
(2008) 05 AHC CK 0109

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37396 of 2007

Ramesh Chandra

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20(3)

Citation : (2008) 05 AHC CK 0109

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Rajeev Sharma, learned Counsel for the petitioner and Sri Onkar Singh learned Counsel appearing for the respondent No. 4.

2. By this petition the petitioner has prayed for quashing the order dated 4th July, 2007 passed by Deputy Director of Consolidation allowing the revision filed by the respondent No. 4, Shiv Charan.

3. The writ petition arises out of chak carving proceedings under the U.P. Consolidation of Holdings Act. The petitioner filed objection under Section 20(3) praying that he be allotted chak on plot No. 741 or alternatively the valuation of those plots which have been allotted to the petitioner be reduced from 70 paise to 30 paise. The Consolidation Officer vide order dated 27.6.2003 rejected the objection of the petitioner holding that plot No. 741 has been allotted to the cotenure holder of the petitioner. Another time barred objection was filed by the petitioner before Consolidation Officer praying that nali be provided in his chak No. 116, 726 from chak No. 653. The objection of the petitioner was rejected by the Consolidation Officer vide order dated 7.7.2005. The Consolidation Officer held that chaks have been amended at the appellate stage and the petitioner ought to have claimed relief from the appellate Court. The petitioner filed appeal against the order dated 7.7.2005 claiming allotment of nali along with chak road up to his chak. The Settlement Officer Consolidation allowed the appeal of the petitioner and provided the chak nali by affecting the chak of Shiv Charan. Shiv

Charan, the respondent No. 4, filed a revision before the Deputy Director of Consolidation which was allowed. The Deputy Director of Consolidation recorded a finding that chak nali is already there on two sides of petitioner's chak No. 116 and 726. The petitioner filed this writ petition challenging the aforesaid order. On first day of hearing this Court passed the following order on 13th August, 2007 :

"As prayed by Sri Rajeev Sharma, learned Counsel for the petitioner, put upon 16th August, 2007 as fresh by which time, he shall file supplementary affidavit annexing therein the records which may go to demonstrate that the finding recorded by the Deputy Director of Consolidation in the impugned judgment that the petitioner has been provided "Chak Nali" for irrigation of his chak from two sides are factually incorrect".

4. The petitioner filed a supplementary affidavit dated 21st August, 2007 in pursuance of the order of this Court dated 13.8.2007.

5. Sri Rajeev Sharma, learned Counsel for the petitioner, in support of the writ petition, submitted that the plot No. 741 has a tubewell and no area of plot No. 741 was allotted to the petitioner. Learned Counsel further submits that the finding of Deputy Director of Consolidation that there is chak nali on two sides of chak of petitioner is incorrect. The petitioner has no source of irrigation since tubewell has been given to his brothers. Learned Counsel further submits that Settlement Officer Consolidation has rightly given chak nali while allowing the appeal which order has been illegally set aside by the Deputy Director of Consolidation.

6. Sri Onkar Singh, learned Counsel appearing for the respondent, refuting the submission of learned Counsel for the petitioner, contended that Settlement Officer Consolidation, without giving any reason, allowed the appeal of the petitioner which has rightly been set aside by the Deputy Director of Consolidation. It is submitted that finding recorded by the Deputy Director of Consolidation that chak nali is already there on two sides of petitioner's chak is based on material on record. In the map which has been filed by the petitioner himself chak nali is on both sides of chak No. 726.

7. I have considered the submissions and perused the record.

8. The first submission of the petitioner is with regard to nonallotment of plot No. 741 which is original holding of the petitioner. The petitioner as well as respondent No. 4 and other brothers of petitioner were cotenure holder of plot No. 741. It is relevant to note that petitioner filed an objection before Consolidation Officer on which case No. 230 was registered in which chak on plot No. 741 was prayed for. The Consolidation Officer rejected the objection wcte his order dated 27th June, 2003 recording the finding that plot No. 741 has been given to the cotenure holder of the petitioner. The order dated 27th June, 2003 passed by Consolidation Officer is not shown to have been challenged any further by the petitioner. The appeal which was filed by the petitioner was against the order dated 7.7.2005 of the Consolidation Officer. Thus, the claim of the

petitioner with regard to allotment of plot No. 741 came to an end after rejection of the objection by the Consolidation Officer. The petitioner filed a time barred objection under Section 20 on which case No. 237 was registered which was rejected by the Consolidation Officer on 7.7.2005. The petitioner filed an appeal claiming allotment of nali. The Settlement Officer Consolidation observed that petitioner has not been provided Nali and hence appeal was allowed and nali was provided along with chak road. The chak of respondent No. 4, Shiv Charan, was effected by the order of Settlement Officer Consolidation, hence, he filed revision. The Deputy Director of Consolidation allowed the revision after recording specific finding that chak nali has been provided to the petitioner chak in two sides. The Deputy Director of Consolidation further observed that petitioner himself has carved out nali in his chak for irrigation from private tubewell. It was held that by allowing the nali by the appellate Court area from chak of respondent No. 4 has been reduced and for nali area of chak road has been reduced which affects the other chak holder.

8. When the writ petition was heard on 13.8.2007 petitioner was directed to bring materials on record to demonstrate that findings recorded by the Deputy Director of Consolidation in the impugned judgment that the petitioner has already been provided chak nali for irrigation are factually incorrect. In the supplementary affidavit filed by the petitioner dated 21.8.2007 C.H. Form No. 2A has been annexed which indicates the existence of tubewell in plot No. 741. The chak map of entire village has been filed as Annexure SA2. A perusal of the chakmap which has been filed by the petitioner indicates that on the eastern side and southern side of petitioner's chak No. 746 there is a chak nali. The map which has been filed by the petitioner, thus, itself indicates that finding recorded by the Deputy Director of Consolidation that chak nali has been provided on two sides of the petitioner's chak is substantiated from the record and petitioner has failed to demonstrate that finding recorded by the Deputy Director of Consolidation that chak nali is provided on two sides of the petitioner's chak is factually incorrect. The Deputy Director of Consolidation, thus, has rightly allowed the revision after recording a finding that chak nali has been provided to the petitioner from two sides of his chak. The petitioner has failed to point out any error in the order of Deputy Director of Consolidation, which may warrant interference by this Court under Article 226 of the Constitution of India.

9. The writ petition lacks merit and is, accordingly, dismissed.