
(2011) 11 AHC CK 0020
In the Allahabad High Court
Case No : Writ-B.No.-27533 of 1996

Ram Swarup

APPELLANT

Vs

Kadam Singh and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1)

Citation : (2011) 11 AHC CK 0020

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The present writ petition arises out of the proceedings under the U.P. Consolidation of Holdings Act. The petitioner, Ram Swarup, is Chakholder of Chak no.737-Ba. Kadam Singh, respondent no.1, is Chakholder of Chak no.78 and respondent no.2, Smt. Murati is Chakholder of Chak No.657.

2. The dispute in the present writ petition relates to allotment of Chaks between the parties.

3. The original holding of petitioner consisted of plot nos.2166, 2235, 102, 175, 915, 2209, 26409 and 2696. The total area is 0.8079 hectares. In lieu of the aforesaid plots, a Chak over plot nos.2794, 2795, 2796, 2808, 2809, 2810, 2811 and 2812 were proposed to be allotted to the petitioner, having an area 1.4572 hectares. The petitioner, admittedly, did not file any objection against the proposed Chak as he was benefitted by the increase in area. The Consolidation Officer modified the proposal in the manner that an area of 0.8493 hectare was taken out from the Chak of the petitioner and instead an area 0.7578 hectare was given. The said allotment remained unaffected at the stage of Settlement Officer of Consolidation. It appears that the other tenure holders having grievance filed appeals before the Settlement Officer of Consolidation and while deciding the appeals the Chak which was proposed to the petitioner by the

Consolidation Officer remained unaffected. The other tenure holders carried the matter in revisions and all the revisions were heard and decided by a consolidated order dated 10.4.1996, partly impugned in the present writ petition. The petitioner is aggrieved by the judgment and order passed in revision no. 842 of 1995: Smt. Murati Vs. Atar Singh and others and revision no. 26 of 1994: Kadam Singh Vs. Mangal and others. The Joint Director of Consolidation by the impugned order has reduced the area of the Chak of petitioner on the footing that the petitioner has been allotted area in excess.

4. Heard the learned counsel for the parties and perused the record.

5. The learned counsel for the petitioner submits that the petitioner was not impleaded as one of the parties in the revisions and therefore, the impugned order so far as it relates to the petitioner is concerned, is illegal. It was further submitted that from the record it appears that some notices were issued to him. However, without proper service upon the petitioner, the Joint Director of Consolidation decided the case. The other argument raised by the petitioner's counsel is that the petitioner had the largest part of his holding on the plot no.2796 out of which only 0.0480 hectare has been allotted in the Chak of the petitioners as against the original area of 0.5565 hectare. The Joint Director of Consolidation has reduced the petitioner's holding and a very small area of his original holding just for the name's sake has been allotted in the Chak of the petitioner. The other part of the argument is that the larger area than the original holding area has been allotted to Smt. Murati and Kadam Singh, the respondent nos.2 and 1 herein.

6. In reply, the learned counsel for the contesting respondents submits that the Joint Director of Consolidation has adjusted the allotment of Chaks keeping in view the interest of the tenure holders of the village including that of the petitioner and the contesting respondents. Indisputably, the petitioner was allotted much more area than the area of land which he possessed originally and if some part of the excess area of land has been taken away by the impugned order, no injustice has been caused to the petitioner. It was further argued that the petitioner was heard before passing of the impugned order as such no prejudice has been caused to him.

7. Considered the respective submissions of the learned counsel for the parties. There were eleven revisions of the village before the Joint Director of Consolidation. The petitioner, Ram Swaroop, was impleaded as a party in the revision on 8.1.1996 and notices were issued to him fixing 10.1.1996. The said notice was served on Ram Swaroop. The case was adjourned to 20.1.1996. Along with the counter affidavit a certified copy of the notice served on the petitioner has been filed which shows that it was served on the petitioner, Ram Swaroop, personally. Daya Chand son of Ram Swaroop was present in person when the case was heard as per the allegations made in para 6 of the counter affidavit. The contents of para 6 of the counter affidavit have been dealt with in para 6 of the rejoinder affidavit. The stand taken in the rejoinder affidavit is that the

service of notice was manipulated and false. It may be noted that the counter affidavit has been sworn by the son of respondent no.1, Kadam Singh. The rejoinder affidavit denying the service has been sworn by one Chandra Bhushan claiming himself as Pairokar of the petitioner. Neither the petitioner nor his son has come forward to deny the averments made in para 6 of the counter affidavit. Even in the writ petition, there is no specific averment that the petitioner was not heard by the Joint Director of Consolidation before deciding the revisions. Only a vague allegation has been made that the petitioner had not been made party in the revisions and record shows that some notices were issued to him. According to the petitioner, without proper service upon the petitioner the impugned order has been passed. The petitioner could not dare to say in the writ petition that no notice was served upon him or that the service of notice on him available on the record is a manipulative service. The averments in the writ petition are vague and general, as such no reliance can be placed upon them. The petitioner has not denied his signature or thumb mark by filing any affidavit before this Court. The affidavit filed in support of the writ petition is not that of the petitioner but one Pairokar Chandra Bhushan who has sworn the para 5 of the writ petition which contains the above stated averment on personal knowledge. As against this the denial in counter affidavit is specific and therefore, the averments made in the writ petition stand rebutted. It is held that the impugned order was passed after giving proper opportunity of hearing and the allegations to the contrary are, therefore, rejected.

8. Now, I take up the second point. The Joint Director of Consolidation has, on consideration of the document on record, found that there has been increase by 75 per cent in the area of the petitioner. This fact was not disputed before me by the learned counsel for the petitioner. The Joint Director of Consolidation while disposing of eleven revisions of villagers has tried to make necessary adjustments among all the villagers whose revisions were before him. By the impugned order he has made the necessary adjustments by taking out the excess area from the petitioner making good the deficiency in the area of other tenure holders, particularly, with respect to the Chak of respondent no.1, Kadam Singh. In Chak allotment matters certain discretion vests in the consolidation authorities. In the Chak allotment matters, it is not possible to allot Chak of the same area to every villager with mathematical precision. Certain adjustments are necessarily required and in such matters the writ court can prevent only arbitrary action of the authority. Proviso to section 19(1) of the U.P. Consolidation of Holdings Act which deals with the conditions to be fulfilled by consolidation scheme, is relevant. It says that the area of holding or holdings allotted to the tenure holders shall not differ by more than 25 percent of the latter except that with the permission of the Director of Consolidation. The impugned order is within the parameters as prescribed by the aforesaid proviso. The petitioner could not demonstrate any manifest error and the impugned order is in conformity with the consolidation scheme as it fulfils the conditions of consolidation scheme, no interference under Article 226 of the Constitution of

India is called for.

9. In para 13 of the writ petition it has been stated that Kadam Singh, the respondent no.1, is a very big tenure holder and as a result of the impugned order there is increase in the area of land allotted to him by more than 35 per cent. The said point has been dealt with in para 14 of the counter affidavit by Kadam Singh. It is not in dispute that the original area of land of Kadam Singh is 2.9175 hectare against which an area of 3.83392 hectare was proposed by the Assistant Consolidation Officer which was amended by the Consolidation Officer and the matter was carried in revision. Ultimately, the total area of land given to him under the impugned order is 3.024 hectare which is about four per cent above his original area i.e. 2.9175 hectare, is within permissible limit. There is no specific denial in the rejoinder affidavit of the averments made in para 14 of the counter affidavit. In para 14 of the rejoinder affidavit a vague and general denial that the contents of para 14 of the counter affidavit are not admitted, has been set out. This plea, therefore, is rejected.

10. It was then contended that Smt. Murti, the respondent no.2, has been allotted an area which exceeds the limit of 25 per cent increase/decrease of her original area. The Joint Director of Consolidation has considered this aspect of the case and has found that there was an increase of 113 per cent area of land in the hands of Smt. Murati which has been reduced to 66 per cent by the impugned order. The grievance, if any, could be to Smt. Murti who has not come forward to challenge the order. So far as the petitioner is concerned, he cannot have any grievance as the area of the Chak allotted to him is within, as found herein above, the permissible limit.

11. Any other point was not pressed. The Joint Director of Consolidation has adopted a justice oriented approach in the matter and has tried to do the best by taking into consideration the interest of all the parties who were before him in eleven revisions, in a consolidated manner. In such matters, interference under Article 226 of the Constitution of India can be made only under exceptional circumstances and not otherwise.

12. I find no illegality in the impugned order. There is no merit in the writ petition. The writ petition is dismissed. But no order as to costs.