
(1986) 01 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 233 of 1986

Shri Nath

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 20-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1986) RD 209

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : D.C. Mukerji, for the Appellant;

Judgement

K.N. Misra, J.—This writ petition is directed against the order dated 28th November, 1985 passed by the Deputy Director of Consolidation, Sultan. The Petitioner Sri Nath is chak holder No. 742. He was allotted two chalks by the Assistant Consolidation Officer of an area of 2 Bights 3 Biswas and 9 Biswansis as against his original holding measuring 1 blight 18 biswas and 10 biswansis. Aggrieved by this allotment, Petitioner filed objection u/s 20 of the U.P. Consolidation of Holdings Act (for short the Act). This objection was partly allowed by the Consolidation Officer vide order dated 19.3.1985 and the Petitioner's chalks were altered. It appears that the Consolidation Officer had decided several other objections of tenure holders by said order and five of the tenure holders had preferred appeal against that order. These appeals were heard and disposed of by the Settlement Officer, consolidation and the chak of opposite-party No. 2 Hari Ram was altered while making adjustment in the chalks of the Appall ants. The opposite party No. 2 Hari Ram had thereupon preferred revision u/s 48 of the Act. This revision has been allowed by the impugned order dated 28.11.1985. The Petitioner was impleaded as a party in the revision. His chak has been altered while allowing the revision filed by opposite party No. 2 by the Deputy Director of Consolidation. Aggrieved by this order, the Petitioner has preferred this writ petition.

2. Learned Counsel for the Petitioner urged that by the impugned order the area of the Petitioner's allotted chak has been reduced by more than 25 percent than the land of his original holding and this has been done without prior approval of the Director of Consolidation. Learned Counsel, thus, contended that the impugned order has been passed by the Deputy Director of Consolidation in violation of the provisions contained in Section 19(1) of the Act, Learned Counsel had referred to the proviso to Section 19(1) which reads as follows:

19(1)(a)....

(b)....

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 percent, of the latter, ;

3. According to the above quoted proviso, the land allotted to a tenure holder should not differ from the area of his original holding by more than twenty-five per cent except with the permission of the Director of Consolidation. In support of his contention learned Counsel cited a decision in *Semai Lai v. Deputy Director of Consolidation, Pratapgarh, 1985 LCD 354* wherein it was held that the allotment was invalid as the Consolidation Officer had allotted a chak of an area of 1 bight 7 biswas and 19 biswansis as against his original holding to 15 biswas 15 biswansis, which could not be done being vocative of the provisions contained in the proviso to Section 19(1)(b) of the Act. This decision is, however of no assistance to the learned Counsel for the Petitioner in the present case.

4. In the above mentioned *Somali Lai's* case (*supra*) the Consolidation Officer had made allotment of chak having a difference of more than 25 per cent in area than the area of the original holding without obtaining permission of the Director of Consolidation as required under the aforesaid proviso to Section 19(1)(b) of the Act.

5. In the present case the Assistant Consolidation Officer as well as the Consolidation Officer had allotted chak to the Petitioner which was not having a difference of more than 25 per cent in the area of the original holding. The Deputy Director of Consolidation, who in exercise of the delegated powers of the Director of Consolidation under the U.P. Consolidation of Holdings Act, has by the impugned order allotted a chak to the Petitioner which is about 29 per cent less in area than the original holdings of the Petitioner, as he has been allotted better quality of land of higher exchange ratio than originally held by him. Thus, in my opinion, the allotment of chak in question to the Petitioner by the Deputy Director of Consolidation would not be illegal as urged by the learned Counsel for the Petitioner for want of permission of Director of Consolidation because the Deputy Director of Consolidation, who exercises the delegated powers of the Director of Consolidation would be taken to have impliedly permitted allotment of such chak while making appropriate alteration in the chalks of the parties by an

order passed in revision u/s 48(1) of the Act. The permission of the Director of Consolidation, as envisaged under the aforesaid proviso to Section 19(1)(b) would be necessary if the subordinate consolidation authorities would make allotment of a chak having difference of more than 25 percent without obtaining prior permission. But where the Director of Consolidation or the Deputy Director of Consolidation, who exercises delegated powers of the Director of Consolidation under the Act, has made allotment of such a chak to a tenure holder having a difference of more than 25 per cent in area, it would in my opinion, not be invalid because the permission for such an allotment would be inherently manifest therein. If the Authority which is required to give permission to an allotment of chak having a difference in area by more than 25 per cent itself makes the allotment of such a chak in the process of making appropriate adjustment in chalks of parties while deciding a revision it cannot be taken to be invalid and without jurisdiction and no interference would be called for by this Court in exercise of writ jurisdiction.

6. Learned Counsel for the Petitioner had next contended that the Deputy Director of Consolidation has erred in allotting to the Petitioner a chak on plot No. 941. I do not find any merit in this contention because plot No. 491 belonged to the original holding of the Petitioner himself and so he has been rightly allotted a chak on his original plot by the Deputy Director of Consolidation while making alteration in his chak.

7. In view of what has been said above, I find that no interference is called for with the impugned order by this Court under Article 226 of the Constitution.

8. In the result, the writ petition, being devoid of merits is dismissed in limine. Petition dismissed.