
(1996) 02 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 5655 of 1979

Ram Samuj (Dead) through L.R.	APPELLANT
Vs	
Deputy Director of Consolidation and Others	RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11A, 20, 3(2), 3(4A)

Citation : (1996) 02 AHC CK 0020

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Feeling aggrieved by an order passed by the Deputy Director of Consolidation dismissing the revision of Ram Samuj, the Petitioner upholding the order passed by the Settlement Officer (Consolidation) in appeal whereunder plot No. 128 having a total area of 6 decimals had been ordered to be taken out of the consolidation scheme, the Petitioner, has now approached this Court seeking redress praying for the quashing of the appellate as well as revisional court's order. During the pendency of the writ petition, learned counsel for the Respondents had filed a supplementary affidavit annexing therewith the certified copy of the relevant chak map showing the position of plot No. 128 in dispute which has now been renumbered as plot No. 218.

2. I have heard Sri S. N. Srivastava, learned counsel for the Petitioner and Sri S. N. Singh, learned counsel representing the contesting Respondent No. 3 and have perused the record.

3. The plot No. 128 area 6 decimals in dispute stood recorded as the Bhumidhari holding of Shiv Nayak, Respondent No. 3. The Petitioner asserts that a portion of plot No. 128 in dispute having an area of 3 decimals had been reserved for village

Abadi and the remaining area of 3 decimals had been kept within the consolidation scheme. The provisional consolidation scheme wherein 1/2 area of plot No. 128 had been reserved for Abadi became final but during the proceedings u/s 20 of the U.P. Consolidation of Holdings Act, the Respondent No. 3 raised an objection praying that the entire plot No. 128 may be declared as chakout praying, therefore, that the area which had been kept within the consolidation scheme may be taken out from it. It is claimed that 1/2 area of plot No. 128 in dispute which had been kept within the consolidation scheme had been allotted in the chak of the Petitioner and was situated in front of his house. The Consolidation Officer vide his judgment and order dated 30.1.79 rejected the objection of the Respondent No. 3 seeking the taking out of 1/2 of the area of plot No. 128 in dispute from the consolidation scheme on the ground that since the portion of the said plot in question was situated in front of the Sahan of Ram Samuj, the request made could not be accepted.

4. In his objection filed u/s 9 of the U.P. Consolidation of Holdings Act, Shiv Nayak, Respondent No. 3 had asserted that plot No. 128 constituted his original holding wherein he had planted one Bel tree and was using the same for the purpose of Ghoor and Abadi according to his convenience. It was also indicated that his Ghoor, Bel and bamboo clumps stood on the plot which was also being used for tying his cattle and prayed that it should be kept out side the consolidation scheme. The Settlement Officer (Consolidation) inspected the plot in dispute and found that the assertion of the contesting Respondent that in the said plot the trees of Neem, Bel and Chilbil were standing was correct. He also found on his inspection that the plot had never been cultivated and was also being utilised as a Ghoor. However, no evidence was available showing that the said land was being utilised for the tying cattle. The Settlement Officer (Consolidation) on the spot inspection and considering the situation of the plot in dispute came to the conclusion that the aforesaid plot was not fit for being brought within the consolidation scheme and accordingly directed for its being taken out of the same.

5. The order of the Settlement Officer (Consolidation) was upheld by the Deputy Director of Consolidation in revision. In his order of affirmance, the Deputy Director of Consolidation endorsed the view of the Settlement Officer, Consolidation that considering the situation of the plot in dispute, it would not be proper to keep it within the consolidation scheme. It was also noticed that in the remarks column of the Khasra the plot in dispute had been shown to be Parti Kadeem and in this view of the matter it was not possible to fix its valuation.

6. In support of this writ petition, the learned counsel for the Petitioner has strenuously urged that the objection of the Petitioner seeking the exclusion of the plot in dispute from the consolidation scheme was not entertainable at all in view of the bar contained in Section 11A of the U.P. Consolidation of Holdings Act which provides that no question in respect of claims to land, partition of Joint Holdings and valuation of plots, trees, wells and other improvements where the

question is sought to be raised by a tenure-holder of the plot or owner of the tree, well or other improvements recorded in the annual right registered u/s 10 relating to the consolidation area which might or ought to have been raised u/s 9 or and has not been so raised shall be raised or heard at any subsequent stage of the consolidation proceedings.

7. The contention is that the statement of principles contemplated u/s 8A of the U.P. Consolidation of Holdings Act specifically provides that the statement of principles shall also contain details of area as far as they can be determined at that stage to be ear-marked for the extension of Abadi including area for Abadi site for Harijan and landless persons in the unit and for such other public purposes as may be prescribed and the portion of the plot in dispute having been reserved for extension of Abadi in the statement of principles could be altered if at all on an objection u/s 9 of the Act and that having not been made by the contesting Respondent and the statement of principles having been allowed to become final, it was not open to the consolidation authorities to disturb the statement of principles and take out the entire plot from the consolidation scheme affecting thereby not only that area of the plot in dispute which stood reserved for Abadi but also the area which had been included within the consolidation scheme. It is further pointed out that Section 9 of the U.P. Consolidation of Holdings Act clearly provided a remedy to the Respondent No. 3 for correcting the mistakes or resolving the disputes discovered u/s 8 or affecting valuation of the plots and trees etc. This remedy having not been availed of, it was not open to the Respondent No. 3 to raise the dispute seeking the taking out of the plot in dispute from the consolidation scheme and Respondent-authorities have acted in excess of the jurisdiction in granting the relief to the Petitioner in spite of the finality of the proceedings totally ignoring the bar contained in Section 11A of the U.P. Consolidation of Holdings Act.

8. The provisions contained in Section 3 (2) of the U.P. Consolidation of Holdings Act provides that the "consolidation" means a rearrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact. The Explanation (VII) to Section 3 (2) of the Act, however, stipulates that for the purposes of that clause, the holding shall not include such other areas as the Director of Consolidation may declare to be unsuitable for the purposes of consolidation.

9. The Deputy Director of Consolidation has also been defined u/s 3 (4A) of the Act and means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include the District Deputy Director of Consolidation and Assistant Director of Consolidation. In his writ petition, the Petitioner has asserted that 3 decimals area of the plot No. 128 in dispute had been reserved for village Abadi contemplated u/s 8A of the U.P. Consolidation of Holdings Act and the remaining area had been recorded as land which was kept within the consolidation scheme. The Petitioner has also asserted

that in the basic year, the part of the land in dispute was used as Abadi. The Settlement Officer (Consolidation), however, has observed that the land in dispute was situated in between Abadi of Shiv Nayak and Ram Samuj. The certified copy of the relevant chak map which has been filed also indicates that there could be no occasion for reserving the 3 decimals area of the land, considering its situation on the spot, for being reserved for the extension of village Abadi. It may be noticed that the extension of Abadi contemplated u/s 8A(2)(a) of the Act refers to the reservation of land for extension of Abadi including areas for accommodating Harijans and landless persons in the unit. There is nothing on the record to indicate that the piece of the land in dispute had been reserved for the extension of Abadi for accommodating Harijans or landless persons in the unit. In fact, the observations made by the Consolidation Officer while rejecting the objection of the Respondent No. 3 indicates that the 3 decimals area of the land in dispute had been kept out of the consolidation scheme on the ground of its being in the nature of Abadi and situate in front of the Sahan of Ram Samuj. From the observations made in the judgment of the Consolidation Officer as well as the Settlement Officer (Consolidation), there can be no manner of doubt that no portion of the land in dispute had been reserved for the extension of Abadi for the purposes contemplated u/s 8A (2) of the Act.

10. The question which arises for consideration, however, is as to whether any part of the holding which has been kept within the consolidation scheme can be taken out of the same in the proceeding subsequent to the stage of the proceedings u/s 9 of the Act. Under the provision of Section 48 of the U.P. Consolidation of Holdings Act, the Director of Consolidation which includes the Deputy Director of Consolidation as indicated above has powers to look into any proceeding or order passed by the authorities below on his own initiative or on an application made by any party and make such order as he thinks fit. The provision contained in Section 9B (3) of the Act does not bar or restrict the Jurisdiction of the Director of Consolidation envisaged u/s 43 of the Act. Further, the bar of Section 11A of the Act is confined to the claims to land, partition of Joint holdings and valuation of plots, trees, wells and other improvements where the question is sought to be raised by tenure-holder of the plot or the owner of the tree, well or other improvements recorded in the annual register u/s 10 relating to the consolidation area. The question in respect of taking out of the consolidation scheme, a particular holding or part thereof does not fall within the ambit of Section 11A of the Act. Taking into consideration the scheme of the Act, specially the jurisdiction vesting in the Director of Consolidation contemplated u/s 3(2)(vii) of the Act, there can be no justification for holding that such a question as involved in the present case cannot be agitated or determined in the proceedings u/s 20 of the Act or in a revision envisaged u/s 48 of the Act.

11. Taking into account the totality of the circumstances brought on record and the findings recorded by the Settlement Officer, Consolidation as affirmed by the Deputy Director of Consolidation, no justifiable ground is made out for interference by this Court while exercising the extraordinary jurisdiction

contemplated under Article 226 of the Constitution.

The writ petition is accordingly, dismissed. There shall, however, be no order as to costs.