

(2003) 05 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 14111 of 2003

Shanker alias Surendra

APPELLANT

Vs

Deputy Director of Consolidation and Another

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1), 20, 48

Citation : (2003) 6 AWC 5613

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : R.N. Singh and V.K.S. Chandel, for the Appellant; Namwar Singh, Sanjeev Singh and S.C., for the Respondent

Judgement

Ashok Bhushan, J.—Heard Sri Ram Niwas Singh, learned Counsel for the Petitioner and Sri Namwar Singh, learned Counsel appearing for Respondent No. 2.

2. Counter and rejoinder affidavits have been exchanged. As prayed by counsel for both the parties, the writ petition is being finally decided.

3. By this writ petition, the Petitioner has prayed for quashing the order dated 11th March, 2003, passed by Deputy Director of Consolidation, Varanasi.

4. Facts of the case, briefly stated, are; Village: Niardih, Pargana Katehar, District Varanasi was taken for consolidation under the provisions of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act). Both, Petitioner and Respondent No. 2, had original holding in the village. Original holding of the Petitioner consisted of plot No. 214 (0.073), (0.146) and plot No. 197 (0.073). Respondent No. 2 had several plots as original holding in which he had one half share. Original holding of Respondent No. 2 consisted of plot Nos. 181 (0.036), 184 (0.053), 192 (0.028), 215 (.016), 217 (0.020), 312 (0.024), 185 (0.040), 213 (0.036), 216 (0.040) and 197 (0.016). The Assistant Consolidation Officer proposed chak No. 706 to the Petitioner consisted of plot Nos. 214, 217, 216 and

225. The Assistant Consolidation Officer proposed Respondent No. 2 two chaks, first chak at plot Nos. 213 and 214 and second chak at plot Nos. 177, 178, 179, 180, 181 and 185. Objection u/s 20 of the Act was filed by Respondent No. 2 which was decided by Consolidation Officer vide his order dated 10th June, 1999. The Consolidation Officer made changes in the chaks of Respondent No. 2 by removing his second chak from plot No. 177 which area was increased at first chak of Respondent No. 2 by including plot Nos. 210, 215 and 216. The brother of the Petitioner who was given chak on plot No. 213 etc. was shifted to plot No. 182. From the changes made by Consolidation Officer, the Petitioner stood allotted only one chak consisting of his original plot Nos. 213 and 216. The plot Nos. 213 and 216 were good quality of land having valuation of 70 and 90 paisa respectively whereas other plot Nos. 181, 184, 185 and 197 were plots of lessor value, i.e. 50 paisa.

5. An appeal was filed by Respondent No. 2 against the order of Consolidation Officer praying that Respondent No. 2 be given chak on plot Nos. 213 and 214 and his chak proposed on plot Nos. 210, 215 and 216 be given to the Petitioner, Surendra. The Settlement Officer of Consolidation dismissed the appeal of Respondent No. 2 holding that Appellant-Respondent No. 2 was given one chak on his original holding at plot No. 213 and plot No. 215 being the original holding of Respondent No. 2 if the chak is allotted to Respondent No. 2 on plot No. 214, the Petitioner who is chak holder No. 706 will be deprived of the benefit of "rasta". A revision was filed by Respondent No. 2 against the said order which revision was heard along with other revisions and was allowed vide order dated 23.11.2000. The Deputy Director of Consolidation allowed the revision and directed for giving chak to Respondent No. 2 on the eastern side of plot No. 214 and on western side Petitioner's chak was carved. Against the order dated 23rd November, 2000, Writ Petition No. 52427 of 2000 was filed by the Petitioner. This Court allowed the writ petition by its order dated 2nd August, 2001 and set aside the order of Deputy Director of Consolidation dated 23rd November, 2000. The case was remanded to the Deputy Director of Consolidation for fresh decision. After the judgment of this Court dated 2nd August, 2001, the Deputy Director of Consolidation has again heard the parties, made a spot inspection and allowed the revision by the order dated 11th March, 2003 against which order the present writ petition has been filed.

6. Learned Counsel for the Petitioner challenging the order of Deputy Director of Consolidation made following submissions:

(i) The Deputy Director of Consolidation committed error in making modification in the chak of the Petitioner on the ground that Respondent No. 2 has his private source of irrigation over plot No. 224 whereas plot No. 224 being out of consolidation the said claim was irrelevant and the Deputy Director of Consolidation allowed the revision on irrelevant consideration.

(ii) The Deputy Director of Consolidation in allowing the revision has deprived the Petitioner facility of road existing towards east of plot No. 214, the land adjoining

to the said road/rasta was of commercial value and the Petitioner was entitled for chak on the roadside and the Assistant Consolidation Officer has rightly given chak to the Petitioner on his original holding at plot No. 214 taking into such consideration which was also affirmed by Settlement Officer Consolidation by dismissing the appeal filed by Respondent No. 2.

(iii) The Deputy Director of Consolidation had no jurisdiction to pass order in exercise of jurisdiction u/s 48 of the Act without pointing out any illegality, incorrectness or impropriety in the orders passed by subordinate consolidation courts.

(iv) The Deputy Director of Consolidation committed error in not considering the claim of the Petitioner while allowing the revision filed by the Petitioner.

(v) The Deputy Director of Consolidation has proceeded to decide the revision on only one consideration as to whether allotment of chak could be made on the basis of road or "nala" and he has not considered other aspects of the case.

7. Sri Namwar Singh, learned Counsel appearing for Respondent No. 2, refuting the submissions of counsel for the Petitioner contended that no error has been committed by the Deputy Director of Consolidation in allowing the revision. The contention of counsel is that Respondent No. 2 has his source of irrigation on plot No. 224 hence he was entitled for allotment of chak near his source of irrigation on which basis the Deputy Director of Consolidation has allowed the revision. He further contended that "rasta" going in east of plot No. 214 is not a road and only kharanza has been laid upto the extent of four kari and, thereafter, it becomes sloppy in the shape of nala, submission is that the said "rasta" cannot form any basis for allotment in favour of the Petitioner. He further contended that Deputy Director of Consolidation has ample jurisdiction to consider the material evidence on record and set aside the findings recorded by Settlement Officer Consolidation. He further contended that Deputy Director of Consolidation having made spot inspection and found that no "rasta" exists on plot No. 214, the order of Deputy Director of Consolidation is perfectly just.

8. Counsel for both the parties have relied on various decisions of this Court in support of their respective contentions which will be considered while examining the respective submissions.

9. The first submission raised by counsel for the Petitioner is regarding claim of Respondent No. 2 for allotment of chak on plot No. 214 on the basis of his private source of irrigation in plot No. 224. The contention of counsel for the Petitioner is that plot No. 224 is not included in consolidation, hence the source of irrigation existing on the said plot is not relevant for the purposes of Section 19 of the Act. The contention of counsel for the Petitioner is that Section 19 (1) (f) of the Act provides that tenure holder is entitled for allotment of the plot on which exists his private source of irrigation and since plot No. 224 where private source of irrigation exists is not included in the consolidation, there is no question of allotment in the vicinity of the said plot to Respondent No. 2 and the

claim of Respondent No. 2 for allotment of an area in the vicinity of the said plot is unfounded. The counsel for Respondent No. 2 has refuted the submission and has placed reliance on a judgment of this Court in Tara Chand and Ors. v. Assistant Director of Consolidation, Lucknow and Anr. 1994 AWC 558.

10. Section 19 of the Act is contained in Chapter-III of the Act which is with regard to preparation of consolidation scheme. Section 19 of the Act lays down the conditions which are to be fulfilled by a consolidation scheme. Section 19 (1) is quoted below:

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

(a) the rights and liabilities of a tenure-holder, as recorded in the annual register prepared u/s 10, are, subject to the deductions, if any, made on account of contributions to public purposes under this Act, secured in the lands allotted to him;

(b) the valuation of plots allotted to a tenure-holder, subject to deductions, if any, made on account of contributions to public purposes under this Act is equal to the valuation of plots originally held by him:

Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty-five per cent of the latter;

(c) the compensation determined under the provisions of this Act, or the Rules framed thereunder, is awarded:

(1) to the tenure holder:

(i) for trees, wells and other improvements, originally held by him and allotted to another tenure-holder, and

(ii) for land contributed by him for public purposes;

(2) to the Gaon Sabha, or any other local authority, as the case may be, for development, if any, effected by it in or over land belonging to it and allotted to a tenure-holder;

(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; and

(g) every tenure-holder is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangulation units.

11. The object of consolidation is to rearrange the holdings in a unit amongst several tenure holders in such a way to make their respective holdings more compact. Section 19 (1) (e) of the Act contains provision to the effect that as far as possible every tenure holder should be allotted a compact area at the place where he holds the largest part of his holding. The next principle, which is contained in Section 19 (1) (f), is that every tenure holder, as far as possible, be allotted the plot on which exists his private source of irrigation or any other improvement. The provision further requires that together with the above allotment an area in the vicinity equal to the valuation of the plots originally held by tenure holder should also be allotted. The second idea, which is contained in the provision, is that any equivalent area in the vicinity be allotted so that the said area be irrigated through private source of irrigation. The provisions of Section 19 (1) (f) in plain language provides for allotment of the plot on which exists private source of irrigation. There is no difficulty in a case where tube-well is situate on a plot which has been valued and is open for consolidation but the question which has arisen in the present case is as to whether the requirement of Section 19 (1) (f) is attracted when private source of irrigation is situate on a plot which is not included in the consolidation. For example, if the private source of irrigation is in abadi of the tenure holder or situate on plot or area which has been kept out of consolidation. When the plot is out of consolidation on which private source of irrigation is situate, the first part of Section 19 (1) (f) is not applicable. The second part of section which provides for allotment on an area in the vicinity equal to the valuation of the plots originally held by tenure holder is to be looked into to find out the object of the whole provision. The object of second part is clearly to utilise the benefit of irrigation facilities for the tenure holder who is to be allotted chak in the vicinity of the said source of irrigation. Section 19 (1) (f) of the Act, thus, clearly contains two objects, first to allot the plot on which source of irrigation is situate to the tenure holder and secondly, to allot equivalent area to the tenure holder in the vicinity so that irrigation facilities be utilised. In a case where source of irrigation is situate on a plot which is out of consolidation, the first part may not be attracted but second object as contained in Section 19 (1) (f) can be fulfilled by allotting an area in the vicinity of the source of irrigation equivalent to the area held there. Thus, in a case where in vicinity of source of irrigation, a tenure holder has land, he can claim the allotment in the said area so that he may utilise the facility of irrigation. To read the section otherwise will defeat the object of the section. This can be illustrated by an example; a tenure holder has constructed a pakka tube-well situated on roadside, which also contains his abadi and has another improvement for development of his agriculture on a roadside but looking to the nature of

construction on the plot the said area on which tube-well, house and improvement are existing has been kept out of consolidation and tenure holder has in the vicinity large original area which was being irrigated by him from the said tube-well, to hold that the said tenure-holder has no right to claim allotment of chak in vicinity of his source of irrigation because his tube-well is not on a land which is included in the consolidation will not be in consonance with the object underlying provisions of Section 19 (1) (f). The idea of allotting land in vicinity of source of irrigation is for utilising the source of irrigation. The judgment relied by counsel for the contesting Respondent in Tara Chand's case (*supra*) although has not specifically dealt the issue but the observation made by the Court supports the contention of learned Counsel for the contesting Respondent. Following was observed in paragraph 6 of the judgment:

"6. In the matter of allotment of chaks, the authority assigned with the job of allotment, cannot satisfy each and every tenure holder as one is bound to suffer some inconveniences. But, at the same time, it is incumbent on the part of the authorities to ensure that each tenure holder must get a plot on, or near, original holding and near the source of irrigation. In the present case, it is clear that one chak has been allotted to Horem Singh on his original holding, i.e., plot No. 625. So far as the other chak, which is alleged to be at a distance of 1-1/2 kms. and which fact is disputed by Respondent is concerned, this being a matter of fact, I am not inclined to interfere in the writ jurisdiction. Moreover, it is not a case of the Petitioners that where he has been allotted the chak, it is not the original holding."

12. The learned Counsel for the Petitioner has placed reliance on a judgment of this Court in *Aasbaran v. Deputy Director of Consolidation, Gonda and Anr.* 1986 AWC 1088. In the aforesaid judgment, this Court had occasion to consider provisions of Sections 19 (1) (e) and 19 (1) (f) of the Act. Reliance has been placed by counsel for the Petitioner on following observations made by this Court in that case:

"The requirement of allotting original plot of the original holding to the tenure holder in his chak has been mandated only in Section 19 (1) (f) according to which, if there exists private source of irrigation or other improvement on the plot in question, then it is got to be allotted in the chak of the tenure holder."

The above observations are general observations made by the Court while considering the scope of Section 19 (1) (f). The issue, which has been raised in the present writ petition, was neither raised in that case nor was considered, hence the said judgment does not help the Petitioner in any manner. In view of what has been said above, the first submission of counsel for the Petitioner that Deputy Director of Consolidation committed error in relying on source of irrigation of Respondent No. 2 on plot No. 224 cannot be accepted.

13. The second submission raised by counsel for the Petitioner is with regard to "rasta" which is running east to plot No. 214. It is relevant to note that this

Court in its judgment dated 2nd August, 2001 by which the matter was remanded to the Deputy Director of Consolidation has noted the issue as to whether the allotment should be made near the "rasta" or near the "nala". The Petitioner has claimed in this writ petition that there is a "rasta" which runs in east of plot No. 214. The counsel for the contesting Respondent disputes the said fact and says that it is not "rasta" nor is being used as "rasta". In fact, the said "rasta" goes into "nala" while going in north. The Respondent has filed chak maps along with the counter-affidavit as Annexures-C.A. 1, C.A. 2 and C.A. 3. In east to Plot No. 214 there is plot No. 226 which is plot of "rasta". The Deputy Director of Consolidation himself has made spot inspection, copy of the inspection memo has been filed as Annexure-9 to the writ petition. The inspection memo clearly noticed that on the eastern side of plot No. 214, there is Kharanza upto 40 kari and thereafter "rasta" is slopy. The inspection memo clearly mentioned existence of "rasta" in east of plot No. 214 of 4 kari. The Deputy Director of Consolidation in his judgment has also held that plot No. 226 is "rasta" and after end of the Kharanza is slopy towards the "nala". In inspection memo the Deputy Director of Consolidation found that level of "rasta" is much below to the level of plot No. 214. In the judgment he has recorded finding that level of "rasta" which is in plot No. 226 is much lower than plot Nos. 210, 211, 212, 213 and 214. He has further found as fact that there cannot be any egress and ingress from the said "rasta" into plot Nos. 210, 211, 212, 213 and 214. Admittedly plot No. 214 is original holding of the Petitioner and even after the order of Deputy Director of Consolidation his chak is still intact on plot No. 214 which is his original holding. Only change which has been made by Deputy Director of Consolidation is that inspite of allotting chak to Petitioner in south of plot No. 214 he has allotted chak to the Petitioner in north side. plot Nos. 210, 215 and 216 which are in the vicinity of plot No. 214 have been allotted to the Petitioner. The counsel for the Petitioner contended that Petitioner has right of allotment on the roadside. He has also placed reliance on circular of the Commissioner dated 26th May, 1981 copy of which has been filed as Annexure-8 to the writ petition. A perusal of the aforesaid circular of the Commissioner shows that said circular was issued with regard to land situate on the National/State Highways and other important roads. The said circular is for the land situate on the important roads. The "rasta" in question cannot be said to be a road. The principle which governs for land situate on pakka roads cannot be borrowed while determining the allotment of chak on a "rasta" or a chak road situate in the village. The inspection memo shows that the kharanza is only 40 kari upto north of plot No. 225, thereafter, it is slopy. The circular of the Commissioner referred above is not attracted in the facts of the present case. The counsel for the Petitioner has placed reliance on judgments of this Court in Mukut Nath v. Deputy Director of Consolidation, Gorakhpur and others 1998 RD 148 and Gyan Prakash and Another Vs. Deputy Director of Consolidation, Allahabad and Others, . This Court in Mukut Nath's case (supra) made following observations in paragraph 5 of the judgment:

"5. The Consolidation Officer and Settlement Officer Consolidation have carved out the chak of the Petitioner in such a way that its shape was rectangular and was leading upto the P.W.D. road. The Deputy Director of Consolidation for the first time carved out a chak in rectangular shape running from north to south, with the result that the Petitioner was deprived of the land towards P.W.D. road. The Deputy Director of Consolidation has not recorded any finding as to whether under the sale deed any specified portion was sold to the Petitioner. In case the Petitioner was sold a portion which did not lead upto P.W.D. road, the Deputy Director of Consolidation may be justified not to give such portion to the Petitioner but if this portion was not specified or he was given a portion which leads upto the P.W.D. road, the order of the Deputy Director of Consolidation will not be valid and justified. The Deputy Director of Consolidation has not considered this aspect of the matter."

14. From the above observation of this Court, it is clear that allotment was with regard to land which lead up to the P.W.D. road. In the present case, it is not the case of the parties that land is situate on P.W.D. road. It is true that if land situate on P.W.D. road has commercial value and the original tenure holder of the said land has a claim of allotment of the said land. The second case relied by counsel for the Petitioner in Gyan Prakash's case (supra) also lays down a principle that land lying adjoining to the pakka road is valuable land. The said judgment follows the principle laid down in Mukut Nath's case (supra) as referred above. In Gyan Prakash's case (supra), the plot No. 1061 was situate on pakka road. The principles laid down in that case are not attracted in the present case since plot No. 214 is not situate on a pakka road and the "rasta" which lay east to the said plot cannot be said to be road. A clear finding has been recorded by the Deputy Director of Consolidation that level of "rasta" in plot No. 226 is much lower than the level of plot Nos. 210, 211, 212, 213 and 214 and there cannot be any to and fro from the "rasta" in the aforesaid plots. The inspection memo dated 26th October, 2002 filed as Annexure-9 to the writ petition also notes this fact that level of "rasta" is much lower than plot No. 214. In view of this, the principles, laid down in Gyan Prakash's case (supra) and in Mukut Nath's case (supra) are not attracted in the facts of the present case. The Deputy Director of Consolidation having himself made spot inspection considered all aspect of the matter and recorded a finding of fact that "rasta" cannot be used for going on the aforesaid plots including plot No. 214. No error can be said to have been committed by the Deputy Director of Consolidation in making modification in the chak of the Petitioner. The Petitioner himself has filed site plan of his chak as Annexure-11 to the writ petition. The said site plan clearly shows that Petitioner's chak No. 706 has been carved out in west of plot No. 214 taking into plot Nos. 217, 216, 215 and 210. Major portion of plot No. 214 is still allotted to the Petitioner even after modification by Deputy Director of Consolidation. It is not the case where Petitioner is being removed from his original holding. Plot Nos. 216 and 217 were also allotted to the Petitioner by Assistant Consolidation Officer. The Deputy Director of Consolidation has rightly

recorded finding that "rasta" which is in east to plot No. 214 cannot be made basis for allotment to the Petitioner and no infirmity is found in the said finding in view of the spot situation as disclosed in the inspection memo and from the findings recorded in the judgment of Deputy Director of Consolidation.

15. The third submission of counsel for the Petitioner is that Deputy Director of Consolidation has no jurisdiction to set-aside the finding recorded by subordinate consolidation authorities without pointing out illegality, incorrectness and arbitrariness in the orders passed by consolidation authorities. The Deputy Director of Consolidation, while passing the impugned order, has exercised his jurisdiction u/s 48 of the U.P. Consolidation of Holdings Act. The jurisdiction of Deputy Director of Consolidation u/s 48 is very wide jurisdiction. The learned Counsel for the Respondents has referred to Explanation (3) substituted by U.P. Act No. 3 of 2002 which came into force with effect from June, 27, 2002. Explanation (3) to Section 48 is quoted as below:

"Explanation (3).-The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to reappreciate any oral or documentary evidence."

Explanation (3) as quoted above clarifies that the Deputy Director of Consolidation exercises wide power as a Court of fact which includes power to reappreciate oral and documentary evidence. The Deputy Director of Consolidation has made spot inspection in presence of both the parties and has also prepared as inspection memo. The spot inspection made by Deputy Director of Consolidation was a relevant material which has been relied by Deputy Director of Consolidation. The Deputy Director of Consolidation was fully entitled to appreciate the evidence on the record taking into consideration the spot inspection made by him. The Deputy Director of Consolidation recorded a finding that if the chak as allotted by Consolidation Officer and Settlement Officer of Consolidation are maintained, then by the said arrangement, the chak of Respondent No. 2 will be away from his pumping set which is against the object of consolidation. As noted above, Respondent No. 2 was entitled to claim chak in vicinity of his source of irrigation in accordance with provisions of Section 19 (1) (f) of the Act. The Deputy Director of Consolidation, while recording the finding that allotment made by Consolidation Officer and Settlement Officer Consolidation are not in accordance with the object of consolidation, has clearly held that allotment made by Consolidation Officer and Settlement Officer Consolidation was not in consonance with the object of consolidation. The objects and principles of the consolidation are laid down u/s 19 of the Act and the claim of Respondent No. 2 was fully made out for claiming chak near his source of irrigation in accordance with Section 19 (1) (f). Thus, it cannot be said that no infirmity was found by the Deputy Director of Consolidation in the allotment made by Consolidation Officer and Settlement Officer Consolidation. The aforesaid submission of the Counsel for the Petitioner is not made out. The

Deputy Director of Consolidation being last Court of fact has considered all the materials including the spot inspection made by him and has also found that allotment made by Consolidation Officer and Settlement Officer Consolidation are not in accordance with the object of consolidation. The learned Counsel for the Petitioner has placed reliance on judgments of this Court and Apex Court on the scope of jurisdiction by Deputy Director of Consolidation u/s 48 of the Act. Reliance has been placed by the Petitioner on Damodar Prasad v. Deputy Director of Consolidation 1996 AWC 158: 1995 ACJ 1064 and Nanhey v. Deputy Director of Consolidation 1993 (3) AWC 1359. The judgment of the Apex Court in Gaya Din v. Hanuman Prasad 2001 (1) AWC 344 : AIR 2001 SC 386 Sheo Nand and Others Vs. The Deputy Director of Consolidation Allahabad and Others, Muneshwar (Dead) By Lrs. Vs. Raja Mohammad Khan and Others, and Ram Avtar and others Vs. Ram Dhani and others, All the aforesaid cases have laid down scope and ambit of jurisdiction to be exercised by Deputy Director of Consolidation u/s 48 of the Act. In Sheo Nand's case (supra) following was laid down by the Apex Court in paragraph 20:

"20. The section gives very wide powers to the Deputy Director of Consolidation. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly."

The aforesaid observations of the Apex Court itself make it clear that very wide power has been given to the Deputy Director of Consolidation u/s 48 of the Act in widest terms so that claims of the parties under the Act may be effectively adjudicated upon and determined. There cannot be any dispute with the principles laid down in the aforesaid cases by this Court and the Apex Court while interpreting the extent of jurisdiction u/s 48 of the Act. The order impugned passed by Deputy Director of Consolidation was within his jurisdiction u/s 48 of the Act. The submission of counsel for the Petitioner that Deputy Director of Consolidation exceeded in his jurisdiction in allowing the revision cannot be accepted.

16. The next submission of counsel for the Petitioner is that Deputy Director of Consolidation while allowing the revision, has not considered the case of the Petitioner. From perusal of the order of Deputy Director of Consolidation, it is clear that Deputy Director of Consolidation has considered the claim of the Petitioner. The claim of the Petitioner before the Deputy Director of Consolidation was to the effect that Petitioner was claiming allotment on the basis of "rasta" running in plot No. 226. The Deputy Director of Consolidation made spot inspection only for the aforesaid purpose as to find out true nature and extent of "rasta". This Court while remanding the matter vide its judgment dated 2nd

August, 2001 also noted the question as to whether the allotment of chak should be made near "rasta" or near "nala". The Deputy Director of Consolidation has addressed to the said very issue while deciding the case. The Deputy Director of Consolidation noted in his order that Assistant Consolidation Officer has allotted chak to Respondent No. 2 on plot No. 214 on northern side and gave chak to Petitioner on southern side. The Deputy Director of Consolidation has observed that in case the chaks, as allotted by Consolidation Officer and Settlement Officer Consolidation, are maintained, chak of Respondent No. 2 will be away from his pumping set which is against the object of consolidation. The Deputy Director of Consolidation was alive to the issue and has heard the parties while deciding the revision and spot inspection was made in presence of both the parties.

17. The fifth submission of counsel for the Petitioner is that Deputy Director of Consolidation has not decided the revision afresh and has confined only to decide one question as to whether allotment of chak should be made on the basis of road or "nala". The Deputy Director of Consolidation has decided the revision after remand order of this Court dated 2nd August, 2001 passed in Shanker alias Surendra v. Deputy Director of Consolidation, Varanasi and another, Writ Petition No. 52427 of 2000. The Petitioner had earlier come to this Court and when the writ petition was decided, the question raised by the Petitioner was regarding allotment of chak near "rasta" or "nala". The Petitioner has already been allotted chak on plot No. 214 which is his original holding. The only change which has been made by Deputy Director of Consolidation was that Petitioner's chak has been made north-south in the west side whereas Petitioner wanted his chak on the east of plot No. 214 adjoining "rasta". The main issue raised between the parties was noted by this Court in its judgment aforesaid. The Deputy Director of Consolidation has considered all aspect of the matter including the different plots on which chak has been allotted to the Petitioner and the claim of the Petitioner for allotment on the "rasta". The Deputy Director of Consolidation has considered the submissions of both the parties and has decided the revision afresh. It cannot be said that Deputy Director of Consolidation has not considered all aspects of the matter. In the writ petition the Petitioner has not referred to any submission which was pressed before the Deputy Director of Consolidation and not considered by the Deputy Director of Consolidation while deciding the revision. The revision was filed by Respondent No. 2 in which he claimed that he should be allotted chak near his pumping set situate in plot No. 224. The Deputy Director of Consolidation has considered the submissions raised by Respondent No. 2 and decided the matter after considering all aspects of the case. The submission of counsel for the Petitioner that Deputy Director of Consolidation has not decided the revision afresh is unfounded and cannot be accepted.

18. The counsel for the Petitioner has lastly contended that by modification made by Deputy Director of Consolidation, the Petitioner has been deprived of the facility of the road without providing any approach road. He has relied upon the judgment of Apex Court in Rama Nand v. Deputy Director of Consolidation and others 2000 RD 225. The averment to this effect has been made by the

Petitioner in paragraph 22 of the writ petition. A perusal of the judgment of Deputy Director of Consolidation shows that Petitioner has not raised any grievance regarding chak road to him. No such grievance is noted in the judgment. There is no dispute that a tenure holder is entitled to go to his chak by a chak road or "rasta". From the material which has been brought on the record, it is not clear as to whether there exists any "rasta" or road for reaching on the chak of the Petitioner. The Respondent No. 2 although has replied to the averment of paragraph 22 of the counter-affidavit but no specific reply has been given in paragraph 19 of the counter-affidavit by which paragraph 22 of the writ petition was replied. In view of this, it will be appropriate to leave it open to the Petitioner to approach the Deputy Director of Consolidation praying for providing a chak/ approach road for approaching his chak in case there exists no approach to his chak. It is made clear that Deputy Director of Consolidation before considering the claim of the Petitioner for giving approach road to his chak will find out as to whether there exists any approach to his chak or not. The modification made in the chak of both the parties by Deputy Director of Consolidation by his order dated 11th March, 2003 is upheld. However, the said order will not be an impediment in providing approach/ chak road to the Petitioner and it will be open to the Deputy Director of Consolidation to pass necessary order in that regard.

19. In view of what has been said above, it is clear that there is no infirmity in the order of Deputy Director of Consolidation dated 11th March, 2003 and the prayer of the Petitioner for quashing the order cannot be accepted. The writ petition in so far as it prays for quashing the said order is dismissed. However, liberty is given to the Petitioner to approach the Deputy Director of Consolidation praying for providing "rasta" to approach his chak in case none exist on the spot. The order of Deputy Director of Consolidation dated 11th March, 2003 will not be an impediment in making necessary order in that regard by consequential changes.

20. The writ petition is disposed of accordingly.