

(1994) 02 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12327 of 1988

Tara Chand and Others

APPELLANT

Vs

Assistant Director of Consolidation and Another

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1), 20

Citation : (1994) 1 AWC 558 : (1994) RD 286

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : Pushkar Narain Khare, for the Appellant; V.C. Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Misra, J.—By means of the present writ petition, the Petitioners challenge the order of the Deputy Director of Consolidation dated 29-4-1988 in proceedings u/s 20 of the U.P. Consolidation of Holdings Act.

2. In proceedings u/s 20 of the U.P. Consolidation of Holdings Act, Assistance Consolidation Officer proposed a chak. Objection was filed by Horam Singh for allotting a chak on plot No. 625, is largest holding. The objection was partly allowed by the Consolidation Officer. Thereupon, Horam Singh died. The Petitioners are three sons of late Horam Singh. In revision, at the instance of Respondent no 2, the Deputy Director of Consolidation made certain changes and a portion of plot No. 625 has been included in the chak of Respondent No. 2. It is against this order that the Petitioners have come before this Court by means of present writ petition.

3. Sri P. N. Khare learned counsel for the Petitioners vehemently urged that Horam Singh was having his largest holding on plot No. 625, in which there exists a tube well. A major portion of plot No. 625 has been taken away and has been allotted to the Respondent No. 2. Moreover the second chak allotted to the

deceased Horam Singh is more than 1 1/2 kilometers away from the original holding, namely, plot No. 625 and there is no source of irrigation as well. Thus, the impugned order is erroneous on the face of it as it takes away the right of irrigation and has been passed in clear contravention of the provision of section 19(1)(f) of the U.P. Consolidation of Holdings Act.

4. On the other hand, Sri V. C. Misra, Senior Advocate and counsel for the Respondent No. 2 defended the order by contending that the tube well standing on plot No. 625 has either been allotted to Horam Singh or to his three sons, who are separate chak holders. A very, negligible portion of plot No. 625 has been allotted to the Respondent No. 2. So far as distance is concerned, the second chak allotted to the Petitioner is hardly two furlong away from the original holding and the plea that the same is 1 1/2 kms. away is wrong.

5. Having heard and considered the submissions put forward by S/Sri Khare and Misra and, gone through the judgment and orders available on record, I am of the view that no error could be pointed out by the learned counsel for the Petitioner, which may call for interference in the writ jurisdiction. In the matter of allotment of chak certain principles have been laid down, and according to those principles, efforts should be made to allot chak to a tenure holder on original holding near his original holding and near the source of irrigation. In the present case, on the own showing of the Petitioners, admittedly they have been allotted a chak on their largest holding, namely, plot No. 625. The point to be considered here is that as to whether the whole area of plot No. 625 should have been allotted to the Petitioner, or, inclusion of some of its part in the chak of Respondent No. 2 is reasonable. Well is standing on the area which has been allotted either to Horam Singh or to his sons. If the tube well stands either on the plot of Horam Singh or his sons, there should be no grievance for the Petitioners. The objection of the Petitioners in regard to distance of second chak has been disputed by the Respondent No. 2. However, this is a factual aspect and this Court cannot be called upon to decide the same.

6. In the matter of allotment of chaks, the Authority assigned with the job of allotment, cannot satisfy each and every tenure holder as one is bound to suffer some inconveniences. But, at the same time, it is incumbent on the part of the authorities to ensure that each tenure holder must get a plot on, or near original holding and near the source of irrigation. In the present case, it is clear that one chak has been allotted to Horam Singh on his original holding, i.e., plot No. 625. So far as the other chak, which is alleged to be at a distance of 1 1/2 kms. and which fact is disputed by Respondent, is concerned, this being a matter of fact, I am not inclined to interfere in the writ jurisdiction. Moreover, it is not a case of the Petitioners that where he has been allotted the chak, it is not the original holding.

7. Before parting with, it is made clear that in case the Petitioner has not been allotted the chak on plot No. 625, where he has got his tube well, or, in other words, the tube well existing in plot No. 625 has not been included in the chak of

Horam Singh or the Petitioners, it will be open for. them to approach the Deputy Director of Consolidation for allotting the tube well in their chak and irrespective of the fact that I have not interfered with the impugned order on the assumption that tube well existing on plot No. 625, has been allotted either to Horam Singh or his sons, the Deputy Director of Consolidation will consider their grievance and act in accordance with law. In that event, this judgment will not stand as a bar in their way.

8. In the result, the writ petition fails and is disposed of in the light of observations made above. Parties shall bear their own costs.