

(2011) 12 AHC CK 0127
In the Allahabad High Court
Case No : Consolidation No. 435 of 2008

Ram Saran and others

APPELLANT

Vs

Deputy Director Consolidation and Another

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 19(1), 23

Citation : (2012) 3 AWC 3224

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Devendra Kumar Arora, J.—Heard Shri Anurag Shukla, learned counsel for the petitioners and Shri Avadhesh Kumar, learned counsel for the opposite parties.

2. By means of present writ petition, the petitioners are seeking a writ of certiorari for quashing the impugned order dated 28.05.2008, passed by the Deputy Director of Consolidation, Kheri, as contained in Annexure-7 to the writ petition.

3. The submission of learned counsel for the petitioners is that the petitioners are tenure holders of Plot No. 918 and Plot No. 916, which were the largest original holdings of the petitioners. At the time of consolidation proceedings, the Assistant Consolidation Officer after doing physical verification of the plots of the petitioners carved out the chaks at their original holdings of Plot No. 918 area 0.640 hect. and 916 area 0.200 hect. in compliance of Section 19(1)(e) of U.P. Consolidation of Holdings Act. The petitioners were satisfied with the carving of their chaks by the Assistant Consolidation Officer at their original holdings. The opposite party no. 2 feeling aggrieved against the carving of chaks of the petitioners, filed objection before the Consolidation Officer claiming that as Plot No. 734 is his largest original holding, therefore, he should have allotted largest

chak at his original holding. The Consolidation Officer vide order dated 18.04.2006 modified the chak of the opposite party no. 2, but the opposite party no. 2 was not satisfied with the modification of his chaks by the Consolidation Officer. The opposite party no. 2 feeling aggrieved against the order dated 18.04.2006 of the Consolidation Officer filed time barred appeal before the Settlement Officer Consolidation claiming that since Gata No. 734 is his original holdings, therefore, he should have allotted chak at his original holding. The Settlement Officer Consolidation dismissed the appeal of opposite party no. 2 by means of order dated 05.10.2006. The opposite party no. 2 feeling aggrieved with the order dated 05.10.2006 of the Settlement Officer Consolidation filed belated revision before the Deputy Director of Consolidation claiming therein that since he has only Gata No. 734 of his original holding, therefore, he should have allotted chak on his original holding and if it is not possible then his chak should be allotted at Gata No. 914. The Deputy Director of Consolidation allowed the revision of the revisionist, the opposite party no. 2 herein, vide order dated 28.05.2008 and allotted the chak to the opposite party no. 2 at Gata No. 914 depriving the petitioners from their original holdings. Feeling aggrieved against the order dated 28.05.2008 passed by the Deputy Director of Consolidation, Barabanki the petitioners have compelled to approach this Court by means of present writ petition.

4. Learned counsel for the petitioners relied on the judgment of this Court reported in 2004 (22) LCD 736, Shyam Behari vs. Dy. Director of Consolidation, Hardoi and others. Para-9 of the judgment read as under:-

9. Therefore, as far as possible all the conditions which are prescribed under the aforesaid section has to be adhered to by the Consolidation Authorities. But the intention appears to be that the allotment in respect of chaks has to be made looking to the interest of all the villagers at large. Interest of one individual is not only to be taken into account. A particular chak holder cannot claim that all the conditions that are laid down under the consolidation scheme should be satisfied in so far as he alone is concerned, as the process of compulsory consolidation is very difficult and complicated and there is no straight road back towards consolidation. The conditions by the consolidation scheme are to be fulfilled "as far as possible", the phrase which really means that the principles are to be observed unless it is not possible to follow them in particular circumstances of a case.

5. While opposing the writ petition, Sri Avadhesh Kumar learned counsel for the opposite party no. 2 submitted that Plot Nos. 963 and 954 are the largest original holdings of the petitioners. The Consolidation Officer without following the provisions of Section 19 of the U.P. Consolidation of Holdings Act as well as without spot inspection, perusal of map, physical verification carved out three chaks to the opposite party no. 2. The Assistant Consolidation Officer as well as the Consolidation Officer have passed ex-parte order against the opposite party no. 2. The Settlement Officer Consolidation has not considered the rightful claim

of the opposite party no. 2 as Gata No. 734 is his original holding and the private source of irrigation was on it. The Deputy Director of Consolidation while allowing the revision of the opposite party no. 2 allotted the chak at Gata No. 914, which is not his original holding and he is fully satisfied with the order of the Deputy Director of Consolidation dated 28.05.2008. There is no illegality in the same and the writ petition deserves to be dismissed.

6. I have considered the submissions of learned counsel for the parties and gone through the record.

7. In order to appreciate the controversy it is necessary to reproduce the provisions of Section 19 of U.P. Consolidation of Holdings Act, 1953:

19. Conditions to be fulfilled by a Consolidation Scheme. (1) A Consolidation Scheme shall fulfill the following conditions, namely:

(a) the rights and liabilities of a tenure-holder in the annual register prepared u/s 10, are, subject to the deductions, if any, made on account of contributions to public purposes under this Act, secured in the lands allotted to him;

(b) the valuation of plots allotted to a tenure-holder, subject to deductions, if any, made on account of contributions to public purposes under this Act, in equal to the valuation of plots originally held by him,

Provided that, except the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty-five percent of the latter;

(c) the compensation determined under the provisions of this Act, or the rules framed there under, is awarded:

(1) to the tenure-holder

(i) for trees, wells and other improvements, originally held by him and allotted to another tenure-holder; and

(ii) for land contributed by him for public purposes;

(2) to the Gaon Sabha, or any other local authority, as the case may be, for development, if any, effected by it in or over land belonging to it and allotted to a tenure-holder;

(d) the principles laid down in the Statement of Principles are followed:

(e) every tenure-holder is, as far as possible, allotted a compact area at the place where he holds the largest part of his holding;

Provided that no tenure-holder may be allotted more chaks than three, except with the approval in writing of the Deputy Director of Consolidation;

(f) every tenure-holder is, as far as possible, allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in

the vicinity equal to the valuation of the plots, originally held by him there; and

(g) every tenure-holder is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangulation units.

(2) A Consolidation Scheme before it is made final u/s 23 shall be provisionally drawn up in accordance with the provisions of Section 19-A.

8. The perusal of record reveals that during the consolidation proceedings, Consolidation Officer after spot inspection and examining the map, provided single compact consolidated chaks comprising the respective original holdings of petitioners i.e. at plot no. 918 and 916. The opposite party no. 2 feeling aggrieved against the carving of chaks of the petitioners, filed objection before the Consolidation Officer claiming chak at his original holding at plot no. 734. Being not satisfied with the modification done by the Consolidation Officer, opposite party no. 2 filed appeal before Settlement Officer Consolidation and the same was dismissed by means of order dated 05.10.2006. The opposite party no. 2 filed belated revision before the Deputy Director of Consolidation claiming therein that since he has only Gata No. 734 as his original holding, therefore, he should have allotted chak on his original holding and if it is not possible then his chak should be allotted at Gata No. 914.

9. The Deputy Director Consolidation without examining the pleadings and prayer made in memo of revision of opposite party no. 2, snatched away maximum portion of the petitioners' land of their respective original gata nos. 918 and 916 and provided to respondent no. 2, which were never demanded. After snatching the largest original holding i.e. plot no. 918 of petitioner no. 1, provided him plot nos. 900, 911 and 912, which are the Udan numbers. Similarly, the Deputy Director Consolidation snatched petitioner no. 2's plot no. 916 and provided him plot no. 271 and 272, which are also Udan chaks. The Deputy Director Consolidation has not assigned any reason for depriving the petitioners of plot nos. 918 and 916. There is no provision for providing Udan Chak under the U.P. Consolidation of Holdings Act. The Deputy Director Consolidation absolutely did not consider petitioners' aspect nor considered the concurrent allocations made by Assistant Consolidation Officer, Consolidation Officer and Settlement Officer Consolidation. The revisional order is against the statutory provisions of Section 19(1)(e) of the Act. The fundamental object of consolidation scheme is to compact and minimize the number of chaks of tenure holders enabling them to achieve the best output of their holdings. The petitioners have been deprived of their valuable land while satisfying and fulfilling the need of opposite party no. 2.

10. In the case of Dr. A.N. Srivastava and others Vs. Deputy Director of Consolidation and other, 1982, Lucknow Law Journal 42, this court observed that under the provision of Section 19(1)(e) of the Act, a tenure holder is entitled to get a chak at a place where he had largest part of his original holding. The words "as far as possible" used in the said sub-section do not confer any jurisdiction upon the consolidation authorities to act arbitrarily, ignoring the provisions

contained there under. While making allotment of chaks to various tenure holders the equities have to be adjusted in accordance with the provisions of Section 19 of the Act. Simply because a person is a big tenure-holder as compared to other tenure-holders, his claim for allotment of land at the largest part of his holding cannot be given a go by. The same view was reiterated in the case of Samai Lal Vs. Deputy Director Consolidation, 1985(3) L.C.D. 354 and Shyam Behari Vs. Dy. Director of Consoliation, Hardoi, 2004 (22) LCD 736.

11. On examination, this Court finds that the impugned revisional order is not only non-speaking but has been passed in violation of provisions of Section 19(1) (e) of U.P. Consolidation of Holdings Act as such the impugned order is not sustainable in the eyes of law.

12. The impugned order dated 28.05.2008, passed by the Deputy Director of Consolidation, Kheri, as contained in Annexure-7 to the writ petition, is hereby quashed and the matter is remanded back to Deputy Director of Consolidation, Kheri to consider and decide afresh after affording opportunity of hearing to all the concerned parties as well as examining the claims of respective parties in accordance with law, if possible, within a period of six months.

13. The writ petition is allowed.