

(2014) 08 AHC CK 0212
In the Allahabad High Court
Case No : C.M.W.P. No. 13705 of 2001

Rajendra Kumar Upadhya

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 9, 9B

Citation : (2015) 2 AWC 1639 : (2014) 125 RD 145

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Govind Krishna, Advocate for the Appellant; R.P. Yadav, Arvind Kumar, Manoj Srivastava and Arvind Srivastava, Advocate for the Respondent

Judgement

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Anjani Kumar Mishra, J.—Heard Sri Govind Kirshna, learned Counsel for the petitioner and Sri Arvind Kumar, who appears for contesting respondent No. 2. This writ petition arises out of an objection under section 9-B of U.P. Consolidation of Holdings Act, 1953 (for short "the Act") and is directed against the order of remand dated 27.3.2001 passed by the Deputy Director of Consolidation, Azamgarh (Respondent No. 1) in Revision No. 903, a copy whereof has been fixed as Annexure-6 to the writ petition.

2. The bone of contention between the parties in this writ petition is plot No. 152 which is valuable roadside land and is the original holding of the petitioner.

3. 800 links of this plot No. 122 was declared chak out by the order dated 27.6.1997 passed on an objection under section 9-B filed by the petitioner.

4. The contesting respondent purchased plot No. 1 area 200 links by means of a registered sale-deed dated 15.1.1998. On 3.9.1999, a reference was prepared at his instance whereby 15 links of plot No. 152 was proposed to be allotted in his chak. In these reference proceedings it transpired that 800 links of plot No. 122 had been declared chak out and therefore the contesting respondent filed an

application for recall of the order dated 27.6.1997. This recall application was rejected by the Consolidation Officer, Azamgarh (the C.O.). Against the order the C.O. revision was filed by the contesting respondent which was allowed by the order dated 27.3.2001, the order dated 27.6.1997 was set aside and it was directed that the question of declaration of 800 links of this plot as chak out be considered again. This order has admittedly been passed at the instance of the contesting respondent No. 3.

5. Sri Govind Krishna, Counsel for the petitioner submitted that the revisionist (Respondent No. 3) was a totally unconcerned person. He had no right, title or interest in plot No. 122 and had no locus to maintain the revision itself. He, therefore, states that the revisional order passed at the instance of unconcerned person is liable to be set aside. He has further submitted that the order of remand is a futile exercise and therefore the impugned order deserves to be set aside.

6. The Counsel for the respondents Sri Arvind Srivastava vehemently refuted the submission made by the Counsel for the petitioner. He has submitted that the question of locus is being raised for the first time in the writ petition and therefore this issue is liable to be ignored. He further contends that the findings recorded in the impugned order have not been challenged in the writ petition. The order of 1997 whereby 800 links of plot No. 122 were declared chak out was a patently illegal order as the objection itself was filed more than 12 years after the publication under section 9 of the Act was made in the unit, chaks had already been finalized at the time this objection was filed and hence the same was highly belated and should have been rejected on the ground of delay alone. Moreover, the objection was allowed on the mere asking without any notice or information to the Gaon Sabha and was therefore an ex parte order. This ex parte order was set aside by the order impugned in the writ petition and the matter has been remanded for fresh decision after hearing all concerned parties. He, therefore, submits that the interference in this order of remand will amount to restoring another illegal order. He, therefore, prayed for dismissal of this writ petition.

7. So far as the question of locus is concerned, Counsel for the contesting respondent has submitted that he is tenure holder in unit in question and being a resident of the Gaon Sabha, was entitled to file maintain the revision.

8. In support of his objection, he has relied upon the following decisions:

(i) M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, .

(ii) Judgment in P.I.L. No. 22067 of 2012; Ayurved Srivastava Kalyan Samiti through Secretary v. Union of India and others, paragraph - 18.

9. At the very outset it may be pointed that none of the decisions cited by the Counsel for the respondent pertain to consolidation operations. The entire land in the unit is survived and proper valuation is accorded to the entire land of the unit

on the start of consolidation operation. The entry as regards ownership to the various plots are also made. Areas to be reserved for public purposes are earmarked. Once these matters are finalized publication is made under section 9. It is at this stage that any holder of land can raise an objection claiming that certain area of this plot be excluded from consolidation operations.

10. It is settled law that any objection at this stage as regards valuation of the land or as regards reservation for public purpose or for declaring any area as chak out can be raised by the original holder of the land. In case such an objection is not filed, the bar created by section 11 comes into operation. It is, however, open for a person other than the original holder of the land to raise an objection regarding its valuation in case such land is proposed in the chak of such person or tenure holder and he feels that the valuation has been wrongly fixed. Then such a person can, even at the stage of allotment of chaks, pray for correction of the valuation of the land that has been proposed in his chak.

11. From the above discussion, it can be safely said that it is only original holder of plot who can pray for certain area of the same being declared as chak out on the ground it is not being used for agricultural purposes or same is required for extension of Abadi. Notifications have been issued by the State Government which provide that commercial valuable land situated adjacent to roads could normally be declared as chak out or in the alternative such land should be allotted in the chak of the original tenure holder thereof. The logic behind this notification is that roadside land has much higher commercial value as compared to agricultural land which is situated away from main road.

12. In view of the discussion above, it is clear that plot No. 122 is valuable roadside land and is so admitted to both the parties. It is also admitted that the petitioner is original holder thereof. The contesting respondent has no concern with this plot. He, therefore, in my considered opinion has no locus to challenge the order of 1997 whereby 800 links of plot No. 122 has been declared chak out. However, in view of the finding recorded in the impugned order that the application was filed more than 12 years after publication under section 9 of the Act, and such objection was without any notice or information to the Gaon Sabha, there appears to be no justification why the order of remand should be interfered with. In this connection, it would be relevant to record that despite repeated pointed queries made by the Court, Counsel for the petitioner could not put forth any cogent reason why the petitioner filed an application for declaring 800 links of plot No. 122 as chak out at such belated stage specially when this area was proposed in his chak and there being no challenge to such allotment. At least there is no material on the record of this writ petition to show that anybody had objected to the allotment of plot No. 122 in the chak of the petitioner, who is its original holder.

13. Under these circumstances and in view of the discussion above, I do not find it proper to interfere with the impugned order. The writ petition, therefore, is accordingly dismissed. It is further provided that the contesting respondent has

on concern with this controversy and he is a stranger thereto and therefore, he will not be entitled to be heard in the proceedings that are required to be proceeded with in pursuance of the remand order. Accordingly and subject to the aforesaid observations and directions, the writ petition is dismissed.