
(1977) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4051 of 1974

Shanti Devi

APPELLANT

Vs

Deputy Director of Consolidation, Varanasi and Another

RESPONDENT

Date of Decision : 03-11-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19, 19A, 20, 21

Citation : (1977) 11 AHC CK 0029

Hon'ble Judges : R.M.Sahai, J

Final Decision : Allowed

Judgement

R.M. Sahai, J.

In this writ petition the revisional order of Deputy Director of Consolidation passed in proceedings arising out of allotment of Chaks have been assailed both on merits as well as being violative of principles of natural justice.

To support the submission based on lack of opportunity of hearing reliance was placed mainly on:

1. Sarvadaman Rai v. Dalffanjan Rai. 1977 R.D. R.D. 263.
2. Changu Lal v. Deputy Director of Consolidation.

The principle laid down in these decisions is based on denial of cherished right of hearing. But how will this principle come to petitioner's rescue is difficult to appreciate as petitioner was admittedly, part in one of the three revisions decided by the Deputy Director Consolidation by a common order relating to land situated in the unit. The learned counsel maintained that opposite party No. 1 did not file any objection against petitioner nor did he claim Ghak over the land proposed to be allotted to her in consolidation scheme as such the Dy. Director acted against law in directing modifications in the petitioners Chak and allotting it to opposite party No. 1 in a revision filed by him without impleading her.

Admittedly three revisions filed by opposite party No. 1, Kaushilya and Jitendra were decided by the impugned order. Petitioner was a party in revision filed by Kaushilya. She was represented and heard as well. But substance of petitioner's argument appears to be hearing and consequent alteration of Chaks should be case wise. The argument is on a complete misunderstanding of the scheme and provisions contained in Consolidation of Holdings Act regarding allotment of Chaks. Section 19 and 19A of the U.P. Consolidation of Holdings Act lay down the conditions and preparation of consolidation scheme. The provisional scheme has to be prepared in the form prescribed for the unit. The objections filed on the scheme under Section 20 have to be disposed of in the manner laid down in Section 21 of the Act. Rule 46 and 47 indicate the Scheme shall be for the entire unit. Subsection (3) of Section 21 casts a duty on Consolidation Officer to make local inspection of plots after notice to parties concerned (objector under Section 20) and consolidation committee. Subsection (4) of Section 21 empowers Consolidation Officer and Settlement Officer Consolidation to order revision of Consolidation scheme if material injustice is done to large number, of tenureholders. These provisions indicate that proceedings for allotment of Chaks should be taken unit wise. All the tenureholders who file objection should be heard to enable the authorities to direct adjustment after examining the claim for the entire unit. If the principle of natural justice is stretched as suggested by the learned counsel it would frustrate the entire objective and make the working of the scheme as unfolded in various section difficult. In connected cases or in cases of the same unit heard on the same day if all those persons who are likely to be affected are heard either because they were party in, the revision in which alteration made or were parties in connected cases cannot be said that they have been denied the right of hearing. The argument has no merit. It would be impossible for the authorities to decide proceedings for allotment of Chak if while making alterations they were required to serve the party against whom the alterations are made although the party is present and has been heard.

On merits it was argued that the order passed by the Deputy Director was against the provisions contained in the Act and the petitioner was seriously prejudiced. In para 9 of the Writ Petition it has been stated that the Deputy Director directed to take out twelve anna land from the petitioner's Chak out of plot No. 998 but in the Schedule appended to the order 21.93 annas land has been taken out. In para 12 of the Writ Petition it has been stated that as a result of the modification made in the Chak of the petitioner the width of the Chak has been reduced in such a manner that the cultivation of the petitioner's Chak became impossible. It is further asserted that in the adjustment made a portion of the petitioner's Chak has been thrown at 1 Km. away from the petitioner's well and pumping set. The opposite party although served has not appeared in this court nor has filed any counter affidavit. The allegations, therefore, remain un rebutted. The effect of the allegations made by the petitioner is that the shape has become irregular longish not rectangular. If the width is reduced and Chak is in shape "of a strip it is obvious that process of tilling cannot be carried

successfully. This allegation alone is sufficient to allow the Writ Petition as the entire purpose of consolidation is defeated in case the Chakholder is deprived of cultivation. Moreover on the averments made there is a conflict in the order and the Schedule appended to the order. The finding recorded by the Deputy Director Consolidation has to be examined in the light of provisions contained in the status. If in arriving at the finding the tribunal has arrived at a conclusion which is not only contrary to the purpose of the Act but puts at nought the entire objective the finding cannot be upheld. The petitioner has suffered substantial injustice as a result of modifications in her Chak.

In the circumstances the Writ Petition is allowed. The order passed by the Deputy Director of Consolidation is set aside. As nobody appeared for the opposite party there shall be no order as to costs.