

(2011) 04 AHC CK 0307

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 24714 of 2011

Chandra Man @ Chandra Mani

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 21, 44A, 48

Citation: (2011) 6 ADJ 395 : (2011) 6 AWC 6524

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A.P. Sahi, J.

Heard learned Counsel for the Petitioner and Sri A.K. Dwivedi assisted by Sri Mahendra Singh learned Counsel for the Respondent No. 3 and the learned standing counsel for the Respondent Nos. 1 and 2.

2. This is a chak allotment matter in a proceeding arising out of Section 21 of the U.P.C.H. Act, 1953.

3. Learned Counsel for the Respondent No. 3 states that he does not propose to file any counter-affidavit at this stage and the matter may be disposed of finally on the basis of the records that are available.

4. The contention of the Petitioner is that he is a co-tenure holder of the original holding over plot Nos. 709, 710 and 711. His share therein is 1/9th. The dispute in the present writ petition is confined to the road side land of plot No. 711. The Petitioner contends that the total area of plot No. 711 is 206 acres .The Petitioner has 1/9th share in it. The proposal and allotment in favour of the Petitioner went to the extent of 45 acres .

5. One Arvind Kumar filed an appeal claiming that he has no passage to reach his plot No. 707 and accordingly some adjustments should be made in order to provide a chak road for him. This appeal came to be allowed and while doing so the appellate authority directly affected the allotment of the Petitioner over plot No. 711 and reduced the entire area that was allotted to him again relocating the land. While doing so the allotment over plot No. 711 went in favour of chak holder No. 423 who is the Respondent No. 3 herein. Aggrieved the Petitioner filed a revision which has been dismissed holding that it is not maintainable and even otherwise the Petitioner has been allotted his land over his original holding as such no prejudice is caused.

6. Learned Counsel for the Petitioner submits that the findings are perverse inasmuch as the prejudice which is being caused is that the Petitioner has been deprived of his holding over roadside land. This aspect of the matter has been ignored and the revision was very much maintainable as the Petitioner was directly affected.

7. Sri Mahendra Singh learned Counsel for the opposite party No. 3 submits that the order passed in the proceedings u/s 21 are final and therefore the revision was not maintainable and since the Petitioner has been allotted land over his original holding the Deputy Director of Consolidation has rightly refused to interfere in the matter

8. The provisions of Section 48 of the U.P.C.H. Act encompass within itself the orders passed by the authorities subordinate to the Deputy Director of Consolidation which can even otherwise be exercised suo motu keeping in view Section 44-A of the 1953 Act. The Deputy Director of Consolidation has therefore been conferred with such powers to entertain the revision in such matters and hence the objection on this ground that the revision was not maintainable is misconceived and is rejected.

9. So far as the merits of the claim of the Petitioner is concerned, it is settled law that coo-tenure holder having his holding over a plot besides the road is entitled to retain the same. The said position has not been successfully disputed before this Court and on the contrary the Petitioner is admittedly a co-tenure holder of plot No. 711. This being the position and further that plot No. 711 is situate besides the road, the Petitioner is entitled to his share therein.

10. The Deputy Director of Consolidation has erred in ignoring the aforesaid aspects of the matter and hence the order impugned dated 11.2.2011 is vitiated. The same order deserves to be set aside on both counts. It is accordingly quashed. The Deputy Director of Consolidation shall decide the matter afresh in the light of the observations made herein above as expeditiously as possible but not later than 3 months from today.

11. The writ petition is allowed. No order as to costs.