
(2010) 03 AHC CK 0273
In the Allahabad High Court

Ram Pher and Others

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 AWC 1726

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri T.C. Gupta, learned Counsel for the petitioners, Sri D.K. Mishra, learned Counsel for the respondent Nos. 3 to 5 and Sri G.S. Mishra, learned standing counsel for the State and perused the material placed on record.

2. Under challenge is an order passed by Deputy Director of Consolidation, Faizabad on 10.3.2010, disposing of the revision preferred u/s 48 of U.P. Consolidation of Holdings Act, 1953. This order has been passed in furtherance of directions and observations contained in a judgment dated 17.2.09 rendered by this Court in a revision Ram Pyare v. Deputy Director of Consolidation and Ors. preferred in the year 1992. The original consolidation dispute arose in the year 1988 and as such it requires expeditious adjudication by this Court as more than about 22 years have gone. The land chaks in the concerned village have not yet been settled even after several years of conclusion of consolidation proceedings in the village.

4. It emerges from the record that the dispute relates to the chak Nos. 196, 314 and 315 had jointly been allotted to the petitioners' father (Late Ram Payare) as well as to the opposite parties No. 4 and 5 Ramjas is the owner of chak Nos. 442.71 and 34. The contesting parties belong to the same family stock. There is mention in the records about the family partition which took place in the family. After initiation of consolidation proceedings, objections were filed by the rival

parties before the Consolidation Officer. The final order was passed by Consolidation Officer on 14.1.88, Consolidation Officer had recorded findings against the petitioners' father(now petitioner herein). An appeal was preferred against the same, which was dismissed by the Settlement Officer of Consolidation on 23.5.89.

5. As per Sri T.C. Gupta, plot No. 196 was wholly allotted to Sri Ram Payare petitioners' father, he has highlighted the details of the chaks. The petitioners' father had assailed the said order by filing a revision before Deputy Director of Consolidation, Faizabad, which was dismissed on 23.5.89.

6. A writ petition No. 111 (consolidation) of 1992 Ram Payare v. Deputy Director of Consolidation and Ors. presented in this Court in the year 1992. The matter remain pending for about 17 years and this Court rendered a judgment on 17.2.09 and issued certain directions and made observations. The Deputy Director of Consolidation was relegated to look into the facts law and submissions of rival contesting parties. This Hon''ble Court as also invoked the Deputy Director of Consolidation to deal with the matter in the light of the observations made in the judgment for convenience. The relevant portion of the judgment and order is being quoted below-

7. Submissions of learned Counsel for the petitioner is that the petitioner has been allotted the land, which is causing irreparable injury and inconvenience to him on account of the fact that the land in front of the house of the petitioner has been allotted to a certain extent to chak holder of 314. He further submits that no spot inspection has been made by the Deputy Director of Consolidation and in absence of any spot inspection the correct appreciation of the spot position could not be made and on account of the said discrepancy the illegality in the allotment of chak has occurred.

8. Learned Counsel for the opposite parties No. 4 and 5 could not dispute the fact that any spot inspection has been made by the Deputy Director of Consolidation.

9. The impugned order also indicates that no spot inspection was made by the Deputy Director of Consolidation. The law in this regard is settled by this Court by means of various decisions that when the allotment is challenged on account of certain disputed facts and intricate delicacies in the matter are involved then the Deputy Director of Consolidation is supposed to make spot inspection. Section 21(3) of the U.P. Consolidation of Holdings Act also provides that spot inspection is to be made by the Consolidation Officer and the Settlement Officer Consolidation. The orders of both the authorities do not indicate that any spot inspection has been made and in absence of any spot inspection the correct appreciation of the spot position could not be made by the authorities.

10. Submission of learned Counsel for the petitioner is that right of the petitioner is being affected on account of the fact that the land in front of the house of the petitioner to certain extent has been allotted to chak holder of 314. The relevant

map for perusal has been produced before this Court, from which it is apparent that house of the petitioner is situated in plot No. 47 on the corner where his tube-well is also installed. It also appears that the irrigation facility is also being affected on account of the aforesaid allotment. It is also submitted that chak No. 196 to the north of the chak road is a pit or low lying area, which is about 8-10 feet deep and the earth has been excavated from the said chak. The litigating parties are, inter se, family members and belong to the same family. One of the members has been running a brick kiln and he has taken out certain earth from some of the plots. This aspect of the matter will also be taken into consideration by the Deputy Director of Consolidation and the party, who has taken out the earth from the said pit, will be put to a disadvantageous position in accordance with his share. Considering the entire facts and looking to the fact that the allotment made by the Deputy Director of Consolidation is affecting the petitioner to a certain extent, the orders passed by the three courts below are bad in law and are liable to be set aside.

11. The writ petition is accordingly allowed. The orders dated 14.1.1988, 23.5.1989 and 4.3.1992 passed by the Consolidation Officer, Settlement Officer Consolidation and the Deputy Director of Consolidation respectively are hereby set aside and the matter is remitted to the Deputy Director of Consolidation with a direction that he will make a spot inspection and thereafter allot the chaks in accordance with the observations made in the judgment. The Deputy Director of Consolidation while allotting chaks will keep in mind the situation of the houses existing on the spot and irrigation facilities as well. Till the decision is taken by the Deputy Director of Consolidation, the parties shall maintain status-quo as it exists today. The Deputy Director of Consolidation will decide the matter expeditiously.

22. There shall be no order as to costs.

23. The Deputy Director of Consolidation in compliance of the directions contained in the judgment has reconsidered the matter afresh. It is noteworthy that the earlier orders passed by the Consolidation Officer Dated 14.1.88 and 23.5.89 by Settlement Officer Consolidation and the Deputy Director of Consolidation have already been quashed. The Deputy Director of Consolidation had to deal with the matter afresh as per the scheme of Section 48 (as amended upto date) of Consolidation of Holdings Act, 1953. The Deputy Director of Consolidation along with the team of officials carried out spot inspection on 14.10.09. The inspection memo was prepared, a copy of which has been enclosed by the petitioner as Annexure No. 2 to the writ petition and copy of report map is also annexed as annexure 3 to the writ petition. The objections were filed by the petitioners, a copy of which as annexed as annexure No. 4 to the writ petition.

24. There is mention of two applications submitted to District Deputy Director of Consolidation for transfer of the case from the present Court of Deputy Director of Consolidation to some other court. His applications were rejected by the

District Deputy Director of Consolidation and the revision proceeded further.

25. After hearing the submissions of learned Counsel for the parties, the Deputy Director of Consolidation had fixed various dates, written submissions were submitted by the parties including petitioners. The revision was dealt with and a judgment running in 3- 5 pages has been delivered on 10.3.10. Sri T.C. Gupta, has assailed the judgments on various grounds. According to him no spot inspection was carried out in respect of the complete plot No. 196. The Deputy Director of Consolidation has not complied with the directions contained in the judgment rendered by this Court on 17.2.2009. There were 8 to 10 deep pits in the north of the chak and there were manure pits. The proper irrigation facilities like tube-well was not available at appropriate spot. The petitioners' land could have been allotted near Abadi, residences. The principles of allotment of chaks have not been kept in mind. The request for survey commission was rejected. He has lead the court to paras 6, 8 and 10 of the writ petition and has also led the court to the maps and other documents to strengthen his submissions regarding the status of chak No. 196 and the chak allotted to them (vide para 4 of the writ petition).

26. Sri G.S. Mishra, learned standing counsel has submitted that the Deputy Director of Consolidation was directed to carry out the spot inspection as required u/s 23(3) and 21(4) of the U.P. Consolidation of Holdings Act and this exercise has been carried out in this case. He has shown the Relevant documents in this regard.

27. Sri D.K. Mishra, learned Counsel for the respondent Nos. 3 to 5 has resisted the motion, according to him the Deputy Director of Consolidation has dealt with the matter in the light of the observations and directions contained in the judgment rendered by this Court as referred above. There is no illegality or infirmity in the order. According to him the petitioner wants that the chak be allotted before his Abadi and residence. This would cause immense difficulties to the contesting respondents 3 to 5 as it would deprive them with ingress and egress to the dwelling houses. He has reiterated that respondent Nos. 3 and 5 are not stranger to the petitioners and the other contesting parties. Both the parties belong to the same family and their ancestors were same. In view of this, it cannot be said that they were not having any substantial interest in the land or is not living in the village to look after their holdings.

28. Sri T.C. Gupta, learned Counsel for the petitioners has responded to this saying that the village where the said respondents live in 1.00 km. away from the chak of the petitioner.

29. I have heard the learned Counsel for the parties and perused the record.

30. In the present case the Deputy Director of Consolidation, Faizabad was issued specific directions to carry out spot inspections to ascertain correct facts to look at the plots make assessment of the status of the chaks, irrigation facilities and other disputed facts. The Deputy Director of Consolidation has

carried out spot inspection prepared "memo map" etc. This has been duly signed by the Officers concerned. As per the order passed by the Revisional Court, the inspection was carried out in the presence of Officers of Consolidation Department. Learned Counsel for the contesting parties including that of petitioner were present on the spot. The Deputy Director of Consolidation has also dealt with the oral and written submissions of the rival parties. He has laid stress in his 5 pages long judgment that both the chak-holders were accommodated on their original gatas. This is a relevant factor in the scheme of Consolidation of Holdings Act, 1953 that as far as possible the chak may be carved out allotted on the original gatas. If the chak as desired by the petitioners is allocated, it would certainly affect the respondents No. 2 to 5 as they may not have asses to their Abadi godown or whatever storage facilities etc. are available on the spot. The cattle tractor may not pass. The Bullockcarts and other equipments may not be having a passage. As far as the irrigation facilities are concerned the Court has taken note of the Deputy Director of Consolidation's views that if the irrigation facility is provided all the rival chak-holders shall be benefited. The drain will carry water from the tube-well of the petitioners to their remotest plot. As far as the low value land near railway line is concerned, this has already been equitably distributed between the two rival parties various other factors were also considered in taking the decisions based on facts.

31. Considering the facts and submissions the reasons and findings recorded by the Deputy Director of Consolidation, this Court is of the view that equities have been balanced. The Deputy Director of Consolidation has acted justly and fairly in disposing of the revision. This Court has taken note of the directions contained in the judgment dated February 2009 and viewed the matter carefully in accordance with the directions contained in the judgment. In totality none of the parties would suffer any kind of substantial injury, however as a result of allocation of chaks some inconvenience is caused to the chak holders in the villages but in the larger interest of the villagers such situation can be ignored.

32. Sri T.C. Gupta, learned Counsel for the petitioners has tried to persuade this Court to look at the dispute as a super consolidation Court or super Revisional authority. This cannot be done under Article 226 of the Constitution of India. The Deputy Director of Consolidation has already dealt with the issue in detail. These are mere findings of fact. The dispute relating to facts and the findings based on facts do not require interference. Moreover under the present Amended Section 48, 48A of Consolidation of Holdings Act, 1953 the Deputy Director of Consolidation has wider powers to look into the facts as well as law in adjudicating such disputes vide judgment of Bano Vs. State of U.P. and Others, and Ekhlq Ahmad and Ors. v. Deputy Director of Consolidation and Ors.

33. The Revisional Courts judgment is a well considered detailed reasoned document.

34. In the present case "spot inspection" has already been carried as per spirit of the judgment and order rendered by this Court. In a case giving importance to a

spot inspection appears to have been taken note (Shri Nath v. State of U.P. and Ors. 2005 (99) RD 371) by the court.

35. In view of the above the writ petition is dismissed. The Consolidation Authorities, Revenue Authority are directed to implement the directions contained in the judgments. The consolidation and revenue records shall be immediately corrected. The lower court's record, if any, summoned by the Deputy Director of Consolidation shall be immediately remitted back for settling things on the spot.

36. Sri T.C. Gupta after rendering the above judgment in the open court submitted that he may be given permission for filing SLP In the present case the Court has merely dealt with factual controversy only and no legal issue is involved. The prayer is rejected.

37. Moreover the directions contained in the earlier unchallenged judgments have been carried out by the consolidation authorities and it would be of no use to prolong an old litigation.