

(1991) 09 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16212 of 1991

Smt. Ram Devi

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

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

Citation : (1992) 1 AWC 253 : (1991) RD 488

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : G.N. Varma, for the Appellant;

Judgement

R.R.K. Trivedi, J.—In this petition, counter and rejoinder affidavits have been filed and the Learned Counsel for the parties have agreed that the petition may be disposed of finally at this stage. I have heard Sri G.N. Verma, Learned Counsel for the Petitioner and Sri V.K.S. Chaudary Learned Counsel for Respondent No. 2.

2. Facts giving rise to this petition are that Respondent No. 3 Bijendra Singh chak holder No. 156 filed Revision No. 1470/445 u/s 48 of the T.J.P. Consolidation of Holdings Act, here-in-after referred to as "Act", questioning the order dated 24th December, 1987 passed by Settlement Officer Consolidation by which his chak was altered. This revision was allowed by Respondent No. 1 Deputy Director of Consolidation, Mathura by order dated 28th July, 1990. Respondent No. 1 by his order altered as many as 11 chaks of the village and the chak road and Nali. Respondent No. 2 Naniga filed an application on 30th July, 1990 for recalling the order dated 28th July, 1990 inter alia on the allegations that he was not a party in the revision filed by Respondent No. 3 and he never received any notice of the revision and his chak No. 177 has been altered without hearing him. This application was supported by an affidavit filed by his son Ram Ramveer Singh. Respondent No. 1 by his order dated 9th April, 1991, accepted the grievance of Respondent No. 2 on the finding that he was neither a party in the revision nor

was he served by any notice and the order dated 28th July, 1990 was ex-parte against him. Respondent No. 1 on the same day restored the revision and set aside his order dated 28th July, 1990 partly so far as it affected chak Nos. 117, 232 and 156. Rest of the order was maintained. Some day Respondent No. 1 again decided the revision and allowed the same altering the aforesaid three chaks. It is this order which has been challenged in this writ petition by Petitioner Smt. Ram Devi.

3. Sri G.N. Verma, Learned Counsel for the Petitioner challenged the order on various grounds. He has submitted that the Petitioner Smt. Ram Devi has been deprived her original holding which was allotted to her by Respondent No. 1 under the earlier order dated 28th July, 1990. The submission is that the allotment was in consonance with the Section 19 of the Act. No reasons have been recorded for depriving the Petitioner of her original holding. It has been further submitted by the Learned Counsel that the restoration cannot be legally allowed at the instance of one Respondent against another Respondent. The submission of Sri Verma in other words is that the restoration application of Respondent No. 2 Naniga could not be legally allowed so far Petitioner is concerned as she was also one of the Respondents in revision in which order dated 28th July, 1990 was passed. Lastly it has been submitted that the Respondent No. 2 Naniga was served with a notice and the order was passed after hearing and the restoration application could not be allowed. Sri G.N. Verma has produced before me a certified copy of the notice allegedly served on Respondent No. 2 and a true copy whereof has been filed as Annexure 1 to the rejoinder affidavit.

4. Sri V.K.S. Chaudhary, Learned Counsel appearing for Respondent No. 2, however, submitted that the Petitioner was allotted her chak on plots No. 955/2, 956/3 and 194. None of these plots were from her original holding. Petitioner failed to satisfy that this allotment was ever challenged by her by filing any objection u/s 20 of the Act at any stage. Similarly Respondent No. 2 was allotted chak No. 117 on his original plot No. but it was never challenged at any stage. In revision filed by Respondent No. 3 Bijendra Singh. (son of Petitioner) no grievance was raised against the chak allotted to Respondent No. 2. The submission of Sri Chaudhary is that the order dated 9th April, 1991 has been passed after hearing the parties and Respondent No. 2 has been restored to plots which were allotted in his chak at the stage of Assistant Consolidation Officer. The order is fully justified and no interference is called for. So far as the submission of Learned Counsel for the Petitioner that the notice was served on Respondent No. 2, it has been submitted by Sri Chaudhary that no such allegations has been made in the writ petition and entirely new fact has been alleged for the first time in rejoinder affidavit and the Petitioner cannot be permitted to raise new grounds at this stage. Sri Chaudhary has relied on the finding recorded by Respondent No. 1 that the Respondent No. 2 was not a party in the revision and on record there is no notice issued in his name.

5. I have thoroughly considered the submissions made by both the Learned Counsel. In my opinion, the Respondent No. 1 was not justified in setting aside his order dated 28th July, 1990 in part. As clear from alteration chart annexed to this order as many as 11 chaks were affected by the order and the alteration made were inter-se connected. In fact the order was indivisible and could not be legally set aside in part. It was not that only three chaks of Petitioner and Respondents No. 2 and 3 were affected independently without touching other chaks. The strange result of the course adopted by Respondent No. 1 is that 8 chaks, chak road and Nali have been altered without any rhyme or reason. If it was possible to give relief to Respondent No. 3 by considering alteration of only three chaks, there was no occasion or justification for altering chaks of other tenure-holders. The same revision filed by Respondent No. 3 has been allowed twice firstly by order dated 28-7-90 and then by order dated 9th April, 1991. The changes made by order dated 28th July, 1990 have been made basis for consideration and for passing order dated 9th April, 1991 as clear from the alteration chart, in other words it can be said that Respondent No. 1 has revised allotments made by him under the earlier order. The correct procedure for Respondent No. 1 at the revisional stage should have been to consider the chaks allotted to parties upto the stage of Settlement Officer Consolidation. Thus, in my opinion, the order passed by Respondent No. 1 dated 9th April, 1991 so far it set aside the order dated 28th July, 1990 in part and he allowed the revision of Respondent No. 3 again by order dated 9th April, 1991 suffers from manifest illegality. In view of the facts stated above, as, in my opinion, the order of Respondent No. 1 dated 9th April, 1991 cannot be sustained it is not necessary to examine the other contentions raised by the Learned Counsel. It may be pointed out that in paragraph No. 11 of the writ petition, it has been averred that the entire order dated 28th July, 1990 should have been set aside. In reply in para 23 of the counter affidavit Respondent No. 2 has stated that the entire order of 28th July, 1990 has been set aside. Revision has been decided afresh after hearing of the parties; which is not correct. In the facts and circumstances of the case, in my opinion, it would be proper to send the matter back to Respondent no 1 for deciding the revision again after hearing in the parties concerned including the Respondent No. 2.

6. For the reasons recorded above, this writ petition is allowed in part. The order dated 9th April, 1991 is hereby quashed to the extent it set aside the order dated 28th July, 1990 in respect of chak Nos. 117, 132 and 156 and further alterations made in the aforesaid three chaks. The Respondent No. 1 now shall treat that the whole order dated 28th July 1990 has been set aside and the parties shall stand relegated to the stage that the Revision No. 1470/445 Bijendra Singh v. Shyam Sunder and others shall stand restored to its original number and the Respondent No. 1 shall decide the same afresh in accordance with law after hearing all the parties. Respondent No. 2 shall be treated as a party in the revision and he shall also be heard. There will be no order as to costs.