

(2008) 07 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition No. 316 (MS) of 2002

Ram Cheej

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 21(2), 23, 27, 52

Citation : (2008) 3 UC 1863

Hon'ble Judges : P.C.Verma, J

Bench : Single Bench

Advocate : Mr. Sarvesh Agarwal, for the Appellant; Mr. H.M. Raturi, learned Standing Counsel for the Mr. S.S. Yadav, Learned Counsel for the Respondents No. 3 to 8., for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble P.C. Verma, J.—By means of the present writ petition, Petitioner has challenged the orders dated 11.9.1997 & 26.8.1999 (Annexures No. IV and Annexure No. 10 to the writ petition) passed by the Respondent Nos. 2 and 1 respectively

2. Brief facts giving rise to the present petition are that the Petitioner and Respondents no, 3 and 4 are real brothers and their father was freedom fighter. The Government allotted 90 Bigha of land in three pieces in two different villages i.e. Pratappur and Inderpur. being Plot No. 18 area 29 Bigha, Plot No. 21 area about 33 bigha, Plot No. 40/102 situated at Village Inderpur having an area of 29 Bigha of land. In the year, 1959, father of the Petitioner died leaving behind the Petitioner and Respondents No. 3 and 4. Thereafter in the year, 1968, the property was divided amongst the Petitioner and the Respondents No. 3 and 4 under the family settlement. The Petitioner was given possession over the land situated at Village Pratappur Plot No. 21/2 having an area of 0.6140 Hectares and Plot No. 21/3 having an area of 1.2500 hectare, Respondent No. 3 was given Plot No. 21/ 1 area 0.2420, plot No. 18/2 having an area of 0.9300 hectare and

Plot No, 18/ 3 having an area of 0.6200 situated at Village Pratapur and the Respondent No. 4 was given Plot No. 34 and 40/102 having a total area of 29 Bigha situated at Village Inderpur. In the year, 1995, consolidation proceedings of the village was started and during the consolidation proceeding, a survey was conducted by Survey Amin and after survey, he sent report on 17.3.1996 to the Consolidation Officer stating therein that Plot No. 21/1 area 0.2420 is in physical possession of Respondent No. 3 and Plot No. 21/2 area 0.6140 and Plot No. 21/3 area 1.2500 are in physical possession of the Petitioner. Petitioner made an application before the Consolidation Officer which was registered as Case No. 891 and Plot No. 21/1 and 21/2 was given to the Petitioner. On plot No. 21/1 a pumpset boring was found and the valuation of the same was assessed as Rs. 4,000/-. Plot Nos. 18/1 and 18/2 were given to the Respondent No. 3 and as there were standing ten sheesham trees, eighteen mangos, four Mahua, Bans Kothi and four popular, valuation of the same was assessed as Rs. 8000/- recorded in Akar Patra No. 2Ka. Consolidation Officer allotted Plot No. 21/3 amongst Shiv Pujaan, Jai Mangal, Heera Lal and Ranjeet etc. and Plot No. 83 was made new Plot and given to Respondent No. 4 Ram Shankar vide order dated 31.1.1996.

3. Against the said order, the Respondent No. 3 preferred an appeal being 808 u/s 21(2) of the Consolidation of Holdings Act Ram Charitra v. Ram Cheej before the Respondent No. 2 / Settlement Officer. The Settlement Officer on 16.5.1996 allowed the appeal and gave the Plot No. 21/1 and 21/2 Gata No. 85 area 0.5746 Hectares to the Respondent No. 3 and Plot No. 18/1 and 18/2 Gata No. 84 area 0.6064 was given to the Petitioner.

4. Being aggrieved by the said order, Petitioner filed a restoration application before the Settlement Officer, which was admitted and modified the earlier order by giving Chak No. 85 Plot No. 21/2 and 21/ 3 area 0.6298 to the Respondent No. 3, Chak No. Plot No. 18/3 and 18/2 area 0.7590 as Udan Chak to the Petitioner and deleted from his Original Chak No. 85 Plot No. 21/2 and 21/3 vide his order dated 11.9.1997.

5. Thereafter, against the said order, the Petitioner preferred a Revision before the Respondent No. 1 / Deputy Director of Consolidation. Deputy Director of consolidated admitted the revision and stayed the proceeding wide order dated 24.12.1997. Thereafter, the Petitioner moved an impleadment application (Annexure No. VI to the writ petition) to implead the name of Respondents No. 4 to 8, but the same was not entertained by the Respondent No. 2. The interim order, so granted, was extended from time to time. Again on 26.8.1998, the Petitioner made an implement application before the resposna(sic) No. 1, which was objected by the Respondent No. 3 stating that there is no need of stay order and impleadment of Respondent No. 4 to 7 as the Chak No. 84 was measured on 7.1999 by the Police Force and possession has been taken by the Respondent No. 3. After hearing the parties, the Respondent No. 1 vide order dated 26.8.1999 rejected the revision of the Petitioner along with the stay extension

application.

6. Heard Counsel for both the parties.

7. Counsel for the Petitioner has submitted that the Respondent No. 2 while allotting the plot of the Petitioner has acted gross illegality and not considered the interest of the Petitioner. It has further been submitted that Respondent No. 2 has wrongly disposed of the appeal and allotted Udan Chak which is not admissible to the Petitioner.

8. Perused the order passed by the Deputy Director Consolidation as well as Settlement Officer Consolidation. After considering the evidence, the Settlement Officer Consolidation has recorded a finding that the parties are small farmers and allotment of only one plot each will be enough and gave the Plot No. 21/1 and 21/2 Gata No. 85 area 0.5746 Hectares to the Respondent No. 3 and Plot No. 18/1 and 18/2 Gata No. 84 area 0.6064 was given to the Petitioner. The order of the settlement officer consolidation has been confirmed by the Deputy Director of Consolidation holding that publication of Section 52 of the Consolidation of Holdings Act, 1953 has been carried out and the possession over the land has been changed.

9. Section 52-of the U.P. Consolidation of Holding Act, 1953 reads as under:

(52. Close of consolidation operations.--(1) As soon as may be, after fresh maps and records have been prepared (under Sub-section (1) of Section 27), the State Government shall issue a notification in the Official Gazette that the consolidation operations have been closed in the (unit and the village or villages forming a part of the unit) shall then cease to be under consolidation operations):

(Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix distribute and recover the cost of operations under this Act.)

((1-A) The notification issued under Sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.) ((2) Notwithstanding anything contained in Sub-section (1), any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases or proceedings pending under this act on the date of issue of the notification under Sub-section (1), shall be given effect to by such authorities, as may be prescribed and the consolidation operations shall, for that purpose, be deemed to have not been closed.)

((3) Where the allotment or lease of any land made before the Consolidation Scheme becomes final u/s 23, is cancelled by an order under Sub-section (4) of Section 198 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and such order becomes final, then notwithstanding anything contained in the provisions of this Act, such order shall be given effect to by such authorities, as may be prescribed, in the following manner, and the consolidation operation

shall, for that purpose, be deemed to have not closed, remely--

(a) the value of the land which was subject matter of such allotment or lese shall first be ascertained in the manner prescribed;

(b) the value referred to in Clause (a) shall be deducted from the total value of land allotted to the tenure holder concerned during consolidation proceedings;

(c) the tenure-holder shall be entitled, during consolidation proceeding, to land equivalent in valuation to the said land.)

10. Since, the operation of the consolidation has been closed by publication of a notification u/s 52 of the Consolidation of Holdings Act, therefore, I do not find any illegality or infirmity in the impugned orders passed by the Settlement Officer Consolidation as well as Deputy Director of Consolidation and the same are co-farmed.

11. Accordingly, writ petition is dismissed. No order as to costs.