
(2005) 10 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16624 of 1997

Shahjor

APPELLANT

Vs

Deputy Director of Consolidation & Ors.

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2005) 10 AHC CK 0107

Hon'ble Judges : S.N.Srivastava, J

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—This writ petition is directed against the judgment dated 1921997 by Deputy Director of Consolidation by which petitioner's chak No. 212 was disturbed and plot No. 163/3, the original holding of petitioner, was allotted to opposite party No. 2.

2. Learned Counsel for petitioner urged that petitioner was neither a party in revision or was he impleaded, the impugned order was passed without giving opportunity of hearing. He further urged that his Original Holding Plot No. 163/3 was allotted to him upto the stage of Settlement Officer Consolidation and Deputy Director of Consolidation without any reason excluded original plot from Petitioner's chak and allotted to opposite party No. 2 at the revisional stage, hence impugned order is liable to be set aside.

3. Learned Counsel for opposite party, in reply, referred paragraph 12 of counteraffidavit and urged that through Petitioner was not a party to the revision, but he was impleaded subsequently by impleadment application and petitioner was heard before the impugned order was passed. He further urged that only some portion of plot No. 163/1 was allotted to opposite party No. 2 in accordance with law to make chak rectangular.

4. Heard learned Counsel for the parties and carefully considered the materials available on record.

5. It transpires from the record that Petitioner was not a party in the revision. It is averred in the writ petition that he was not impleaded by opposite party No. 2 by making any impleadment application. Vague denial has been made by the opposite parties in paragraph 12 of the counteraffidavit. Date of filing of impleadment application date of order on impleadment application date of Service of notice to Petitioner on impleadment application are not disclosed in the counteraffidavit. In view of the vague denial of the opposite parties of the averments made in paragraph 11 of writ petition and admission of the opposite party No. 2 that there is no signature of Petitioner or his Counsel on the order sheet on any date also makes it clear that Petitioner was not heard.

6. The Deputy Director of Consolidation recorded a finding that chak No. 212 is a multi dimensional and the shape of chak will be corrected by amendment. It is clear from the record that Petitioner's original holding consists of Plot Nos. 163/1, 163/2, 163/3, 173/1 and 173/2, he was allotted his chak at two places one on his original holding on plot No. 163/3 and another on plot Nos. 167, 172, 173. By the impugned order, first chak of Petitioner situated on plot No. 163 was taken out and an udan chak was allotted on plot Nos. 171, 172, 169/1 and 169/2. No reasons have been given to the effect that in case it was not possible to allot chak to Petitioner on his original holding, what was the reason for excluding his original holding plot No. 163 and allot to opposite party No. 2. It is also stated by Petitioner that plot No. 163/3 is situated on the main road.

7. In view of the above, this Court is of the view that impugned order suffers from error of law apparent on the face of record. As Petitioner was not heard, matter requires reconsideration by Deputy Director of Consolidation. Muzaffarnagar, who shall pass orders after hearing the parties.

8. With the result writ petition succeeds and is allowed. The impugned order dated 1921997 passed by Deputy Director of Consolidation, Muzaffarnagar is quashed. Matter is relegated to Deputy Director of Consolidation, Muzaffarnagar is quashed. Matter is relegated to Deputy Director of Consolidation, Muzaffarnagar to decide the same in accordance with law after giving opportunity of hearing to the parties within six months from the date of production of a certified copy of this order.