

(2014) 04 AHC CK 0109
In the Allahabad High Court
Case No : Writ-B No. 16593 of 2014

Sunil Kumar

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 21

Citation : (2014) 123 RD 393

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

Bench : Single Bench

Advocate : Namwar Singh and Sanjiv Singh, Advocate for the Appellant; A.L. Tiwari, Manoj Kumar Yadav and K.K. Mani, Advocate for the Respondent

Judgement

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Ram Surat Ram (Maurya), J.—Heard Sri Namwar Singh, for the petitioners and Sri K.K. Mani, for the respondents. This writ petition has been filed against the orders of Consolidation Officer dated 17.6.2008, Settlement Officer Consolidation dated 15.11.2010 and Deputy Director of Consolidation dated 7.8.2013 and 7.11.2013 in chak allotment proceedings under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute is in respect of allotment of chak on plot 582/1 of village Koirajpur pargana Athgawa, district Varanasi, which is a roadside land. There were several co-sharers in plot No. 582. In the share of the petitioners an area of 0.032 hectare was falling. They executed a sale-deed of this land in favour of Abhay Maha Vidyalaya, Tarna, Varanasi (respondent-5). At the time of preparation of Statement of Principle this land was valued at the rate of 50 paise. No one filed any objection against the determination of valuation of this plot. Thereafter it was allotted in the chak of Salik Ram (respondent-4). The petitioners were proposed three chaks namely first chak was proposed on plots 478 etc. of an area of 0.095 hectare, second chak was proposed on plots 560 etc. of an area of 0.226 hectare and third chak was proposed on plots 520 etc. of an area of 0.180

hectare. The petitioner filed an objection (registered as Case No. 234) under section 21 of the Act for allotment of the chak on plot 582/1. The Consolidation Officer heard the objection of the petitioners and also made spot inspection and found that all the three chaks of the petitioners were allotted either on their original holdings or in the vicinity of the original holdings as such the chak of the petitioners cannot be disturbed. On these findings the objection was dismissed by order dated 17.6.2008.

3. The petitioners filed a time barred appeal (registered as Appeal No. 177/85) along with delay condonation application on 12.5.2010 from the aforesaid order of Consolidation Officer. In the appeal, the petitioners stated that although they had sold the land in dispute to respondents-5 but in a part of it they had constructed one tin shed room and a hut and some portion of it was agricultural land. The transferee of the petitioners have given his consent for allotment of this land in the chak of the petitioners. This plot is a roadside land as such has commercial value and liable to be allotted in the chak of the petitioners. The appeals was heard by Settlement Officer Consolidation, who by order dated 15.11.2010, found that although there was one tin shed room in the land in dispute but this construction was not raised with previous permission of Settlement Officer Consolidation. The petitioners had already sold the land in dispute as such it was no more their original holdings. There was nothing on record to show that respondent-5 had given consent for allotment of chak to the petitioners on this plot. Plot 584 was original holdings of respondent-4 as such he was rightly allotted chak on plot 584 taking some area of 582/1 also. The petitioners were allotted three chaks either on their original holdings or in the vicinity of the original holdings as it was not appropriate to allot a fourth chak to the petitioners. On these findings the appeals was dismissed by order dated 15.11.2010.

4. The petitioners filed a revision (registered as Revision No. 376/86/159) from the aforesaid orders. In the revision, the petitioners filed an application on behalf of respondent-5 giving consent for allotment of chak to the petitioners on plot 582/1. The revision was heard by Deputy Director of Consolidation, who by order dated 7.8.2013 held that plot 582/1 was not recorded as the original holdings of the petitioners. The petitioners were rightly allotted chaks either on their original holdings or in the vicinity of the original holdings as it was not appropriate to allot a fourth chak to the petitioners. On these findings the revision was dismissed. The petitioners filed an application for recall of the order dated 7.8.2013, which was rejected by order dated 26.11.2013. Hence this writ petition has been filed.

5. The Counsel for the petitioners submitted that plot 582/1 was the roadside land of commercial value. The petitioners have also raised constructions in this plot. In CH Form-2-A, it was found as not suitable for consolidation and noted in it. The right of the petitioners to claim a chak on this plot is not affected as the sale-deed was a pendente lite transfer. The transferee has also given his consent

for allotment of this land in the chak of the petitioners. Respondents-1 to 3 have illegally not considered the demand of the petitioners. The Consolidation Commissioner U.P. has issued a Circulars for allotment of roadside land in the chak of the original tenure holders. This Court also in Ram Adhar Singh and Another Vs. Deputy Director of Consolidation and Others, and Nandu Vs. Deputy Director of Consolidation and Others, held that roadside land having commercial value was liable to be allotted in the chak of the original tenure holders. The orders of consolidation authorities are contrary to principles laid down by this Court and are liable to be set aside.

6. I have considered the arguments of the Counsel for the parties and examined the record. The Deputy Director of Consolidation specifically recorded a findings that plot 582/1 was not recorded as the original holding of the petitioners in CH Form-23. The petitioners did not disclose the date of sale-deed executed by them nor filed CH Form 23 to rebut the findings of fact recorded in this respect. As such arguments of the Counsel for the petitioners that right of the petitioners to claim a chak on this plot is not affected as the sale-deed was a pendente lite transfer cannot be accepted.

7. So far as the arguments that the petitioners have construction over the land in dispute is concerned, a perusal of CH Form-2-A shows that there was no construction at the time of partial. This plot was valued at the rate of 50 paisa and some portion of this plot was taken for making chak road. Thus when the consolidation was started there was no construction. Settlement Officer Consolidation found that the construction was not raised with previous permission of Settlement Officer Consolidation. As such the petitioners cannot claim any benefit of this construction.

8. The petitioners had already sold the land in dispute as such it was no more their original holdings. There was nothing on record to show that respondents had given consent for allotment of chak to the petitioners on this plot at the initial stage. The alleged consent given before Deputy Director of Consolidation after confirmation of the chaks was meaningless. The Counsel for the petitioners argued that this plot was included in the sale-deed due to mistake although it was not sold by the petitioners. This arguments cannot be accepted as mistake in a registered sale-deed can only be corrected by a registered rectification deed. The application filed by the Manager of respondent-5 cannot be taken as rectification deed. Plot 582/1 was not the original holdings of the petitioners at the time of carving of the chaks as such they cannot claim chak as of right over this plot. Plot 584 was original holdings of respondent-4 as such he was rightly allotted chak on plot 584 taking some area of 582/1 also. In view of the aforesaid discussions, orders of consolidation authorities do not suffer from any illegality. The writ petition has no merit and is dismissed.