
(2010) 05 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 20648 of 2010

Sadullah

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 21(1)

Citation : (2010) 4 AWC 3732

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—This writ petition has been preferred challenging the order dated 24.12.2009, passed by the Deputy Director of Consolidation, Lucknow Camp Court, Bijnor, in Revision No. 179 of 2002, Ali Ahamad v. Sadullah and Ors.,

2. Counter-affidavit has been filed without issuing notice as caveat was filed on behalf of contesting respondents by Sri Ashutosh Shukla Advocate. It appears that counter- affidavit was served to the petitioner's counsel on 27.4.2010 to which a rejoinder-affidavit is also placed before this Court at the time when the writ petition came up as a fresh case.

3. The dispute relates to allotment of chak. Initially the petitioner was allotted chak including gata Nos. 749, 750, 754/1, 755, 763 and 765 having an area of 1.167 hectare. Objections were filed by a number of tenure holders including Smt. Nazma wife of late Amir Ahmad u/s 21(1) of U. P.C.H. Act before the Consolidation Officer. The Consolidation Officer clubbed 17 objections and case was numbered as 323 of 2000. The objections were either partly or completely allowed vide order dated 21.9.2009. The petitioner claimed that though his chak was altered by means of the aforesaid order but he was satisfied as there were only minor changes. This order was challenged by respondent No. 2 in Appeal No. 429 of 2000. 26 appeals were once again decided together. The petitioner

states that he was not given any opportunity of hearing and the Settlement Officer, Consolidation passed an order on 19.3.2001 once again making alteration in the chaks. The petitioner did not challenge the order of the Settlement Officer, Consolidation as well and he did not raise any grievance since the changes in the chaks were not to an extent which caused prejudice to the petitioner.

4. The respondent No. 2 being aggrieved by order of the Settlement Officer, Consolidation filed a revision before the respondent No. 1 as Revision No. 179 of 2002 which was dismissed for his non-appearance. A restoration application was filed which was allowed.

5. The submission on behalf of the petitioner is that he was neither issued any notice nor any opportunity of hearing was given to him. This fact has been disputed by the learned Counsel for the respondents and he has tried to demonstrate that notices were served and there is a thumb impression on the back of the notice.

6. The Deputy Director of Consolidation passed the impugned order granting relief claimed by respondent No. 2 and made major alterations in the chak of the petitioner. There are a number of assertions on behalf of the petitioner to demonstrate that the revision stood transferred from one authority to another and has tried to highlight the fact that since the petitioner was never afforded any opportunity of hearing and contesting respondents have been benefited on account of several extraneous considerations. However, I am not inclined to entertain these arguments only on the basis of certain presumptions and apprehensions in the mind of the petitioner. Nonetheless, the averment of paragraph 19 to the writ petition is only a denial which relates to the source of irrigation and standing trees on the of the petitioner in his field since the initial stage as well as the fact that he has invested a huge amount in cultivating the sugarcane crop. The denial is only halfhearted.

7. I have perused the impugned order passed by the Deputy Director of Consolidation which apparently is cryptic one and it is evident that no reason has been given for accepting the claim of . the contesting respondents and disallowing the claim of the petitioner. In fact the petitioner has been dislodged on the request of respondent No. 2. A perusal of the impugned order, it is apparent that no findings are given whether the question of convenience/inconvenience to the petitioner and availability of irrigation facilities etc. have completely been overlooked. Therefore, the Deputy Director of Consolidation was liable to take into consideration the case of the petitioner after issuing a notice and also awarding an opportunity of hearing. The impugned order is a complete non-application of mind and no reasons have been given for accepting one sided claim and, therefore, I am of the considered view that the order passed by the Deputy Director of Consolidation cannot be sustained in law.

8. Reliance has been placed on two decisions of this Court in Gokul v. Deputy Director of Consolidation, Shahjahanpur and Ors. 2005 (99) RD 822 and Suman

and Anr. v. Deputy Director of Consolidation, Saharanpur and Ors. 2007 (102) RD 541.

9. In view of what has been stated above, the order passed by the Deputy Director of Consolidation, Headquarter, Bijnor dated 24.12.2009 is set aside. The writ petition succeeds and is allowed. The respondent No. 1, Deputy Director of Consolidation, Headquarter, Bijnor is directed to decide the revision afresh after giving an opportunity of hearing to the parties and also taking into consideration the source of irrigation etc. as well as other necessary aspects before altering established chak of the tenure holder. The order of the Settlement Officer, Consolidation shall be maintained on the spot till the final decision is given in revision. The Deputy Director of Consolidation shall proceed to adjudicate afresh in accordance with law.