
(2001) 11 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 1140 of 1990

Satish Kumar through L.Rs. and Others	APPELLANT
Vs	
Deputy Director of Consolidation, Allahabad and Others	RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 19(1), 48

Citation : (2002) 1 AWC 166

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Faujdar Rai and C.K. Rai, for the Appellant; D.P. Srivastava, M.M. Tripathi, Shatrughan Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Present petition arises out of the allotment proceedings under the U. P. Consolidation of Holdings Act for short "the Act" and is directed against the Judgment and order dated 6.10.1989 passed by the Deputy Director of Consolidation. Allahabad.

2. The relevant facts of the case giving rise to the present petition, in brief, are that the Assistant Consolidation Officer allotted 3 chaks to the petitioners. Inspite of the objections filed by the contesting respondents, the chaks of the petitioners were not disturbed either by the Consolidation Officer, the Settlement Officer, Consolidation or the Deputy Director of Consolidation. Thereafter two writ petitions were filed, one by Hira Lal and others and another by Devi Prasad and others. The said writ petitions were numbered as 2472 of 1986 and 2433 of 1986, respectively. Both the writ petitions were allowed by this Court by its judgment and order dated 24.1.1989 and the case was remanded back to the Deputy Director of Consolidation for decision afresh. The operative portion of the Judgment dated 24.1.1989 is quoted below :

"Since the impugned judgment is being quashed at the instance of Hira Lal and

others in Writ Petition No. 2472 of 1986, I quash the impugned judgment even at the instance of the petitioners in this writ petition and direct the revisional court to re-examine the claim of the petitioners and deal with their demand about a chak on plot No. 179 after bearing the parties concerned.

In view of the above observations, both the writ petitions deserve to be allowed and are accordingly allowed and the impugned judgment of the revisional court dated 16.12.1935, is hereby quashed and the revisional court is directed to decide the claim of the petitioners of both the writ petitions strictly in accordance with law and the observation made above. Parties are directed to bear their own costs."

3. The Deputy Director of Consolidation after affording opportunity of hearing to the parties concerned decided the revision filed by Devi Prasad and others by his judgment and order dated 6.11.1989 by which he has made slight alteration in the chaks allotted to Devi Prasad and the petitioners. An area valuing 16.29 paise and measuring 12 biswas 15 dhoors was taken out from the chak of Satish Kumar, the petitioner, out of chak on plot No. 179 and was allotted to Devi Prasad. Area of same valuation, i.e.. 16.29 paise. out of chak of Devi Prasad was given to Satish Kumar, the petitioner. Thus, the number of chaks allotted to Devi Prasad. i.e. 4, and of the petitioners remained the same. The petitioners, thereafter, filed the present petition.

4. I have heard learned counsel for the petitioners and learned counsel appearing for the contesting respondents.

5. Learned counsel for the petitioners submitted that the Deputy Director of Consolidation has enhanced the number of chaks of the petitioners from 3 to 5. which is wholly illegal and contrary to the provisions of Section 19 of the Act. According to him. the number of chaks could not be enhanced more than 3 without permission in writing of the Deputy Director of Consolidation. The second submission made by the learned counsel for the petitioners was that the area of the chaks allotted to the petitioners was also varied by more than 25% and third and last submission was that the chaks allotted to the petitioners were away from their private source of irrigation. Therefore, it was contended that the order passed by the Deputy Director of Consolidation was liable to be set aside.

6. On the other hand, learned counsel appearing for the contesting respondents submitted that number of chaks allotted to the petitioners were only 3 and not 5 as claimed by him. It was also urged that the Deputy Director of Consolidation also had the jurisdiction to enhance the number of chaks and to vary the valuation of the land more than 25% without permission of anybody, although in this case, it was not varied to that extent. It was urged that since the order has been passed by the Deputy Director of Consolidation, therefore, there was no question of obtaining permission as provided u/s 19 of the Act. So far as the source of irrigation is concerned, no such objection was either raised before the Deputy Director of Consolidation nor there arose any such question in this case.

as the petitioners could move the pumping set owned by them to any place of their choice. According to the learned counsel for the respondents, the writ petition was concluded by findings of fact and was liable to be dismissed.

7. I have considered the submissions made by the learned counsel for the parties and also perused the record.

8. Clauses (d), (e) and (f) of subsection (1) of Section 19 provide as under:

19. Conditions to be fulfilled by a Consolidation Scheme.--(1) A Consolidation Scheme shall fulfil the following conditions, namely :

(a)

(b).....

(c)

(d) the principles laid down in the Statement of Principles are followed ;

(e) every tenure-holder is, as far as possible, allotted a compact area at the place where he holds the largest part of his holding ;

Provided that no tenure-holder may be allotted more chaks than three, except with the approval in writing of the Deputy Director of Consolidation :

Provided further that no consolidation made shall be invalid for the reason merely that the number of chaks allotted to a tenure-holder exceeds three ;

(f) 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."

9. The questions which have been raised and pressed by learned counsel for the petitioners were neither raised nor pressed before the Deputy Director of Consolidation. On the other hand, it has been specifically denied by the contesting respondents that the number of chaks allotted to the petitioners have been enhanced from 3 to 5 and that the valuation of the land has been varied more than 25%. Second proviso to sub-clause (e) provides that no consolidation made shall be invalid for the reasons merely that the number of chaks allotted to a tenure-holder exceeds three. The question as to whether petitioners have been allotted three chaks or five is a question of fact. It is well-settled in law that disputed questions of fact cannot be decided by this Court under Article 226 of the Constitution of India. Similarly, question of source of irrigation and allotment of land near it was neither raised nor pressed by the petitioners before the Deputy Director of Consolidation, therefore, petitioners cannot be permitted to raise the said question for the first time before this Court under Article 226 of the Constitution of India, as it involves factual aspect and is denied by the other side. From a reading of the judgment of the Deputy Director of Consolidation, it appears that Devi Prasad, the respondent No. 2, was allotted 4 chaks on his original plots No. 809. etc. He claimed that one of his chaks should be allotted at

plot No. 179. The Deputy Director of Consolidation, finding force in the claim made by Devi Prasad, simply allotted one chak to him on plot No. 179 of the valuation of 16.29 paise measuring 12 biswas and 15 dhoors out of the chak. which was allotted to Satish Kumar and the land, which was taken out from the chak of Devi Prasad, which was of the same valuation, was given to Satish Kumar. The Deputy Director of Consolidation recorded cogent reasons for the aforesaid alteration in the chaks. In the impugned order, the Deputy Director of Consolidation did not consider any other point nor any other point was pressed by anyone of the parties. Although, the question with respect to the permission of the Deputy Director of Consolidation does not arise in the present case either to enhance the number of chaks more than three or to vary the valuation of land more than 25% but it may be stated that if the order is passed by the Deputy Director of Consolidation himself, no such permission in writing will be required. The submission made by the learned counsel for the petitioners, to the contrary, does not arise in the present case, therefore, cannot be accepted. In view of the aforesaid facts and circumstances of the case, no case for interference under Article 226 of the Constitution of India is made out.

10. The writ petition fails and is hereby dismissed. Interim order dated 11.10.1990 granted by this Court is also discharged.