

**(1993) 03 AHC CK 0050**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 35193 of 1992

Ram Das

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

**Date of Decision :** 24-03-1993

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 19(1), 19(2), 19A, 48

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A

**Citation :** (1993) 3 AWC 1650 : (1993) RD 421

**Hon'ble Judges :** B.L. Yadav, J

**Bench :** Single Bench

**Advocate :** Rahul Sripat and P.S. Nigam, for the Appellant;

**Final Decision :** Allowed

## Judgement

B.L. Yadav, J.—By this petition under Article 226 of the Constitution of India, the prayer is that a writ of Certiorari may be issued quashing the, order dated 10th September, 1992, passed by the Deputy Director of Consolidation (Annexure-4 to the petition).

2. Counter and rejoinder affidavits have been exchanged between the parties. Learned Counsel for both the parties have suggested that the Writ Petition itself be decided on merits. Consequently the arguments were heard and the petition is being disposed of on merits.

3. The Petitioner was aggrieved by the order of the Settlement Officer Consolidation. Consequently he filed a revision, whereas the other Respondents including Respondent No. 12 to 14 have also filed revision. All these revisions were consolidated together and were disposed by a common judgment dated 10-9-92, The revision of Petitioner Ram Das, Chak Holder No. 183 was dismissed on the ground that as his co-sharers Chak Holder Nos. 155 and 46 having been given Chak over Plot No. 195, consequently it was not possible to allot the

Petitioners the Chak over Plot No. 195. However, while considering the grievances of other chak holders in Revision No. 506, 576, 526, 525 and 479 etc. the Petitioner was adversely affected and his Chak over Plot No. 404 was removed and he was given Chak on another plot, more inconvenient to the Petitioner.

4. Sri S.K. Srivastava, learned Counsel for the Petitioner urged that the revision is filed u/s 48 of the U.P. Consolidation or Holdings Act, 1953 (for short the Act), and that can either be dismissed or allowed. In other words, relief can be granted or refused. In case the revision preferred by the Petitioner is dismissed, it means that the order passed by the Settlement Officer Consolidation is to be maintained, but while dismissing the revision of the Petitioner his Chaks cannot be adversely affected and other revisions could not be allowed against the claim of the Petitioner. If that was intended by the Deputy Director of Consolidation, in that event he must have considered the revision of all the tenure holders together. But that was not done in this case. Petitioner's revision was separately taken up and dismissed. Consequently no further change adversely affecting the interest of the Petitioner could have been made and that even if there are other co-tenure-holders, their convenience cannot be considered in the revision of Petitioner. Sri L.N. Pandey, learned Counsel appearing on behalf of Respondent Nos. 12, 13 and 14 etc, on the other hand, urged that the impugned order of the Deputy Director of Consolidation was correct and he could make modification in the Chak of the Petitioner even if his revision was dismissed. Learned Counsel appearing for the other Respondents were also heard.

5. Having scrutinised the submissions of the learned Counsel for the parties, I am of the opinion that the impugned order cannot be sustained. The Act is a complete Code in respect of the scheme of allotment of Chaks and convenience of respective tenure holders. The title of the tenure holder is decided u/s 9-A (2) of the Act. In case there is any holding i held by the tenure holders jointly, Assistant Consolidation Officer or the Consolidation Officer would ascertain the same on the basis of title and share u/s 9A notwithstanding anything in the contrary contained u/s 168-A of the UP ZA and LR Act, 1950 or any other law. The partition is to be made on the basis of share of the parties. Unless the tenure holder agrees to remain joint, for that purpose he has to make specific application. In the present case the Petitioner and his co-tenure holders did not agree to remain joint. The holdings were partitioned in view of Section 9C of the Act and other provisions. Consequently the Petitioner has his separate unit of the holding having nothing to do with the case of other co-tenure holders.

6. u/s 19 of the Act conditions have been indicated to be fulfilled by the consolidation scheme. But there is no condition for allotment of Chak pertaining to the convenience of other co-tenure holders, rather every tenure holder has been indicated by the Legislature, meaning thereby that the U.P. Legislature considered the principles for allotment of Chak to every tenure holder having nothing to do with other co-tenure holders as is obvious by a perusal of Section

19(1) (c) (i) and Section 19(2) (e) and (f) of the. Act.

7. As there is nothing to indicate that the Legislature intended that the grievance of other co-tenure holders may also be taken into account, the Deputy Director of Consolidation was not justified in rejecting the grievance of the Petitioner on the ground that his other co-tenure holders have been given Chak over Plot No. 195 and other plots. The maxim "UBI NULIA EST CONJECTURE QUAE DUCAT ALIO VERBA INTELLIGENDA SUNT EX PROPRIETATE NON GRAMMATICA SED POPULARI EXUSU", connotes when there is no inference which would lead in any other direction, or words of a particular provision it is understood according to their proper meaning, not grammatical, but according to popular usage. In the present case there was nothing to indicate that the Legislature intended that the inconvenience of other co-tenure-holders may also be taken into account while considering the revision of a particular Chak holder. Section 48 of the Act only indicates that the regularity of the proceedings, or as to the correctness, legality or propriety of any order can be considered by the Deputy Director of Consolidation either suo moto or on the application of any tenure holder. But there was nothing to indicate that the grievances of the co-tenure holders can also be looked into,

8. "UTRES MAGIS VALEAT QUAM PEREAT" is another maxim which means that it is better to validate a thing than to invalidate it, better the act prevails than perish, lest intention of legislature may go in vain. In other words a particular statute need not be extended to meet the situation for which there is no provision. (See Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, .

9. In the present case to consider the grievance of the co-tenure holders, there was no provision either u/s 19 or 19A or Section 48 of the Act. Consequently the Deputy Director of Consolidation was not justified in rejecting the revision of the Petitioner.

10. Reverting to the next question. The revision of the Petitioner was to be decided u/s 48 of the Act and either it was to be rejected or allowed. The Petitioner's revision has been considered separately and rejected and while considering the other revisions the Deputy Director of Consolidation would not be justified in taking out certain plots from the Chak of the Petitioners, or in other words, while dismissing the revision of the Petitioner his interest cannot be adversely affected while applying mind to the grievance:, of other tenure holders, or co-tenure holders who have filed separate revisions. I am accordingly of the opinion that the ;mpugned orders passed by the Deputy Director of Consolidation cannot be sustained."

11. Under the circumstances of the case, without recording any finding as to whether the Petitioner was in possession over the sugarcane crop or the Respondent Nos. 12 to 14, and without affecting the merits of the case, the sugarcane crop grown for the year 1992-93 shall be harvested by Respondent Nos. 12 to 14. But this would not entitle these Respondents to claim possession,

right or title over the land in dispute, which shall be subject to decision of the Deputy Director of Consolidation to be passed on merits.

12. In view of above, the petition succeeds and is allowed. The impugned order dated 10-9-92 is hereby quashed and the revisions are restored to their original numbers and they shall be decided afresh by the Deputy Director of Consolidation in accordance with law and, in the light of the observations made above after affording the parties reasonable opportunity of being heard. There shall, however, be no order as to costs.