
(2013) 12 AHC CK 0027
In the Allahabad High Court
Case No : Writ-B No. 70209 of 2013

Smt. Bala Devi

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 122 RD 213

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

Bench : Single Bench

Advocate : Anil Sharma, for the Appellant; Swarn Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Sri Swarna Kumar Srivastava, has filed caveat on behalf of Deepak Kumar, respondent No. 4, the only contesting respondent in the writ petition. He states that in the circumstances of the case, he does not propose to file any counter affidavit in the matter. Accordingly with the consent of the parties the writ petition is decided finally. The writ petition has been filed against the order of the Deputy Director of Consolidation dated 3.12.2013 by which the revision filed by the petitioner has been dismissed and at the same time in the garb of correcting the shape of chak an area of 0.050 hectare of plot No. 922 has been taken from the chak of the petitioner and allotted in the chak of respondent No. 4.

2. The Counsel for the petitioner submits that the revision has been decided by Deputy Director of Consolidation by order dated 26.2.2007. Thereafter respondent No. 4 filed an application for recall of the order on the ground that by the order dated 26.2.2007 his boring and tubewell were allotted in the chak of the petitioner, accordingly, shape of the chak be corrected so that his boring and tubewell may not be included in the chak of the petitioner. On this application Deputy Director of Consolidation has called for a report from the Assistant Consolidation Officer. The Assistant Consolidation Officer after spot inspection

submitted a report on 19.8.2009 in which the boring of the petitioner was shown in the abadi land and was not included either in the chak of the petitioner or in the chak of respondent No. 4. No objection has been filed against this report of the Assistant Consolidation Officer dated 19.8.2009. However, behind the back of the petitioner, Deputy Director of Consolidation on his oral direction has obtained another report from the subordinate authorities. Behind the back of the petitioner a subsequent report dated 29.11.2013 has been submitted in which boring has been shown in the western and southern corner of chak of respondent No. 4 and on its basis the Deputy Director of Consolidation passed the order dated 3.12.2013 and dismissed the revision of the petitioner and at the same time has deducted an area of 0.050 hectare of plot No. 922 from the chak of the petitioner and allotted in the chak of respondent No. 4.

3. The Counsel for the petitioner submits that the consolidator inspected the spot in presence of the parties and the report was countersigned by Deepak Kumar on 19.8.2009. Deepak Kumar never filed any objection against the report dated 19.8.2009. The Deputy Director of Consolidation has procured a report behind the back of the petitioner in which no spot inspection was made in the presence of the petitioner and passed his order on the basis of this report, which is totally an ex parte report and no opportunity has been given to the petitioner for filing any objection against it. The conduct of the Deputy Director of Consolidation for calling the report on his oral direction behind the back of the petitioner is also mala fide. The judgment which is based upon this ex parte report is liable to be set aside.

4. I have considered the arguments of the Counsel for the parties and examined the record.

5. The perusal of the report dated 19.8.2009 clearly shows that the spot inspection was made in the presence of the parties which was countersigned by the parties. The report dated 29.11.2013 does not indicate that spot inspection was made in the presence of the parties. The report was obtained on the oral direction and the impugned order was passed on 3.12.2013 which shows that the Deputy Director of Consolidation passed the order on extraneous consideration.

6. The Counsel for the respondents submits that the order is not based upon the report dated 29.11.2013. In case the arguments of the Counsel for the respondents is accepted the decision will be against the evidence on record as the report dated 19.8.2009 has been totally ignored in which boring was shown outside the chaks of the parties. In view of the aforesaid discussion, the writ petition succeeds and is allowed. The order of the Deputy Director of Consolidation dated 3.12.2013 is set aside. The matter is remanded to the District Deputy Director of Consolidation, Bijnor who shall decide the application of respondent No. 4 afresh expeditiously, preferably within a period of three months from the date of production of a certified copy of this order before him.