
(2015) 03 AHC CK 0056
In the Allahabad High Court
Case No : Writ-B No. 1635 of 1984

Phool Chand

APPELLANT

Vs

Asstt. Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 127 RD 664

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.

1. Heard Shri S.S. Sengar, learned Counsel for the petitioner and Shri P.N. Saxena learned Senior Advocate for the heirs of the respondent No. 4. This writ petition arises out of proceedings for allotment of chaks and is directed against the order dated 17.9.1983 passed by the Assistant Director of Consolidation whereby he has allowed the revision filed by the respondent No. 4, Putto.

2. Against this order, the petitioner preferred a restoration application claiming that the order had been passed ex-parte against him. The restoration application was dismissed by the order dated 17.12.1983. It is these two orders dated 17.9.1983 and 17.12.1983 which have been impugned in the writ petition.

3. The petitioner is holder of chak No. 64 while Putto the contesting respondent No. 4 was holder of chak No. 61.

4. It is the case of petitioner that on the start of chak allotment proceedings, a compromise was entered into between the petitioner and one Jahanwati wife of Om Prakash, holder of chak No. 33 whereby the original plots, namely, plot Nos. 163/1, 163/2 and 164 belonging to the said Jahanwati were allotted in the chak of the petitioner while Jahanwati was allotted a chak on plot No. 86 belonging to petitioner.

5. It appears that Putto filed an objection under section 20 of the Act which was allowed. Still not satisfied he preferred an appeal claiming therein that he had been proposed two chaks by the order of the Consolidation Officer; first, on plot Nos. 41 and 42 while the second had been proposed on plot Nos. 245 and 246. The demand raised in the appeal was that the first chak on plot Nos. 41 and 42 be shifted to plot No. 42 while the second chak on plot Nos. 245 and 246 be shifted on plot Nos. 165 and 167. This appeal was dismissed by the Settlement Officer, Consolidation.

6. The consequential revision filed by Putto, was allowed by the Deputy Director of Consolidation by order dated 30.8.1983 on the ground that plot No. 165 etc. whereupon the petitioner had been allotted a chak were not his original plots and, therefore, there is no problem in shifting him from these plots.

7. The contention of the learned Counsel for the petitioner is that the petitioner was not impleaded as a party in the revision. Subsequently an impalement application was filed whereupon notices were issued. These notices are alleged to have been served by affixation. Since the petitioner did not reside in the village and resided in Ghaziabad in connection with his employment, he had no notice or information and the order of the Deputy Director of Consolidation had been passed without affording him opportunity of hearing. It has further been contended that although there appears to be a report of service by way of affixation, the impediment application was never allowed prior to the passing of the order "impugned. Therefore, the restoration application was filed which has wrongly been dismissed on the finding that there was adequate service of the notice upon Prakash, brother of the petitioner, who had also appeared in the proceedings but had failed to sign the order-sheet. It has further been recorded that Prakash and the petitioner were co-tenure holders.

8. Learned Counsel for the petitioner has submitted that this observation is contrary to the record. Separate chaks have been carved out in favour of the petitioner and his brother Prakash. In this connection he has referred to CH Form-23 of the petitioner, copy whereof, is on record as Annexure-1 to the writ petition.

9. Learned Counsel appearing for the respondent has refuted the allegations and submissions made by learned Counsel for the petitioner. He has submitted that there was due service upon the petitioner by affixation and, therefore, the restoration application was dismissed. He has further submitted that there was no material alteration in the chak of the petitioner by the order of the Deputy Director of Consolidation passed while allowing the revision of Putto. The petitioner has been shifted to a different area of the same plots by this order and, therefore, no injustice or injury has been caused to him.

10. I have considered the submissions made by the learned Counsel for the parties and have perused the record.

11. On the question of rejection of the restoration application, perusal of the

order impugned shows that it has been passed for the reason that the service of notice upon the brother of the petitioner is proper and sufficient while the petitioner was served notice by affixation and since both were real brothers and joint chak holders, there was no justification to recall the earlier orders.

12. However, in view of the Annexure-1, the CH Form-23 of the petitioner, it is clear that the observation in the order of the Deputy Director of Consolidation that the two brothers had been allotted a joint chak is incorrect. Chak No. 64 has been carved out exclusively in the name of the Phool Chand, the petitioner.

13. Service of notice upon one brother, in my considered opinion, cannot be held to service on the other brother and to this extent the submissions made by the learned Counsel for the petitioner have substance.

14. In view of the above, the only course open appears to be to remand the matter back for a re-consideration. However before this option is exercised it appears proper to examine the merit of the order passed by the Deputy Director of Consolidation in the light of the submissions of learned Counsel for the respondent that no substantial change has been made in the chak of the petitioner while allowing the revision of the respondents.

15. It is clear from the correction chart annexed to the order of the Deputy Director of Consolidation that no substantial modification has been made in the chak of the petitioner. It emerges that the petitioner has merely been shifted from one place to another on the very same plots which were proposed in his chak. Therefore, there has been no substantial change in the chak of the petitioner by the impugned order. Even otherwise no injury appears to have been suffered by the petitioner on account of the modifications made. The only injury alleged is that a well existed on plot No. 64 allotted to the petitioner on account of the compromise entered into with Jahanwati and he had installed a pump therein. This clearly shows that the alleged private source of irrigation came into existence during the chak allotment proceeding and therefore no benefit thereof can be granted to the petitioner. In such view of the matter, an order of remand for all practical purposes, will be an exercise in futility and for purely academic purposes.

16. In my considered opinion, the changes affected by the order of the Deputy Director of Consolidation passed while allowing the revision cause no injury, muchless substantial injury to the petitioner there fore, there appears no justification for directing for re-hearing of the revision or the restoration application.

17. Since the petitioner has not been able to establish any substantial injury having been caused to him, I refuse to interfere with the impugned orders. In my considered opinion, substantial justice has been done between the parties by the order dated 17.9.1983 and no injury, muchless substantial injury, has been caused to the petitioner by the impugned orders. Accordingly and for the reasons given above, the writ petition is dismissed.