
(1971) 11 AHC CK 0001
In the Allahabad High Court
Case No : C.M. Writ No. 684 of 1969

Smt. Kailaso

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 27-11-1971

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 27(2), 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (1972) 42 AWR 40

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; K.S. Khare and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—These five petitions arise out of the judgments of the Board of Revenue passed in six appeals which arose out of five suits filed by various parties u/s 176 of the UP ZA and LR Act for partition of the holding. The holdings have been the subject matter of consolidation proceedings. After the notification u/s 4 of the UP Consolidation of Holdings Act (hereinafter called the Act), all the holdings belonging to the parties went into the common consolidation pool and "chaks" were carved out in lieu thereof. Motiram, the predecessor-in-interest of the Petitioners (Nepal and others) was allotted a chak in his name. There were other Chaks which were allotted in the name of others who are parties in the various writ petitions. In the suit giving rise to writ petition No. 684 of 1969 Motiram is not a Chakholder. A controversy arose before the Board of Revenue as also before the subordinate courts as to the time at which the rights of the parties were to be determined. According to Motiram and Smt. Kailaso, in these petitions the rights of the parties had been crystallised through the consolidation proceedings and the rights of the parties were finally determined through the allotment of the Chaks to various parties, while according to the other parties the revenue court had a right to go behind the consolidation proceedings and find

out the rights of the parties in respect of the holdings in lieu of which Chaks were finally allotted in consolidation proceedings. The Board of Revenue has accepted the plea that the revenue court can go behind the consolidation proceedings and find out the rights of the parties in the holdings. On that view it has held that the suits were not barred by Section 49 of the Act and that the parties could show that the entries made in the records of rights were erroneous u/s 27(2) of the Act. On this view of law, the Board of Revenue has decreed the suits for partition of all the holdings in dispute treating them as belonging to all those persons who, according to it, had a right in the holdings before the consolidation proceedings started.

2. Once the notification u/s 4 of the Act is published, all the holdings covered by it come under a common consolidation pool. In lieu of the shares of each person whose land is taken into the pool he is allotted land of value equal to the value of land which is taken in the pool. All persons have the right to take part in the proceedings for consolidation and to prove their title in respect of the holdings which go into the common pool. If any person does not choose to raise objections in consolidation proceedings and to establish his title, his right is lost and his remedy to get these rights re-established is barred by Section 49 of the Act. All entries in the record of rights have to be prepared in accordance with the determination in consolidation proceedings and they are presumed to be correct, subject to the condition that they can be shown to be wrong u/s 27(2) of the Act, if they are not in accordance with the Chaks formed in the consolidation proceedings but not otherwise. Finality gets attached to consolidation proceedings and rights are conferred on persons to whom the Chaks are finally allotted. Revenue courts cannot reopen the matter and go behind the consolidation proceedings and redetermine the rights of the parties treating the consolidation proceedings as non est and the allotment of Chaks as of no value. The Board of Revenue has thus committed a manifest error of law in disregarding the consolidation proceedings and the Chaks allotted to the parties in these proceedings and in going behind the same and re-determining the rights of the parties.

3. Learned Counsel for the Respondents contended that justice has been done and hence this Court should not interfere. According to him as the parties did not enter into contest before the consolidation authorities and the revenue courts have held that the Respondents had a right in the plots in dispute, justice must be deemed to have been done. The fallacy, however, lies in the supposition that the revenue courts have made a determination of rights in accordance with law. The determination of rights has, on the contrary been done by the consolidation authorities in accordance with law and the determination made by the revenue courts is without any authority of law. Any finding recorded by the revenue courts cannot therefore be deemed to have decided the rights of the parties in accordance with law. The decision on merits by the Board of Revenue is thus no ground for non-interference.

4. In the result, the petitions are allowed, the judgments of the Board of Revenue which are challenged through these petitions are quashed and a direction is issued to the Board of Revenue to decide the appeals afresh in accordance with law and in the light of the observations made above. The Petitioners will be entitled to one set of costs in all the petitions. Petitions allowed.