

(2005) 07 AHC CK 0132

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25787 of 2000

Prabhu Nath and Ors.

APPELLANT

Vs

D.D.C., Ballia & Ors.

RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Citation : (2005) 07 AHC CK 0132

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

Final Decision : Disposed Of

Judgement

S.K. Singh, J.

1. Heard Sri Rai learned Counsel for the petitioner and Sri C.K. Rai, learned Advocate in opposite thereof.

2. Challenge in this petition is the judgments of Deputy Director of Consolidation dated 771999 and 31101998 and that of Settlement Officer Consolidation dated 1911996.

3. Proceedings are under Section 20 of the U.P.C.H. Act, which is in respect to allotment of plots in the chak of the parties. Needless to say in these proceedings both the parties can never be satisfied as it is not possible for the authority to accept claim of the parties in its entirety.

4. There is no dispute about certain facts and therefore, by mentioning brief detail the matter can be conveniently disposed of.

5. Plot No. 65 happens to be original holding of the petitioners as everybody have 1/6th share in that plot and although they were allotted allotted separate chaks in respect to the land of their share as shown in CH Form No. 23 but for the purpose of convenience they applied before the Consolidation Officer and as noted in CH Form 23 by order of the Consolidation Officer dated 1331995 which was passed in Case No. 6252, all the six chaks of the petitioners were kept joint and thus allotment of chak of all the petitioners remained on plot No. 65. It

appears that order of the Consolidation Officer dated 1331995 was not challenged but at the same time several chak holders including the respondents in respect to their grievance filed several appeals before the appellate authority who in its turn by its judgment dated 1911996 while allowing appeal made necessary changes in the chaks of the petitioners also. Against the judgment of the appellate authority revision was filed by the petitioners which was dismissed by judgment dated 31101998 and thereafter restoration application filed by them was allowed but on filing restoration application by the respondents that was also allowed and as a result thereof order of the Deputy Director of Consolidation dated 31101998 stood restored. It is thus petitioners are before this Court.

6. Submission of the learned Counsel for the petitioners is that there was single plot in which all the six chak holders were adjusted keeping in mind their private source of irrigation which situates in that very plot and Abadi etc. but the appellate authority without considering all the aforesaid aspect has illegally disturbed petitioners and allotted a second chak of bad quality of land. Submission is that Deputy Director of Consolidation although have noticed submission of the learned Counsel for the petitioners about propriety of continuance of the petitioners chak on plot No. 65 for the reasons of there being pumping set and abadi etc. but without recording any findings on the score has illegally dismissed revision. Submission is that on the facts some more details in respect to the petitioners grievance and hardship was expected to be considered from the Revisional Court and if so necessary the equity should have been balanced after making spot inspection and as it has not been done Deputy Director of Consolidation is to be asked to do the needful.

7. In response to the aforesaid, learned Counsel for the respondents submits that Deputy Director of Consolidation has recorded findings while dismissing petitioners revision that the land allotted to the petitioners in their second chak is also of same quality as plot No. 65 and therefore, no change is needed. Submission is that this being allotment of chak matter no interference is called for.

8. After hearing arguments from both sides, as noted above, this Court has examined the matter.

9. There is no dispute about the fact that the petitioner are having their chaks on single plot i.e. Plot No. 65 in which as shown in CH Form No. 23 they all have 1/6th share and in view of the order of the Consolidation Officer 1331995 their chaks remained/kept joint. There is also no dispute about the fact that there was argument/claim from the aside of the petitioners that they have their private source of irrigation in plot No. 65 and their Abadi situates near by. Perusal of the judgment makes it clear that he has not analysed and recorded any finding either way on these scores and in a most cursory and cryptic manner revision has been dismissed. Contention of the petitioners about existence of their private source of irrigation if is accepted to be correct, it can be find out only after spot inspection. Thus, for shifting petitioners from plot No. 65 more strong reason will

have to be given as Section 19 of the U.P.C.H. Act mandates the allotment of chak to the chak holder over the plot on which he possess his private source of irrigation. Besides private source of irrigation if all the six petitioner are having 1/6th share in a particular plot and by the order of the Consolidation Officer their chaks were kept which is apparent keeping in mind their convenience, for bifurcating them also there will have to be strong reason which appears to have not given in the judgment of the appellate authority or the Revisional Court.

10. In view of the aforesaid this Court is satisfied that petitioners have suffered serious prejudice on account of the changes and that too without analysing and giving any valid reasons for the same and thus matter needs fresh attention.

11. At this stage submission of the learned Counsel for the respondent also to be taken note of as he submits that Deputy Director of Consolidation has found that his private source of irrigation situates in plot No. 64 and therefore, in order to adjust the respondents near his private source of irrigation necessary changes were made by the appellate authority and approved by the Revisional Court. So far this aspect is concerned it is for the Revisional Court to adjust equity keeping in mind the claim of both sides. Thus, it is clear that the claim of the petitioners has not been analyzed by the Revisional Court in a proper manner and on the facts this Court is satisfied that nonconsideration of the petitioner's claim caused serious prejudice to them and thus proposes to quash impugned order with the further direction to the Revisional Court now to attend the matter and decide claim of the parties in accordance with law after adequate opportunity of hearing to all the parties concerned and if it is necessary after making spot inspection after notice to the parties preferably within a period of six months from the date of receipt of certified copy of this order from either of the sides. For the reasons, recorded this writ petition succeeds and is allowed and the order of Deputy Director of Consolidation dated 771999 and 31101996 are hereby quashed and the matter is remitted back in terms of the directions as given above.