
(2013) 10 AHC CK 0084
In the Allahabad High Court
Case No : Writ-B No. 56747 of 2013

Sanjay and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 121 RD 561

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Ranjeet Asthana, for the Appellant; S.K. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Ranjeet Asthana for the petitioners and Sri S.K. Yadav for the respondents. The writ petition has been filed against the order of Deputy Director of Consolidation, dated 25.9.2013 passed in chak allotment proceedings, under U.P. Consolidation of Holdings Act (hereinafter referred to as the Act).

2. Plot No. 323, of village Tadi, tahsil Mohammadabad Gohna, district Azamgarh was the original holding of respondents 2 to 5 and plot No. 324 was original holding of the petitioners. During consolidation all the co-sharers, except Pankaj (respondent-3) were proposed chaks on plot No. 323. Pankaj was proposed chak on plot No. 324. An area of 0.055 hectare of plot No. 323 was proposed in the chak of the petitioners. In the northern side of plot No. 323, a road, connecting the village Khallopur to the highway by the side of plot No. 322 is existing Plot No. 329 is the grove holding of the petitioners and the petitioners have their boring and pumping set in adjacent plot No. 124 of village Khallopur. Pankaj filed an objection (registered as Case No. 27) u/s 20 of the Act, against his proposed chak and claimed allotment of his chak on plot No. 323 giving frontage on the roadside, which was his original holding. He stated that Assistant Consolidation Officer has illegally proposed his chak on plot No. 324 due to which his access to

the roadside has been taken away. The objection of the petitioner was heard by Consolidation Officer, who by order dated 30.6.2012 found that boring and pumping set of the petitioners situated in village Khallopur, was adjacent to plot No. 323 and in the western side of this plot No. 323, the grove of the petitioners on plot No. 329 was situated as such they were rightly allotted chak taking some area of plot No. 323. On these findings the objection of Pankaj was dismissed.

3. Pankaj filed an appeal (registered as Appeal No. 807/2365) from the aforesaid order. Rajendra (respondent-2), Virendra (respondent-4) and Vijai (respondent-5), the other co-sharers of Pankaj also filed separate appeals. All the appeals were consolidated and decided by Settlement Officer, Consolidation, who by order dated 27.11.2012, held that as the chak of Pankaj was adjacent to plot No. 323, which is on roadside as such he was rightly allotted chak on plot No. 324. In respect of the case of the petitioners it was held that boring and pumping set of the petitioners was situated in village Khallopur which was adjacent to plot No. 323 as such some area of plot No. 323 was allotted to them in their chak on plot No. 324 and no prejudice has been caused to Pankaj and his co-sharers. On these findings the appeals were dismissed.

4. Respondents 2 to 5 filed separate revisions from the aforesaid order which were consolidated and heard by Deputy Director of Consolidation (respondent-1), who by order dated 25.9.2013 held that plot No. 323 is the roadside original holding of respondents-2 to 5, as such, it was liable to be allotted in their chaks. It is further held that plot No. 324 is the original holding of the petitioners as such this plot was liable to be allotted in their chak. On these findings the revisions were allowed and the petitioners were allotted chak on their original plot No. 324 and respondents-2 to 5 were allotted chaks on their original plot No. 323. Hence this writ petition has been filed.

5. The Counsel for the petitioners submits that order of Deputy Director of Consolidation is an order of reversal and he was required to consider the reasons and findings recorded by Consolidation Officer and Settlement Officer Consolidation as held by this Court in Haridas and others v. Deputy Director of Consolidation and others, 2005 (98) RD 593 and Khemha v. Deputy Director of Consolidation and others 2005 (98) RD 603 Respondent-1 did not consider the facts and circumstances of the case that boring and pumping set of the petitioners were adjacent to plot No. 323, in the northern side, at village Khallopur and their grove on plot No. 329 was adjacent to plot No. 323, in western side. Looking to the source of irrigation the petitioners on the adjacent plot and to avoid dispute between the parties a small portion of plot No. 323, which was affected with shadow of the trees of the grove and over flow of the water of the nali of the petitioners, was allotted in the chak of the petitioners. This portion of plot No. 323, which was allotted to the petitioners, situate in the corner and by taking this corner portion, the petitioners were allotted chak on the part of plot 324, making the rectangular shape of the chak. The Consolidation Officer and Settlement Officer, Consolidation, after making spot

inspection, were satisfied that the allotment made to the petitioners was in consonance of the object of the consolidation. Deputy Director of Consolidation reversed the findings without making spot inspection. He submits that spot inspection was necessary in order to locate the boring, pumping set and grove of the petitioners as well situation of plot No. 323 on roadside. This Court in *Sri Nath v. State of U.P. and others*, 2005 (99) RD 371 held that Deputy Director of Consolidation is required to make spot inspection in the chak allotment matters. He submits that plot No. 323 is not a roadside land rather plot No. 322 is a roadside land. The contention of respondents-2 to 5 that plot No. 323 was roadside land, before Deputy Director of Consolidation was incorrect. This fact was also liable to be verified by making spot inspection but Deputy Director of Consolidation has illegally failed to exercise his jurisdiction and due to which a wrong conclusion has been drawn, causing material prejudice to the petitioners. He submits that Pankaj was co-sharer of respondents 2, 4 and 5 accordingly, if he had any grievance for allotment of his original holding of plot No. 323 then his grievances ought to have been satisfied from his co-sharers and not from the chak of the petitioners. The order of Deputy Director of Consolidation is illegal and liable to be set aside.

6. I have considered the arguments of the Counsel for the parties and examined the records. The first point raised by the Counsel for the petitioners is that plot No. 323 does not situate on roadside. The petitioners have filed a map as Annexure-6 to the writ petition. A perusal of the map shows that a highway is running through north-south, adjacent to plot No. 322 and the corner of plot No. 323. In the eastern side of plot No. 323 there is a road which connects the village Khallopur with the highway and entire plot No. 323 is adjoining this road, except a small portion in the western side. The arguments of the Counsel for the petitioners that plot No. 323 is not adjoining the road, is not liable to be accepted.

7. The other point argued by the Counsel for the petitioners that Deputy Director of Consolidation was required to make spot inspection. Due to not making spot inspection he has failed to notice the various vital facts and circumstances which were relevant for adjusting equity between the parties and which were considered by Settlement Officer Consolidation and Consolidation Officer. Section 21(3) requires the Consolidation Officer and Settlement Officer Consolidation to make spot inspection while deciding the objection and appeal relating to chaks. There is no provision either in the Act or in the Rules which casts obligation upon Deputy Director of Consolidation to make spot inspection. As such there is no statutory obligation for Deputy Director of Consolidation to make any spot inspection, while deciding the chak revision.

8. In *Sri Nath v. State of U.P. and others*, 2005 (99) RD 371 relied upon by the Counsel for the petitioner, the dispute was as to whether the land was brick kiln land or it was an agricultural land. In the facts of that case, this Court held the issue involved in that case ought to have been decided after making spot inspection. But in this case, there was no such dispute, for which spot inspection

was necessary. The existence of boring, pumping set at village Khallopur and grove in plot No. 329 of the petitioners was admitted. Existence of the road in the northern side of plot No. 323 was proved from the settlement map. Neither the Consolidation Officer nor Settlement Officer Consolidation has held that plot No. 323 was not on roadside, although specific plea has been raised before them. Thus due to not making spot inspection, there was neither violation of the provision of any law nor failure of justice. In such circumstances, spot inspection was neither necessary nor obligatory for the Deputy Director of Consolidation.

9. So far as the arguments of the Counsel for the petitioners that findings recorded by Consolidation Officer and Settlement Officer Consolidation have not been considered by Deputy Director of Consolidation, is concerned, the Consolidation Officer and Settlement officer Consolidation have illegally failed to notice the grievances and arguments of Pankaj that he was deprived from the roadside land. His arguments has been meted out by Settlement Officer, Consolidation, by holding that plot No. 323 is adjacent to the roadside and his chak on plot No. 324 is adjacent to plot No. 323. The Settlement Officer, Consolidation has illegally failed to notice that plot No. 323 was already allotted in the chaks of the other persons, as such, Pankaj will not get frontage on the roadside as his chak on plot No. 324 was in the back side. The Consolidation Commissioner, U.P. has issued a Circular to allot roadside land to the original tenure holder. This Court has also consistently held that roadside land has to be allotted to original the tenure holder. The order of Settlement Officer Consolidation and Consolidation Officer were contradictory to the law laid down by this Court as well as circular of Consolidation Commissioner U.P. The findings of the Consolidation Officer and Settlement Officer, Consolidation were not worth reliable by the Deputy Director of Consolidation.

10. So far as the arguments of the Counsel for the petitioners that pumping set and boring of the petitioners are situated in village Khallopur, in the northern side of plot 323, is concerned, admittedly, the petitioners have been irrigated their plot 324 through nali as their grove plot No. 329 is also adjoining the village Khallopur. In such circumstances, there would be no difficulty to the petitioners for irrigating his plot No. 324. Imaginatory dispute is being suggested on the ground of the shadow of the trees and over flow of the water through nali, in order to deprive Pankaj from his valuable land on roadside. In case the petitioners wants to avoid dispute by over flow of the water of nali, they can construct their in middle of his plot No. 329. So far as shadow of the trees is concerned, there is no guarantee that if a portion of plot No. 323 is allotted to them, then in future they will not plant any tree in it. Thus a imaginatory terror is being created to grab the roadside land of respondents-2 to 5. As Deputy Director of Consolidation has allotted the original holding of the petitioners in their chak and original roadside holding of respondents-2 to 5 in their chak, as such, no illegality can be find in the order of Deputy Director of Consolidation. In view of the aforesaid discussion, the order of Deputy Director of Consolidation does not suffer from any illegality. The writ petition has no merit and is dismissed.