

(2016) 01 AHC CK 0048
In the Allahabad High Court
Case No : Consolidation No. 2 of 2011

Ram Rang Singh S/O Shamsheer Singh	APPELLANT
Vs	
Deputy Director of Consolidation Administration & Another	RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Citation : (2016) 130 RD 817

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : C.S.C, Anurag Narain and Gauri Shankar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri B.K. Singh, for the petitioner, Sri Anurag Narain and Sri Gauri Shankar Maurya, for the contesting respondent-2.

2. The writ petition has been filed against the order of Deputy Director of Consolidation dated 10.12.2010, passed in chak allotment proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

3. Plots 914 (area 2-5-0 bigha), 1105/1 (area 0-8-0 bigha), 1105/2 (area 0-3-0 bigha), 1105/3 (area 0-7-0 bigha), 1115/1 (area 0-2-0 bigha), 1115/2 (area 0-1-0 bigha) and 1115/3 (area 0-3-0 bigha) (total area 3-9-0 bigha) were original holdings of Smt. Manjauka (now represented by respondent-2). Plots 914 (area 2-5-0 bigha) was left as chak-out and remaining plots of Smt. Manjauka of an area of 1-4-0 bigha were included in consolidation area and in lieu of it, she was allotted single chak of an area of 0-12-7 bigha on plot 1334, which was original holding of the petitioner and his co-sharers. An objection (i.e. Case No. 1499) was filed under Section 20 of the Act, which was decided by Consolidation Officer, by order dated 12.06.1965. Thereafter, an appeal (registered as Appeal No. 265), was also filed, which was decided by order of Settlement Officer Consolidation, dated 06.07.1975, in which chak of the

petitioner was affected.

4. Smt. Manjauka filed a time barred objection (registered as Case No. 3164) under Section 21 of the Act. Consolidation Officer, by order dated 02.12.1978 held that chak of Smt. Manjauka had already been affected by orders of Consolidation Officer, dated 12.06.1965 and Settlement Officer Consolidation dated 06.07.1975 as such delay in filing of objection was not liable to be condoned. On this ground objection was dismissed as time barred. Smt. Manjauka filed a time barred revision (registered as Revision No. 856) against the aforesaid orders, on 30.01.1979, along with delay condonation application. Deputy Director of Consolidation, by order dated 12.05.2003, allowed the revision, by which chak of the petitioner was disturbed. The petitioner filed a writ petition (registered as Writ Petition No. 1227 (Consolidation) of 2003) which was allowed by this Court, by order dated 22.09.2004 on the ground that the petitioner was not given notice/opportunity of hearing in the revision.

5. After remand, Deputy Director of Consolidation, again by order dated 21.12.2004, allowed the revision, by which chak of the petitioner was disturbed. The petitioner filed a writ petition (registered as Writ Petition No. 3 (Consolidation) of 2005), in which, it has been pleaded by the petitioner that chaks were carved out in the year 1965. For the first time, chak of the petitioner was disturbed in the year 2003. In the meantime, the petitioner had installed a tube-well, planted various trees and constructed house over the disputed land. At the time of allotment of chak, plot 1105 was usar land. After its allotment in his chak, by investing labour and money he had made it fertile. The revision was malafide filed after inordinate delay to deprive the petitioner from his developments. Without awarding any cost of the various developments made by him, his chak had been disturbed. This Court, by order dated 16.03.2009 held that there was nothing on record to show that Deputy Director of Consolidation had made spot inspection before allowing the revision. The factual controversy raised by the petitioner can be more appropriately appreciated and considered after spot inspection. On these findings, writ petition was allowed and matter was remanded to Deputy Director of Consolidation to make spot inspection and after hearing the parties decide the revision on merit afresh.

6. After remand, Deputy Director of Consolidation made spot inspection in presence of the parties on 04.12.2010 and after hearing the parties held that delay in filing the revision was liable to be condoned. Plots 1105 and 1115 (total area 1-4-0 bigha) were original holdings of Smt. Manjauka. As against it she was allotted chak of an area of 0-12-7 bigha on plot 1334, thus there was variation of area to the extent of 49%, which is not permissible under Section 19 of the Act. Plots 1105 and 1115 were lying in vicinity of abadi. Smt. Manjauka was illegally deprived her original holdings near abadi and allotted an uran chak on original holding of the petitioner on plot 1334, which situates at a long distance from abadi thus grave prejudice had been caused to respondent- 2 and allotment of chak to her was in contravention of principles as provided under Section 19 of

the Act. On the other hand plot 1334 was original holding of the petitioner. In case, respondent-2 is allotted chak in northern side in his new plot 565 then his tube-well, constructions and trees will remain in his chak. On these findings he again allowed the revision. Hence this writ petition has been filed.

7. The counsel for the petitioner submitted that chaks were carved out in the year 1965. It was confirmed after order of Settlement Officer Consolidation and village was notified under Section 52 of the Act in 1976. For the first time, Smt. Manjauka filed objection under Section 20 of the Act on 02.12.1978. After notification under Section 52 of the Act, consolidation authorities had no jurisdiction to entertain objection under Section 20 of the Act. In any case, there was no ground to condone inordinate delay in filing the objection. Consolidation Officer dismissed the objection as time barred by order dated 02.12.1978. The revisional Court had not considered that delay in filing the objection from 1965 to 1978 was not liable to be condoned. Without condoning delay of these period, condoning delay in filing the revision after order dated 02.12.1978 was immaterial. At the time of consolidation plot 1105 was usar land as such it was rightly valued at the rate of 2 annas and some portion at the rate of 8 annas. Smt. Manjauka did not file any objection under Section 9 of the Act, challenging determination of valuation. At the subsequent stage, she cannot challenge the valuation. Small portion of plot 1105 and 1115 were allotted in the chak of the petitioner from stage of Assistant Consolidation Officer. Respondent-2 did not file any objection against the chak of the petitioner, which was slightly modified by orders of Consolidation Officer and Settlement Officer Consolidation in the year 1975. Thereafter village was notified under Section 52 of the Act, in 1976. The chak of the petitioner was disturbed in the year 2003. In the meantime, the petitioner had installed a tube-well, planted various trees and constructed house over the disputed land. At the time of allotment of chak, plot 1105 was usar land. After its allotment in his chak, by investing labour and money he had made it fertile. The revision was malafide filed after inordinate delay to deprive the petitioner from his developments. Without awarding any cost of the various developments made by him, his chak had been disturbed. Only small portion of plots 1105 and 1115 were allotted in the chak of the petitioner while its major portion was allotted in the chak of other person, who was not impleaded as party in revision as such no relief could be granted to respondent-2 in absence of necessary parties and revision ought to have been dismissed on this ground only. From spot inspection report/map it is proved that plot 1105 is falling in middle of chak of the petitioner. Deputy Director of Consolidation has taken middle portion of the land from chak of the petitioner and allotted it to respondent-2. Order of respondent-1 is illegal and liable to be set aside.

8. I have considered the arguments of the counsel for the parties and examined the record. So far as arguments that fresh objection under Section 20 of the Act was filed after notification of village under Section 52 of the Act, as such it was not maintainable, is concerned, no such issue was raised/pressed by the petitioner in earlier writ petitions. This Court, by order dated 16.03.2009

remanded the matter with specific direction to make spot inspection and decide the revision afresh on merit as such in compliance of order of this Court, respondent-1 decided the revision on merit after spot inspection and hearing the parties as such this issue cannot be raised before this Court.

9. A perusal of memorandum of revision (Annexure-5 to the writ petition) shows that the revision was filed against the orders of Consolidation Officer, dated 12.06.1965 and 02.12.1978 and Settlement Officer Consolidation dated 06.07.1975. Although fresh objection under Section 20 of the Act, after notification of village under Section 52 was not maintainable but revision against orders of Consolidation Officer, dated 12.06.1965 and Settlement Officer Consolidation dated 06.07.1975 was maintainable even after notification of Section 52 of the Act, as held by Division Bench of this Court in Gopi Singh v. DDC and others, 1967 RD 214 (DB) and Ram Bahadur v. DDC and others, 1974 RD 53 (DB) and has been followed subsequently through out by this Court. Similarly Full Bench of this Court in Rama Kant Singh v. DDC and others, AIR 1975 All 220 (FB) held that once record has been summoned by Deputy Director of Consolidation then in spite of fact that delay was not liable to be condoned, he can exercise suo moto jurisdiction of revision under Section 48 of the Act. Arguments on these issues have no merit.

10. Arguments that at the time of consolidation plot 1105 was usar land as such it was rightly valued at the rate of 2 annas and some portion at the rate of 8 annas, are also not established. In CH Form-2-A, quality of land of plot 1105 and 1115 were noted as "domat" land and not as usar. Thus findings of Deputy Director of Consolidation that serious prejudice was caused to Smt. Manjauka in valuing her original holdings lying in vicinity of abadi at a very low rate and allotting her an uran chak at a long distance from abadi on high valuation land, resulting reduction of about 49% area, also do not suffer from any illegality.

11. Now the arguments based upon developments made by the petitioner is concerned, Deputy Director of Consolidation allotted chaks to the parties in such a manner that developments made by the petitioner is still lying in his chak. Thus no prejudice has been caused to the petitioner. So far as arguments that by allotting chak to respondent-2 in northern side of plot 565, chak of respondent-2 has been carved out in middle of the chak of the petitioner, is concerned, it may be noted that plots 1100, 1101 and 1105 which were in northern side of new plot 565 were valued at the rate of 2 annas while southern portion of plot 565 was valued at the rate of 14 annas. In case, respondent-2 is allotted chak in southern portion of plot 565 then her area would be again reduced more than 25% of total area. In such circumstances Deputy Director of Consolidation allotted chak to respondent-2 in northern side to do substantial justice between the parties. Order of Deputy Director of Consolidation based upon local inspection report, does not suffer from any illegality. No interference is required by this Court.

12. However, the petitioner is given liberty to exchange his southern portion of new plot 565 from the chak of respondent-2 without affecting area of chak of

respondent-2 as allotted by order dated 10.12.2010. In case, the petitioner gives an application for exchange of his southern portion of plot 565 from chak of respondent-2 to the extent of same area, within period of two months before Deputy Director of Consolidation, he may entertain the application of the petitioner and pass suitable order on it.

13. In view of the aforesaid discussion, the writ petition has no merit and is dismissed, subject to aforesaid liberty.