Counsel for the contesting opposite party has tried to refute the contentions raised on behalf of the Petitioner. He has demonstrated that most of the contentions raised on behalf of the Petitioner are incorrect and he has contended that this is not a fit case where interference should be made with the impugned judgment.

7. I have considered the contentions raised on behalf of the parties and I have gone through the rulings cited at the bar. In my opinion the learned Counsel for the Petitioner has not been able to substantiate his contention that the Petitioner has got lesser area than the area permissible in law. The consolidation authorities can increase or decrease the original area of a tenure holder at the time of allotment of holding by 25%. In the present case the Petitioner held 1.04 acre originally and after allotment by the Assistant Director of Consolidation, he has got 1.03 acres, hence this contention raised on behalf of the Petitioner fails.

8. As regards the second contention the materials attached with the writ petition are not sufficient to demonstrate where the largest part of the Petitioner's original holding was situate and in this connection it is difficult to say that the Asstt Director of Consolidation has committed an error in not allotting the Petitioner a chak on his largest part of the holdings. In support of his contention the learned Counsel for the Petitioner has placed reliance upon the rulings reported in 1974 UPRC 17 Ram Ker v. Deputy Director of Consolidation, U.P. Lucknow Camp at Azamgarh and 1980 RD 123 Chandra Pal Singh v. Prem Dutt Rai, Deputy Director of Consolidation, but for want of necessary materials, the Petitioner cannot derive any benefit out of the rulings mentioned supra.

9. Regarding third contention if the Petitioner has made some improvement in the chak allotted to him during the pendency of litigation, he cannot be allowed to bank upon his improvements in the chak to claim that chak. On the materials it is evident that the Petitioner had only 1.04 acres original holding whereas he got a chak of 2 acres at the stage of the consolidation officer and the allotment of chak to the Petitioner in appeal had been confirmed but it is evident that the allotment of chak by the consolidation officer to the Petitioner was not in consonance with the provisions of Section 19 of the U.P. Consolidation of Holdings Act, hence the Petitioner cannot claim that chak on the ground that he had improved the chak by planting trees and digging well in some portion of the disputed chak. It is noteworthy that the plots which have been excluded from the chak of the Petitioner are not the plots in which improvements have been made by the Petitioner. The Petitioner claims improvement in new number 1181 whereas the plots excluded from the chak of the Petitioner constituted new Khata No. 1182. Therefore, in my opinion the Petitioner cannot be permitted to stick to the chak which is not in consonance with the provisions of Section 19 of the U. P. Consolidation of Holdings Act.

10. Regarding the last contention raised on behalf of the Petitioner, it is noteworthy that there is no legal obligation on the part of the revisional Court to make local inspection in each case. Much emphasis was laid that while allotting

chak to the Petitioner the consolidation officer, and the settlement officer of consolidation had made local inspection but the revisional Court did not make local inspection, hence the impugned judgment deserves to be quashed. I think according to the rule of propriety in some cases the revisional Court might be obliged to make local inspection where the allotment of chak has taken place on the basis of local inspection by the subordinate authorities but I am not prepared to hold that since the revisional Court failed to make local inspection at the revisional stage, its judgment must be quashed as a matter of law. In the present case I am not satisfied that any prayer for local inspection was made to the revisional Court, hence I am unable to accept the last contention raised on behalf of the Petitioner.

11. During the course of arguments, the learned Counsel for the Petitioner placed reliance upon the ruling reported in 1977 RD 259 Satya Narain v. Ram Manohar, and has emphasized the following observations:

...The Deputy Director of Consolidation and the Settlement Officer of Consolidation should have made a local inspection before upsetting the order.

12. In 1981 RD 12 Bans Lal v. Deputy Director of Consolidation Kanpur, I have already indicated that the second appellate Court before the Amendment Act No. 8 of 1963 and the revisional Court after the amendment of 1963 are not under legal obligation to make local inspection and on that ground alone, no interference should be made with the judgment of the revisional Court. In view of the facts and circumstances mentioned above it can be safely inferred that the revisional Court has not patently erred in disturbing the chak of the Petitioner without making local inspection.

13. However, a perusal of the impugned judgment indicates that the revisional Court disturbed the allotment of chak to the Petitioner with a view to remove the differences in the areas allotted to the parties and held by them originally which were not in accordance with law, but the allotment of the chak to the opposite party is not in accordance with law even after modification by the Assistant Director of Consolidation. Admittedly the contesting opposite party Smt. Dulari had original holding of 1.19 acres and after allotment by the Assistant Director of Consolidation she has got 1.94 acres whereas the Petitioner had 1.04 acres original holding and at the stage of consolidation officer he got an area of two acres, hence the Assistant Director of Consolidation thought proper to disturb the chak of the Petitioner but he has failed to apply the same standard in allotting land to the contesting opposite party which is not strictly in accordance with the provisions of Section 19 of the UP CH Act. The area of the contesting opposite party has increased more than 25%. Therefore, the allotment of chak by the Assistant Director of Consolidation through the impugned judgment is not in accordance with law and he has applied different standards in the cases of the parties. He has failed to regularise the area of the contesting opposite party.

14. Moreover, it is noteworthy that the purpose of consolidation is to allot a

compact area to a tenure holder as far as possible. At the stage of appellate authority both the parties had got only one chak but now both the parties have got two chaks by the order of the Assistant Director of Consolidation who has given no reasons why it was not possible to allot the parties only one chak especially when they had got one chak being small tenure holders. The ends of justice require that the impugned judgment of the revisional Court should be quashed and the revisional Court be asked to allot chak to the parties strictly in accordance with law keeping in view the provisions of Section 19 of the U.P. Consolidation of Holdings Act and without applying different standards to the claims of the parties.

15. In the result, the writ petition succeeds and the impugned judgment of the revisional Court dated 29-8-1979 is hereby quashed and the revisional Court is asked to allot chaks to the parties in accordance with law keeping in view the observation made above. Parties are directed to bear their own costs.