

(2014) 09 AHC CK 0170
In the Allahabad High Court
Case No : Consolidation No. 105 of 2011

Triveni Prasad Dixit

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19

Citation : (2014) 125 RD 319

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

Bench : Single Bench

Advocate : R.R. Upadhyay and Nasir, Advocate for the Appellant; D.C. Singh, Lakshman Singh, R.N. Gupta and Ram Kumar, Advocate for the Respondent

Judgement

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Ram Surat Ram (Maurya), J.—Heard Sri R.R. Upadhyay for the petitioner and Sri Lakshman Singh for the contesting respondents. The writ petition has been filed against the order of Deputy Director of Consolidation dated 26.11.2010 and 18.7.2009 passed in chak allotment matters in U.P. Consolidation of Holdings Act.

2. The dispute between the parties is in respect of allotment of chak on plot No. 824 which is neither the original holding of the petitioner nor the original holding of the contesting respondents. The petitioner states that plot No. 827 was his original holding and by the order of Deputy Director of Consolidation dated 18.2.2006 plot No. 824 was left as bachat land. He submits that as the second chak was allotted to him on plot No. 1081 which is at the distance of about 2 kms. of his first chak on plot No. 827 since the chak is adjacent to plot No. 824 which was lying as bachat land. The petitioner filed a revision before Deputy Director of Consolidation demanding for allotment of plot No. 824 in his chak and deleting his chak on plot No. 1081. The revision filed by the petitioner was allowed by the order dated 25.6.2009.

3. In chak allotment matter Brijesh Kumar and Dev Sharma filed a revision i.e.

Revision No. 183/51 and another revision was filed by Jagdish Shankar, respondent-5 i.e. Revision No. 182/50. Both the revisions were consolidated and allowed by the Deputy Director of Consolidation on the basis of compromise between the parties by the order dated 18.2.2006 and due to this order plot No. 824 which was earlier allotted in the chak of respondents-3 and 4 was left as a chak. Thereafter Jagdish Shankar, respondent-5 moved a recall application for recalling the order of Deputy Director of Consolidation passed in the aforesaid revisions. The recall application was allowed by Deputy Director of Consolidation by the order dated 18.7.2009. When the revisions were restored then Brijesh Kumar filed an application for dismissing the revision as withdrawn. As during this period plot No. 824 was allotted in the chak of the petitioner, the petitioner filed an objection in the recall application and prayed as the new right has been accrued to the petitioner as such withdrawal application cannot be allowed. However, the Deputy Director of Consolidation rejected the objection of the petitioner by the order dated 26.11.2010 and allowed the withdrawal application and dismissed both the revisions as withdrawn although there was no withdrawal application on behalf of Jagdish Shankar. The Counsel for the petitioner submits that earlier plot No. 824 was allotted in the chak of Brijesh Kumar and Dev Sharma in pursuance of the order of Deputy Director of Consolidation dated 18.2.2006 this plot was left as bachat land and thereafter it was allotted in the chak of the petitioner by the order dated 25.6.2009. He submits that the effect of the order of Deputy Director of Consolidation dated 26.11.2010 is that the chak of Brijesh Kumar and Dev Sharma of the stage of Settlement Officer Consolidation, is restored. He submits that plot No. 824 has been left as bachat land by order dated 18.2.2006 and thereafter it was allotted to the petitioner on 25.6.2009. Now position of the stage of Settlement Officer Consolidation in respect of the chaks of Brijesh Kumar and Dev Sharma could not have been restored but the Deputy Director of Consolidation has illegally not considered the objection of the petitioner. He further submits that plot No. 824 was not the original holding of Brijesh Kumar and Dev Sharma therefore they cannot claim this plot as of right under section 19 of U.P. Consolidation of Holdings Act.

4. I have considered the arguments of the Counsel for the parties and examined the record. Supreme Court in *Sneh Gupta Vs. Devi Sarup and Others*, held that when right has accrued to any party on the basis of decree of Trial Court the Appellate Court should not permit to withdrawal of the appeal and suit. As chak of the respondents 3 and 4 of the stage of Settlement Officer, Consolidation has already been disturbed by the order dated 18.2.2006, Deputy Director of Consolidation has to make fresh adjustment and allotment to them. Subordinate authority cannot make any adjustment after the order of Deputy Director of Consolidation. In the results the writ petition succeeds and is allowed. The orders of Deputy Director of Consolidation dated 26.11.2010 and 18.7.2009 are set aside. The matter is remanded to the Deputy Director of Consolidation, who shall decide the revisions of respondents-3 to 5 afresh after hearing the parties concerned in accordance with law.