
(2011) 02 AHC CK 0283

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61155 of 2009

Salimuddin

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19

Citation : (2011) 02 AHC CK 0283

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard Sri Faujdar Rai for the Petitioners and Sri Ram Nivas Singh for the contesting Respondent.

2. Facts, giving rise to the dispute, are as under.

3. Revision filed by predecessor-in-interest of contesting Respondent challenging the order passed by the Settlement Officer Consolidation in an appeal arising out of chak allotment proceedings was dismissed by the Joint Director of Consolidation on the ground of limitation as well as on merits by merely observing that he has no case and adjustment in the chak is proper. This order was challenged by this Court by filing Civil Misc. Writ petition No. 9844 of 1980.

4. This Court finding that the order passed by the Settlement Officer Consolidation is not available as the entire record got destroyed in fire in the record-room, in the ends of justice allowed the writ petition and remanded the case back to the Deputy Director of Consolidation to decide afresh in the light of respective claim and keeping in mind the mandate of Section 19 of the U. P. Consolidation of Holdings Act (for short the "Act"). It may be relevant to quote the following observations made in the judgment.

This is no dispute about the fact that record in respect to appeal and order passed

by the appellate authority is not available which is stated to have been destroyed in fire which is said to have taken place in the Record Room. The stand of the Petitioner is that on 1.12.1979 when measurement was to take place, Petitioner came to know about the alleged order of Settlement Officer Consolidation. A Question-Answer has also been filed in this respect. Be that as it may, this fact has been dealt with by the Deputy Director of Consolidation but keeping in mind the non availability of the order of the appellate authority and as no details are here to ascertain the grounds on which, appeal was allowed, this Court in the ends of justice thinks it proper that irrespective of the changes as has been made by the appellate authority both parties are entitled to get their adjustment finalized by the Deputy Director of Consolidation in the light of their respective claim. Thus, it will be for the revisional court to adjust the chaks of the parties in the light of their respective claim keeping in mind the mandate of Section 19 of the U. P. Consolidation of Holdings Act and also keeping in mind the comparative hardship and inconvenience of the parties and if it is necessary after making spot inspection after notice to the parties.

For the reasons recorded above, this petition succeeds and is allowed. The impugned judgment of the Joint Director of Consolidation dated 23.7.1980 is hereby quashed and the matter is sent back to the concerned revisional court to decide the claim of parties afresh after providing adequate opportunity to them, preferably within four months from the date of receipt of certified copy of this order, without allowing any unwarranted adjournment to either of the parties, unless it is required for very compelling reason.

5. After remand made by this Court, the Deputy Director of Consolidation considered the claim of the parties afresh and vide order dated 31.10.2009 allowed the revision and restored the chaks allotted to the parties at the stage of Consolidation Officer.

6. It has been contended by the learned Counsel for the Petitioners that after remand the record ought to have been reconstructed and thereafter revision ought to have been decided but the Deputy Director of Consolidation wrongly and illegally did not reconstruct the record. It has next been contended that despite specific direction of this Court to make spot inspection, no such inspection was made and thus judgment of the Deputy Director of Consolidation is against and in the teeth of the remand order.

7. In reply, it has been submitted that there is no direction to reconstruct the record, nor it was possible, as the same was not available with either of the parties. It has further been submitted that Deputy Director of Consolidation did make spot inspection which fact has been recorded in the impugned order. Learned Counsel for the Respondent has further submitted that Deputy Director of Consolidation has made adjustment in such manner that both parties have been allotted chaks on their original holding and thus, no interference is required in the impugned order.

8. I have considered the rival submissions of the parties and perused the record.
9. Undoubtedly, there was no direction given by this Court for reconstruction of record. Petitioners themselves have failed to bring on record of the writ petition any such document on the basis of which record could have been reconstructed. In view of the above, first submission advanced on behalf of the Petitioners is devoid of any merits.
10. In so far as second submission is concerned, it has categorically been stated by the Petitioners that no spot inspection was carried out. Respondents assert that spot inspection was made and the fact has rightly been record in the impugned order. Thus, it is a disputed question of fact. However, the question losses much of its significance in view of the fact that this Court while remanding the matter back made it optional for the Deputy Director of Consolidation to carry out spot inspection, if found necessary. Thus, it was not mandatory for the Deputy Director of Consolidation to have carried out spot inspection. Irrespective of the fact whether spot inspection was carried out or not, a perusal of the impugned judgment goes to show that Deputy Director of Consolidation has analysed and considered the rival claim of the parties in the light of the provisions of Section 19 of the Act as directed by this Court in the remand order.
11. Section 19 of the Act lays down various conditions to be fulfilled by consolidation scheme and the most important and relevant for the purpose of the case is conditions No. (e) and (f) which provides that every tenure holder as far as possible may be allotted a compact area at the place where he holds the largest part of his holding and 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.
12. Now what is required to be considered is whether Deputy Director of Consolidation while deciding the revision has taken into account the provisions of Section 19 of the Act as directed by this Court.
13. A perusal of the record indicates that the case set up by the contesting Respondent in revision was that at the state of Consolidation Officer, he was allotted two chaks on his original holding whereas at the stage of Settlement Officer Consolidation, he was allotted three chaks and his original plots No. 1363, 1364 and 1385 etc. were wrongly allotted in the chak of the Petitioners and he was given URAN chak.
14. Petitioners set up the case that at the stage of Settlement Officer Consolidation plot No. 1363 etc. was allotted in his chak on the basis of compromise and the said plot is situate adjacent to their original plot No. 1435, 1439, 1467 etc. However, since the record was not available and no material could be adduced by the Petitioners to establish the factum of compromise, Deputy Director of Consolidation did not accept the theory set up by the Petitioners about the compromise at the stage of Settlement Officer

Consolidation. However, the Deputy Director of Consolidation has proceeded to consider the case of the parties and on an analysis of CH Form 23 of both the parties, found that original holdings of the Petitioners comprised of 1300, 1467, 1400, 1435, 1438, 1498, 1439, 1488, 1618 and 1668 etc. whereas original holdings of the contesting Respondent comprised of 1655, 1656m, 1608, 1510, 1219, 1385, 1363 and 1364. Deputy Director of Consolidation has further found that contesting Respondent has been allotted small chak of valuation 5.98 paise near his Abadi though he and his co-tenure holders had land valued 32.87 paise at that place and his co-tenure holder has not been allotted any land adjacent to Abadi and the Petitioners have been allotted chak adjacent to Sehan of the contesting Respondent on account of which he faces problem of egress and ingress. The Deputy Director of Consolidation accordinally made adjustment and took out plot No. 1363, 1364, 1365 etc. which were the original holdings of the contesting Respondent from the chak of the Petitioners and allotted the same in the chak of contesting Respondent. Similarly, Petitioners were adjusted on plot No. 1363, 1364, 1365, 1369 etc. A Very categorical finding has been recorded by the Deputy Director of Consolidation that by the proposed amendment, the URAN chak of the contesting Respondent is abolished and he gets a chak on his original holding and the chak of the Petitioners is also adjusted on his original holdings near his private source of irrigation.

15. It is, thus, clear that by the adjustment proposed by the Deputy Director of Consolidation not only the chaks of both the parties are adjusted on their original holdings but they also get benefit of private source of irrigation and thus the changes proposed are strictly in conformity with the provisions of Section 19 of the Act.

16. Learned Counsel for the Petitioners, during the course of arguments, has failed to point out any infirmity or illegality in the finding recorded by the Deputy Director of Consolidation.

17. In view of the above, the impugned order passed by the Deputy Director of Consolidation does not require any interference by this Court. The writ petition accordingly fails and stands dismissed.

18. However, there shall be no order as to costs.