
(2016) 09 AHC CK 0268
In the Allahabad High Court
Case No : Consolidation No. 22374 of 2016

Shantanu Singh

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

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

Citation : (2017) 134 RD 432

Hon'ble Judges : Shabihul Hasnain, J.

Bench : Single Bench

Advocate : B.R. Singh, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Shabihul Hasnain, J. - Heard Sri B. R. Singh, learned counsel for the petitioner and learned Standing counsel.

2. Petitioner has challenged order dated 5.9.2016 passed by Deputy Director of Consolidation, Barabanki in revision No.385 under Section 48 of U.P. Consolidation of Holding Act. Petitioner has challenged this order and has raised five objections. Firstly, he has submitted that there is violation of Section 19(1)(g) of U.P. Consolidation of Holdings Act. For convenience this provision is quoted herein below:-

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

3. Petitioner has referred to page 86 of the writ petition. This is certified copy of the map which has been prepared after spot inspection. Two chaks have been carved out; one of Gokaran son of Asharafti Lal-father of opposite party No.3 to 5 and husband of opposite party No.2; petitioner has been granted the other chak.

4. Petitioner has submitted that earlier his chak was having the dimensions of

210 metres on one side and 170 metres on the other side. The chak was admittedly in rectangular shape. The revisionist's chak was also rectangular. By the order of revisional court now the petitioners' chak though has still remained rectangular but the dimensions have changed to that of 410 metres in length and 85 metres in breadth. It appears that the petitioner has mistakenly read Section 19 (1) (g). Rectangle is a geometric figure in which the length is always in excess of breadth, otherwise it is known as square. Even if the chaks are carved out in the form of square it will not mean that Section 19(1) (g) has been violated by any person. The chaks remained rectangular and cultivable even by tractor or by bullock. It cannot be said that width of 85 metres is not enough for a tractor to plough through the length of breadths of the plot. The first argument of the petitioner fails for misconception of law.

5. The second ground taken is related to the first argument and it appears to be prima facie misconceived because it says that the chak given is not proportionate. The Court wonders as to what is meant by proportion (Samanupat). Proportion means in relation to an earlier area. The change in length and breadth without a change in area will always mean that the chak has been carved out in proportionate manner. If the change in length and breadth results in lesser area then it can be said that geometrical figure is not proportionate. Proportion is in shapes and in the area but never in length and breadth standing alone. The second argument is only for sake of it and does not contain any substance or proposition of law and it also fails.

6. The third objection taken by the petitioner that while going for the spot inspection objection was not invited from him. The petitioner has not demonstrated before this Court as to what prejudice has been caused to him by this spot inspection. The report is before the Court and is being examined exclusively. Nothing has been shown before this Court in the writ petition as to how an objection before spot inspection would have resulted in something different. It has not been alleged that the area has been incorrectly demarcated; it has not been submitted that some other land has been inspected; it has not been submitted that the dimensions have wrongly been measured. In such a situation it cannot be said that the spot inspection has resulted in any injury or prejudice caused to the petitioner. Opportunity of hearing is a necessity of law but a person coming in writ petition will have to demonstrate before Court as to how that opportunity would have resulted in a different proposition or different answer. The Court is willing to take that objection into account while sitting in Article 226 jurisdiction.

7. One other objection has been taken by the petitioner which is very interesting interpretation of the word "Sadak". Petitioner has interpreted that on the Southern area of the chak where petitioner's plot is situated is "Khadanja" and it is not a "Sadak". "Khadanja" does not define "sadak" and "sadak" does not mean a metal road. There are number of nomenclatures and number of systems by which a road can be made useful. There can be a metal road; there can be a

cemented road; there can be a "khadanja"; there can a kuchcha road; there can be a "damar" road; there can be a road fixed with different kinds of bricks. The bricks can be of metal; it can be of clay and of different materials. "Sadak" means a measure of public property by which a person or public is able to commute without transgressing anybody else's rights. "Sadak" in common parlance means a way, a public pathway or a thoroughfare. The distinction which the petitioner is trying to draw between "Sadak" and "Khadanja" is without any basis. Bricks are arranged in a manner so that clay or soil does not wash away and it is navigable. "Khadanja" does not mean that there is no "sadak". Road normally means a constructed road, it does not mean that it has to be of commercial value or it has to be of a normal value road. Road is simply a road. The argument which the petitioner is trying to raise goes against him. Believing that there is a road which is a commercial value there is all the more reason that it should be equally divided and if there is no road then the petitioner does not have any objection at all. In both the cases, the argument of the petitioner fails. It appears that the argument is being made only to retain the property with adjacent road and it goes to prove that the road has some value which the petitioner is fearing to loose by the arrangement. The purpose of consolidation is to give equal benefit to all other persons concerned.

8. The order of Deputy Director of Consolidation appears to be most just and correct in which no interference is required. The petition being misconceived is dismissed.