
(2015) 03 AHC CK 0007
In the Allahabad High Court
Case No : Writ-B No. 3627 of 2015

Sita Ram

APPELLANT

Vs

Consolidation Commissioner and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (2015) 127 RD 338

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Rajesh Pandey, for the Appellant; Yashwant Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri Rajesh Pandey, for the petitioner, and Sri Yashwant Singh, for the contesting respondents-5 to 7. The writ petition has been filed against order of Deputy Director of Consolidation dated 8.8.2013, allowing the recall application of the respondents and setting aside order dated 31.12.2005 and order dated 30.10.2014, dismissing the revision of the petitioner in chak allotment proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute between the parties is for allotment of chak on plot 1085 of village Chilar, tahsil Saidpur, district Ghazipur. The land in dispute was original holdings of the petitioner and his brother Ram Raj (Chak-445) and, Kishun and Sarju (Chak-53) (now represented by respondents-5 to 7). Assistant Consolidation Officer proposed chak to the petitioner on plot 1085 in eastern side and Kishun and Sarju in western side. It is stated that initially, the petitioner did not file any objection, against his chak on plot 1085 rather he filed his objection for allotment of chak on plot 1077 and 1089 on the ground that he had his private source of

irrigation on plot 1090. However Consolidation Officer did not accept the demand of the petitioner.

3. The petitioner filed two appeals before Settlement Officer Consolidation, one appeal was in respect of his chak on plot 1077 and 1089 and other appeal was in respect of his chak on plot 1085 in east west adjacent to chak road and chak nali in western side. Ram Raj also filed two appeals in chak allotment matters. The appeals were consolidated and allowed by Settlement Officer Consolidation, by order dated 23.1.2001. Respondents-5 to 7 filed the applications for recall of the aforesaid order. The recall applications were allowed and the appeals were dismissed by order of Assistant Settlement Officer Consolidation, dated 24.9.2013 and the shape of chak of the petitioner on plot 1085 was restored. The petitioner filed a revision (registered as Revision No. 497) from the aforesaid order. Deputy Director of Consolidation, by order dated 31.12.2005 held that the petitioner was allotted chak on plot 1085 in eastern side, due to which he has been deprived from across of chak road and chak nali, which existed in western side of this plot. On these findings he allowed the revision and changed the direction of the chak of the petitioner and respondents-5 to 7 from north-south to east-west giving both on the side of chak road and chak nali.

4. Respondents-5 to 7 filed an application for recall of the order dated 31.12.2005 on the ground that in the re vision, only Sarju (their father) was impleaded as opposite party and he was given notice. Respondents-5 to 7 were also co-sharers in the land in dispute but they were neither impleaded as parties nor any notice was issued to them as such the order was ex parte against them. Deputy Director of Consolidation, by order dated 8.8.2013 held that Chak-53 was carved out in the name of Ram Kishun and Sarju. After his death of Ram Kishun, the names of Kushhar, Ram Bachan and Ram Hari sons of Sarju were mutated over chak-53 by the order of Settlement Officer Consolidation dated 19.12.1997. But in the revision only Sarju alone was impleaded as opposite party as such respondents-5 to 7 were not given opportunity of hearing. On these findings, the recall application was allowed and order dated 31.12.2005 was set aside. Thereafter, the revision was heard on merit. Deputy Director of Consolidation, by order dated 30.10.2014 held that Ram Raj (Chak-445) was also co-sharer in the plot 1085 but he was not impleaded as party in the revision as such chak of the parties cannot be changed. He further found that the chaks of the parties are on their original holdings. On these findings the revision was dismissed. Hence this writ petition has been filed.

5. The Counsel for the petitioner submitted that the petitioner (Chak-572), his brother Ram Raj (Chak-445) and respondents-5 to 7 (Chak-53) were co-sharers in plot 1085 but chak 53 and 572 were alone allotted on plot 1085. Since the claim of the petitioner in revision was confined to change of direction of his chak on plot 1085, giving frontage of chak road and chak nali as such chak holders-53 were alone necessary parties. Apart from Chak holders-53, other co-sharers were neither necessary nor proper party in the revision. Deputy Director of

Consolidation has illegally held that necessary parties in the revision have not been impleaded. Grievance of the petitioner was that by allotting eastern portion of plot 1085, the petitioner has been deprived from access of chak road and chak nali. Deputy Director of Consolidation has illegally failed to consider the grievances of the petitioner and dismissed the revision on the ground that the chak of the petitioner is on his original holdings. On the basis of confirmed chak map, he submitted that apart from the petitioner, all the other chak holders were allotted chak by the side of chak road and chak nali. The petitioner has been illegally deprived from chak road and chak nali, making his chak unirrigated.

6. In reply to the aforesaid arguments, the Counsel for the contesting respondents submitted that western portion of plot 1085 was uneven and infertile sandy land. It was not cultivated prior to allotment to respondents. As such it was previously valued at low rate in comparison to western portion. Assistant Consolidation Officer proposed chak to the respondents on uneven and infertile sandy land of western side. The petitioner initially did not file any objection under section 20 of the Act, for allotment of chak on western portion. The respondents, by investing huge money and labour made the western portion fertile. Then, the petitioner in the appeal before Settlement Officer Consolidation began to demand chak on western portion, which is mala fide. In eastern side in village Kundi, there is chak nali, from where the petitioner has facility to irrigate his chak. This Court, by order dated 30.1.2015 directed the respondents to file a Supplementary Counter Affidavit, giving the amount of money, invested by them. Then, Supplementary Counter Affidavit has been filed, in which it has been stated that money and labour invested in making the land fertile cannot be quantified in terms of money. The respondents are emotionally attached to this land. The respondents are three co-sharers, in case, they are allotted chak in east-west, then in future it would be very difficult for them to partition it amongst their co-sharers as it would become a long strip, unsuitable for cultivation.

7. I have considered the arguments of the Counsel for the parties and examined the record. Deputy Director of Consolidation has failed to consider the grievances of the petitioner and dismissed the revision on irrelevant consideration that Ram Raj, other co-sharer was not impleaded as opposite party in the revision and the chak was on original holding. The demand in the revision was for changing direction of the chak of the petitioner and respondents-5 to 7. Other co-sharers of plot 1085 were neither necessary nor proper party. Real grievance of the petitioner was that by allotting eastern portion, he has been deprived from irrigation facility as well as access to chak road. A perusal of CH Form 41 shows that the land is irrigated from canal and chak nali is lying in western side. Similarly, the petitioner has no rasta to go upto his portion of the chak. Thus allotment of chak was contrary to the main object of consolidation scheme. Remark that chak of the petitioner was on original holding was irrelevant.

8. So far as the argument of the Counsel for the respondents that the petitioner

has not filed any objection initially in respect of his chak on plot 1085, is concerned, the petitioner was claiming chak on plots 1077 and 1089. Had his demand been accepted, then his chak on plot 1085 must have been deleted. Before Appellate Court, he confined his demand for changing direction of his chak on plot 1085. Settlement Officer Consolidation has jurisdiction to change entire Provisional Consolidation Scheme suo motu as such appellate Court can accept a new demand and it cannot be ignored on the ground of being new demand.

9. So far as the arguments of the Counsel for the respondents that western portion was uneven and infertile land and the respondents, by investing huge money and labour made the western portion fertile, is concerned, western portion being of land of low quality was valued at low rate in comparison to eastern portion. In case direction of the chaks of the petitioner and the respondents is changed half of it will still remain with the respondents. On the other hand in case, direction is not changed then the petitioner will be deprived from source of irrigation and chak road for ever. Allegation that the petitioner has source of irrigation from eastern side, being a factual controversy, cannot be decided by this Court for the first time. In view of the aforesaid discussions/writ petition succeeds and is allowed. Order Deputy Director of Consolidation dated 30.10.2014 is set aside. The matter is remanded to Deputy Director of Consolidation to decide the revision of the petitioner afresh in accordance with law as well as observations made above.