

(2013) 05 AHC CK 0338**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 13372 of 1996

Asraf Hussain

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision: May 17, 2013**Citation:** (2013) 9 ADJ 280**Hon'ble Judges:** Ram Surat Ram (Maurya), J**Bench:** Single Bench**Advocate:** P.K. Singh, R.K. Rai, V.P. Rai and Rakesh Pandey, for the Appellant; Anup Mishra, S.C. Babu Lal Ram, Narendra Kumar, Rajeshwar Singh, Shailendra Prakash, Sunil Kumar Srivastav and V. Choubey, for the Respondent**Final Decision:** Dismissed

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri. Rakesh Pandey for the petitioner and Sri. Rajeshwar Singh for respondents. The writ petition has been filed for quashing the order of Deputy Director of Consolidation, Moradabad dated 22.2.1996, passed in Revision No. 586, Dharam Singh v. Asraf Hussain, in chak allotment proceedings under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

2. Plot No. 189/3 (area 0.434 hectare) and 189/4 (area 0.100 hectare) of village Pali, pargana Sambhal, district Moradabad were the original holding of Dharam Singh (respondent-4), chak holder No. 134 and plot No. 276/2 (area 1.655 hectare) was the original holding of Asraf Hussain (the petitioner) chak holder No. 183. Assistant Consolidation Officer proposed a chak to the petitioner on plot Nos. 183, 189/1, 189/2, 189/3 and 189/4 (total area 1.816 hectare). It may be mentioned that initially plot No. 189/2 (area 0.139 hectare) and plot No. 189/4 (area 0.100 hectare) were left as a chak and valuation of these plots was not fixed at the stage of Section 8 of the Act. Dharam Singh (respondent-4) filed an objection on 21.9.1991, u/s 20 of the Act against his second proposed chak on plot No. 276/2, claiming his chak on plot No. 189/3 etc., stating therein that plot No. 189/3 and 189/4 were his original holdings

where he had his abadi and "samadhi" of his father-in-law on which the petitioner was allotted an "uran" chak and he was allotted an "uran" chak on plot No. 276/2. The objection of respondent-4 was heard by the Consolidation Officer alongwith other objections of the village, who by order dated 20.5.1992 dismissed the objection without considering his grievances. Respondent-4 filed two appeals (registered as Appeal Nos. 2595 and 2596) from the aforesaid order. The appeals were heard by Settlement Officer Consolidation, Moradabad, who by dated 22.10.1992 dismissed the appeals. Respondent-4 filed a revision (registered as Revision No. 1793 of 1993) from the aforesaid order. The revision was heard by Deputy Director of Consolidation, Moradabad, who directed the Assistant Consolidation Officer to make spot inspection and submit report. Assistant Consolidation Officer after spot inspection submitted his report dated 6.3.1993. The revision was heard thereafter by respondent-1, who by order dated 20.3.1993 allowed the revision and remanded the case to Settlement Officer Consolidation to pass a fresh order after giving opportunity of hearing to the parties and making spot inspection.

3. After remand, the appeal was transferred to the Court of Settlement Officer Consolidation Nainital (Camp Rampur) who also made spot inspection on 12.12.1994 and allowed the parties to lead their evidence. Thereafter the appeal was heard by Settlement Officer Consolidation Nainital (Camp Rampur), who by order dated 20.12.1994 held that Assistant Consolidation Officer had carved out the chaks of the parties on the basis of compromise as has been proved by the affidavits of Shyam Lal and Ganga Ram, and also the fact relating to the compromise had been mentioned in the order of Assistant Consolidation Officer but had not been challenged by respondent-4 in the memorandum of appeal or the revision; although the original compromise was not on record but respondent-4 had cleverly got it removed from the record; plot No. 189 was not the largest original holding of respondent-4 as such there was not illegality in proposed chak of respondent-4. On these findings the appeal was dismissed by order dated 20.12.1994. Respondent-4 then filed a revision (registered as Revision No. 586) from the aforesaid order which has been allowed by respondent-1 by order dated 22.2.1996 and respondent -4 was allotted a chak on his original holding on plot No. 189/3 and the petitioner was allotted a chak on plot No. 276/2. This order is challenged in this writ petition.

4. The counsel for the petitioner submitted that before Assistant Consolidation Officer, Asraf Hussain (petitioner), Dharam Singh (respondent-4), Ram Pal who was original tenure holder of plot Nos. 189/1 and 189/2 and Shyam Lal who was original tenure holder of plot No. 183 entered into a written compromise which was countersigned by Ganga Ram and Tika Ram, members of the Consolidation Committee. The petitioner has only one plot No. 276/2, in his original holding but on the basis of this compromise he was allotted one chak on plot No. 183 etc. and Respondent-4, Ram Pal and Shyam Lal were allotted chaks on his original holding of plot No. 276/2. This compromise was not challenged by respondent-4 in the

memorandum of appeal and revision in the previous round of litigation nor it was challenged by Ram Pal and Shyam Lal. For the first time, respondent-4 began to challenge it, in the previous revision as such after remand affidavits of Shyam Lal and Ganga Ram were filed to prove the compromise. Settlement Officer, Consolidation has specifically recorded a finding of fact that respondent-4 had not challenged the compromise in the memorandum of appeal or revision which had been mentioned in the order of Assistant Consolidation Officer,; although the original compromise was not on record but respondent-4 cleverly got it removed from the record. He further submitted that the allegation of respondent-4 that plot No. 189 was the land of better quality, is false. The petitioner has filed revenue records showing the quality of the various plots from which it was proved that plot No. 276 belonging to the petitioner was of better quality than plot No. 189. Settlement Officer Consolidation during spot inspection did not find any "kachhiyana" crop over plot No. 189. Plot No. 189 was not the largest original holding of respondent-4 as such there was no illegality in proposed "uran" chak on plot No. 276/2 to respondent-4 as all the chak cannot be allotted on the original holding. The petitioner, who had only one compact holding, has been uprooted on the basis of compromise by respondent-4 and his co-sharers, in case the compromise is disregarded, then number of chaks of the petitioner will become two; if the chak of the petitioner as proposed on plot No. 189 etc is disturbed, then his entire original area of plot No. 276/2 be restored to him, otherwise grave and irreparable loss will occur to the petitioner.

5. I have considered the arguments of the parties and examined the record. The first question arise for consideration is as to whether the chaks of the petitioner and respondent-4 were carved out on the basis of compromise. Section- 19A(1) of the Act provides that Assistant Consolidation Officer shall in consultation with Consolidation Committee prepare the provisional consolidation scheme in the prescribed form. Rule-48-B provides that proposal for the consolidation of holdings as contained in the extract shall be explained to the tenure holders by Consolidation Lekhpal and Consolidator. Section 20 provides for filing of the objection against the proposed consolidation scheme. Section 21 requires Assistant Consolidation Officer to refer such objections to the Consolidation Officer for disposal. Thus there no provision like Section 9A(1) of the Act, which authorizes the Assistant Consolidation Officer to make conciliation between the parties or the provision like Rule 25-A, which provides for recording the terms of conciliation in the prescribed register and take signature of the parties entering into the compromise and members of the Consolidation Committee on it. There was no occasion for Assistant Consolidation Officer to take any compromise at the stage of preparation of the provisional consolidation scheme. Even for the sake of argument if it is accepted that the parties have entered into a compromise before Assistant Consolidation Officer, then also there is no provision to keep the compromise on record or pass any order on its basis by Assistant Consolidation Officer.

6. Findings of Settlement Officer Consolidation that Assistant Consolidation Officer has mentioned about the compromise in his order but has not been challenged by respondent-4 in the memorandum of appeal or the revision and although the original compromise was not on record but respondent-4 had cleverly got it removed from the record, are based upon conjectures and surmises as at no stage in chak carvation proceedings Assistant Consolidation Officer is required/authorised to pass any order nor there is any such order. He does not maintain any record of provisional consolidation scheme except prescribed form CH-23. It was never the case of the petitioner that he had filed the original compromise before any consolidation authority thus on what basis it has been held that respondent-4 had removed the compromise from the record. So far as the affidavits of Shyam Lal and Ganga Ram are concerned these affidavits are collusive and no reliance can be placed on it. The various facts mentioned in the affidavits were contrary to the prescribed procedure for preparation of the provisional consolidation scheme and apparently false. The facts stated therein were not liable to be believed.

7. A perusal of the order of Consolidation Officer shows that he had not considered anything, he even had not referred the grievances of respondent-4 in his order, while Settlement Officer Consolidation in his previous order dated 22.10.1992 relied upon the so called information of the Pradhan about the compromise without recording his statement as such at the most for the first time reference of alleged compromise has come in the order dated 22.10.1992. Even at that stage also the alleged photostat copy of the compromise was not on record as such no adverse inference can be drawn for the reason that respondent-4 has not raised any objection in his memorandum of appeal and revision on earlier occasion in respect of the alleged compromise as it was not on record by that time.

8. Now the question arise as to whether plot No. 276/2 was of better quality of land. The petitioner has filed extract of revenue record of the year of previous settlement which were more than 50 years old. Settlement Officer Consolidation has not placed any reliance on it while Deputy Director of Consolidation has given cogent reasons for not placing reliance on it. The case of respondent-4 that fertility of the land has been changed during this period is not liable to be disbelieved.

9. After remand, Settlement Officer Consolidation has dismissed the appeal for the reasons that respondent-4 had entered into compromise at the stage of Assistant Consolidation Officer and plot No. 189/3 was not the largest original holding of respondent-4 as such "uran" chak to him on plot No. 276/2 was justified. The main grievances of respondent-4 as raised in the objection as well as in the appeal were not considered. Plot No. 189/2 and 189/4 were not valued at the stage of Section 8 of the Act and these plots were left as a chak. No one has filed any objection against the statement of principle. How and in what manner these plots were included in consolidation area. Assistant Consolidation Officer was required to record specific order in this respect. As stated above that there is no order except the provisional

consolidation scheme in CH Form-23. Thus the extraneous procedure was adopted by Assistant Consolidation Officer shows a grave shadow of doubt upon his conduct. Although Settlement Officer Consolidation made spot inspection but has not based his order on the facts collected during spot inspection.

10. By the impugned order, Deputy Director of Consolidation allotted chak to respondent-4 on his original holdings and the petitioner on his original holding in accordance with the provisions of Section 19A of the Act as such no illegality can be found in it. So far as the arguments of the counsel for the petitioner that in case he is reverted on his original holding then entire area of his original plot be restored in his chak cannot be considered at this stage as the petitioner has not impleaded the other person in whose chak his original holdings has been allotted in the writ petition as such their chaks cannot be disturbed. In view of the aforesaid discussion I do not find any illegality in the order of respondent-1. The writ petition has no merit and is dismissed.