

(1994) 02 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6534 of 1984

Ram Prasad

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1994) 1 AWC 420 : (1994) RD 471

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : Radhey Shyam and Santosh Kumar Srivastava, for the Appellant;
S.N Singh, R.N. Singh, P.N. Singh and G.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.R. Misra, J.—Ram Prasad, Petitioner challenges the order, dated 18th April 1984, passed by Deputy Director of Consolidation by means of the present writ petition.

2. The facts of the case, as stated in the writ petition; in brief are that in proceedings before the Consolidation Authorities, an objection was filed by the Petitioner in respect of plot No. 986 situate in the village Sisarshepah, Post Office Nasratpur, Pargana Sikaadra, District Allahabad claiming that plot No. 986/1, area 2 Biswa 10 Dhoor belongs to him and, therefore, the aforesaid area be demarcated. The Petitioner further asserted that the area allotted to him was less than actual area. Bankey . Lal, Respondent No. 1 amalgamated 1 Biswa 10 Dhoor land, which was a chak land, in his chak and, therefore, this area should be excluded from the Chak of Bankey Lai.

3. Consolidation Officer's report dated 31-12-1970, together with other reports, were considered by Dy. Director of Consolidation who decided the case against the Petitioner. Therefore, Petitioner filed Civil Misc. Writ. Petition No 2551 of 1974 before this Hon'ble Court. A perusal of the order passed by this Court dated

18-5-1981 reads as under:

Yadi rakwa ka ghatana barana kal banshit tha so bipakshi ka rakwa 14 Biswa 3 biswhnsi se bara kar 18 Biswa 10 biswansi rakwa tiahi kiya ja sakta. Parantu main is bisay par apna koi bhi nirnaya nahi dena chahata Up sanchalak chakbandi ko yeh chaheya ki jo rakwa chak ke bahar tha, usko chakbandi ke bahar rakhte huye uski bahbandi athava hakbandi karwa den. Uske bisaya me yadi koi swatwa (title) ka bibad....

4. It makes it clear that there was clear direction to the Deputy Director of Consolidation that the area of 2 Biswa 10 Dhoor which was out of the purview of the consolidation proceedings that should be demarcated and if any dispute in respect of title of that area arises he will decide the same. It was found as a fact and has been reported by the Consolidation Officer that both the Petitioner and Respondents were entitled to 14 Biswa 3 Biswansi but the area of the contesting Respondent was 18 Biswa 10 Biswansi. The Deputy Director of Consolidation on remand instead of complying with the order for demarcating that area for which Petitioner states that there are materials on the record before the Consolidation Authorities that this area of 2 Biswa 10 Dhoor was kept out of the consolidation and this belongs to the Petitioner and no objection was filed by any party, after the receipt of the report, the Deputy Director of Consolidation sent the case, back to the Consolidation Office with the direction that without making any change in the chak of Bankey Lal 2 Biswa 10 Dhoor of land be given to the Petitioner from (sic) land.

5. Aggrieved by the order of the Deputy Director of Consolidation Sri Radhey Shyam, learned counsel for the Petitioner assailed the impugned order on the ground that in plot No. 986/1 originally belongs to the Petitioner prior to the consolidation operation on account of the fact that there are certain constructions of minor nature and a number of trees which were planted by the petitioner's father, this area was excluded from the consolidation operation as Achak land, and, after the decision by this Court the Deputy Director of Consolidation should have demarcated this area on the spot. He next pointed out that when the direction of this Court was to allot 2 Biswa, 10 Dhoor area to the Petitioner as the same is Achak land from Bachat land, the grievance of the Petitioner having been satisfied, Petitioner has no concern nor he could make a claim that since the area of Bankey Lal is more than due to him, he should be allotted from his chak is erroneous and since it is an equitable order no interference is called for.

6. Having heard the counsel for the parties and having perused the record of the case as well as the judgment of this Court, I am of the view that the Deputy Director of Consolidation has completely ignored the directions contained in the judgment dated 18-5-1981 (a portion of which has already been quoted above). A perusal of the order of the Deputy Director of Consolidation shows that he has passed the order without application of mind. Deputy Director of Consolidation is the highest authority in the hierarchy in deciding rights and interest of the parties under the provisions of the U.P. Consolidation of Holdings Act. His

judgment passed u/s 48 of the Act is expected to be covered by legal as well as the equitable aspect of the matter and his findings recorded are treated to be findings of fact, and, are final. Normally, even this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not interfere with these findings of fact, if those are based after the appreciation of material evidence on the record. But, in the instant case Deputy Director of Consolidation has not complied with the direction of this Court and has passed impugned order in a very cursory manner so as to ignore the very direction in the order of remand.

7. So far as the merits of the case are concerned, the order of the Deputy Director of Consolidation cannot be sustained as he has failed to follow the directions of this Court. Accordingly the matter is to go back to the Deputy Director of Consolidation for deciding it afresh in the light of the earlier order passed by this Court. I am not expressing any opinion at this stage about the merits of the case or the respective contentions advanced before this Court. However, in view of the arguments made on behalf of the Petitioner as an area of 2 Biswa, 10 Dhoor of land was kept as Achak land and this plot was owned by the Petitioner and no objection was filed by anybody in respect of this area, this area was liable to be demarcated on the spot and direction to give an area of 2 Biswa 10 Dhoors to the Petitioner instead of demarcating the same, if in fact, what Petitioner says is correct will not arise. When the matter goes to the Deputy Director of Consolidation for deciding afresh he will afford opportunity to the Petitioner and the Respondents or any other interested person and thereafter he will consider the case on merits in accordance with law. If he comes to the conclusion that the averments of the Petitioner in respect of the aforesaid, plot 2 Biswa 10 Dhoor of land is correct he will demarcate the same "in" favour of the Petitioner. In case there is any dispute which may arise out - of the materials on the record, it will be open for the Deputy Director of Consolidation to consider the same on merits in accordance with law. Any less allotment if ultimately found by the Deputy Director of Consolidation in favour of the Petitioner, the Deputy Director of Consolidation will pass appropriate order regarding the adjustments of any area found to be allotted to the Petitioner he will allot the same adjacent to his chak, but, not in the case when it is found that 2 Biswa 10 Dhoor is only to be demarcated, the said demarcation will be made accordingly.

8. The argument of the counsel for the Petitioner that Bankey Lal has been allotted excess of land than is due to him, the Deputy Director of Consolidation while considering the case afresh will look into this aspect of the matter also.

9. In the result, the writ petition succeeds and is allowed, The judgment and order dated 18-4-1981 of the Deputy Director of Consolidation is set aside. He is directed to decide the revision afresh in accordance with law and in the light of observations and directions contained in the judgment dated 18-5-1981 of this Court, as well as those contained in the body of this judgment. On the facts and in the circumstances of the case, the parties shall bear their own costs.