Bechu Vs Deputy Director of Consolidation and Others

Civil Miscellaneous Writ Petition No. 10971 of 2004

Court: Allahabad High Court

Date of Decision: July 3, 2012

Acts Referred:
Constitution of India, 1950 â€" Article 21

Citation: (2012) 7 ADJ 456

Hon'ble Judges: P.K.S. Baghel, J

Bench: Single Bench

Advocate: Triveni Shanker and Ajay Shanker, for the Appellant; A.K. Singh, Anuj Kumar, Pradeep Kumar and Sunil Kumar Singh, for the Respondent

Final Decision: Allowed

Judgement

Hon"ble P.K.S. Baghel, J.
The petitioner, Bechu, is a small tenure-holder. His total holding is only about 3 bigha of agricultural land. He is

aggrieved by the order of the Deputy Director of Consolidation, the first respondent herein. The respondent without hearing him has disturbed his

Chak. The present dispute arose in the following circumstances.

2. The petitioner"s village Sikhari, Tehsil Saidpur Jakhnia, district Ghazipur was brought under the Notification u/s 4 of the Consolidation of

Holding Act, 1953. The petitioner is a Chak holder No. 322. His original holding was compromised of Plot No. 632 (area 1 bigha 19 biswa 4

dhur) Plot No. 662 (area 1 bigha 5 biswa and 17 dhur). The Assistant Consolidation Officer had made the proposals for various Chak holders of

the village including the petitioner. A large number of objections were filed by the tenure-holders of the area against the proposals made by the

Assistant Consolidation Officer. The Consolidation Officer disposed of the various objections of different Chak holders vide order dated

30.12.1992.

3. The Consolidation Officer allotted the petitioner a Chak which was comprised of most of his original holdings. The plot No. 632 was allotted to

him alongwith part of Plot Nos. 630; 635; 636; 637; 638; 663 and 664. The petitioner was completely satisfied with the allotment of his Chaks as

he got a compact Chak at his original holdings. Therefore, he did not prefer any appeal against the order of the Consolidation Officer dated

30.12.1992.

4. It is noteworthy, against order dated 30.12.1992 passed by the Consolidation Officer, no appeal was filed by the opposite parties herein.

Therefore, said order attained finality as petitioner was concerned.

5. The Assistant Consolidation Officer proposed 2 Chaks to respondent No. 3 Bhola and Ram Das respondent Nos. 3 and 4 respectively who

are Chak holder No. 347. The Consolidation Officer by the common order dated 30.12.1992 changed the proposed Chak to respondent No. 3

Bhola and respondent No. 4 Ram Das and allotted first Chak at Plot No. 673,675 and Second Chak was allotted at Plot Nos. 668, 669, 670,

671, and 692. they were also allotted major chunk of their original holding Plot Nos. 673, 669 and 692.

6. The respondent Nos. 5, 6 and 7 herein namely Prabhunath, Bhirgu Nath and Chandrika, original Chak holders of Plot No. 220 were allotted

Chak Nos. 686/3 and 686/4 by the Consolidation Officer. They also did not file any appeal against the allotment of the petitioner''s Chak. As they

were not aggrieved/affected by the allotment of the petitioner''s Chak. However the said respondent i.e. 5, 6 and 7 Prabhunath, Bhirgu Nath and

Chandrika holders of Plot No. 220 filed Appeal No. 328 and in the said appeal they did not implead the petitioner as respondent for the reasons

that they were not aggrieved by the order of the Consolidation Officer in respect of the allotment of the petitioner''s Chak.

7. The Settlement Officer vide his order dated 6.5.2002 dismissed the appeal of the respondent Nos. 5, 6, and 7 on the merit after hearing them.

A perusal of the order of the Assistant Consolidation Officer would indicate that the respondent Nos. 5, 6 and 7 had raised their grievance with

regard to their demand of Plot No. 686 only. However, the SOC did not accede their request for the allotment of the said Chak and their appeal

was dismissed.

8. Dis-satisfied with the order of the SOC dated 23.10.2002 the respondent Nos. 5, 6 and 7 and Smt. Abhiraji wife of Respondent No. 5 filed

revision before the respondent No. 1 the Deputy Director of Consolidation. A memo of revision has been annexed as Annexure-6 to the writ

petition. From the perusal of the memo of Revision it is evident that the petitioner was not impleaded as a party in the revision. Moreover, in the

ground of revision also their demand was confined to the Plot No. 670. It is also evident that the main grievance of the respondent Nos. 5, 6 and 7

was in respect of their Plot No. 670 which they claimed their original holding. From the perusal of the grounds it is also emerges that there is not

even reference of the petitioner as he was not aggrieved by the allotment of the Chaks to the petitioner at the consolidation level.

9. The Deputy Director of Consolidation by the impugned order dated 12th September, 2002 allowed the revision and has changed the Chak of

the respondent No. 5, 6 and 7 herein. The petitioner is aggrieved by the said order.

10. Heard Sri Triveni Shanker Learned Counsel for the petitioner and Sri Pradeep. Kumar Singh Learned Counsel for the respondents.

11. Sri Triveni Shanker, Learned Counsel has submitted that the order of the Deputy Director of Consolidation is ex facie bad and has been

passed without affording any opportunity to the petitioner. He has further urged that respondent Nos. 5, 6 and 7 herein has not even impleaded the

petitioner in their revision and no notice was served to the petitioner even then the Deputy Director of Consolidation has allowed their revision

whereby petitioner"s Chak has been modified, which has caused serious prejudice to him.

12. Consequently, the said order had adversely affected the holding of the petitioner. On this ground alone the order of the Deputy Director of

Consolidation is liable to be quashed. Learned Counsel for the petitioner has drawn the Court"s attention to the paragraph 26 of the writ petition

wherein it has been categorically stated that petitioner was not made party in appeal or revision and no opportunity was afforded to him. Paragraph

26 of the writ petition for the sake of convenience is set out below :

26. That neither petitioner was made party in appeal, revision or restoration nor opportunity of hearing was given to him as such order of Deputy

Director of Consolidation is wholly without jurisdiction, illegal and is liable to be quashed.

The contesting respondent Nos. 5, 6 and 7 has filed their counter-affidavit. The said paragraph of the writ petition has been replied in the following

manner:

11. That in reply to contents of paras 23, 24, 25, 26 and 27 of the writ petition, it is submitted that order passed by Deputy Director of

Consolidation is apparently illegal and without jurisdiction, he has no power of review.

13. The respondent Nos. 3 and 4 have also filed their separate counter-affidavit. The said paragraph has not been replied in paragraph 19 of the

counter-affidavit and totally evasive reply has been given to paragraphs 23, 24, 25 and 26 in one paragraph.

Learned Counsel for the contesting respondent has submitted that the Deputy Director of Consolidation has done a substantial justice, however, he

made a feeble attempt to justify the order with regard to the opportunity of hearing to the petitioner.

14. I have considered the submissions advanced by the Learned Counsel for the parties. It is a common ground that against the order of the

Consolidation Officer dated 30.12.1992 no appeal was filed against the petitioner. In the appeal respondent Nos. 5, 6 and 7 had raised their

grievance only in respect of Gata No. 686. The order of Settlement Officer Consolidation was passed after hearing both the parties on merit. The

said appeal was filed by the respondent Nos. 5, 6 and 7 against Sita and others. Thereafter, a restoration application was also filed against the

order dated 6.5.2002 which has also been rejected by means of order dated 23.10.2002. However, before the Deputy Director of Consolidation

the respondent Nos. 5, 6 and 7 had incorrectly stated that the order of the Settlement Officer Consolidation was ex parte and they were not heard.

From the perusal of the order of the Settlement Officer, Consolidation it is manifestly clear that the said order was passed on merit and after

hearing them and not ex parte.

15. Be that as it may, the respondent Nos. 5, 6 and 7 herein did not implead the petitioner m their revision and no notice was served to them, as

such the order of the Deputy Director of Consolidation is vitiated on the ground of the denial of the opportunity to the petitioner as by the said

order the petitioner"s Chak has been adversely affected.

16. The main object of The Uttar Pradesh Consolidation of Holdings Act, 1953" is for consolidation of the agricultural holding. To meet the said

objective a detailed Scheme is provided in the Act and the Rules so a tenure-holder may be allotted a compact area in lieu of scattered plots. this

Court in the case of Awadh Narain v. Deputy Director of Consolidation/A.D.M. and others (Writ-B No. 24414 of 2012) has dealt with the said

aspect. A relevant part of the order is extracted herein below;-

A perusal of the Scheme of Consolidation Holding Act, 1953 would show that the various Sections like, 7, 8, 8-A, 9, 9-A, 9-B, 9-C, 10, 19, 19-

A and 20 are designed to ensure that the tenure-holder may have his compact holdings and certain basic guidelines have been laid down to meet

the said objective. In case the Scheme provided under the Act and rule are not followed, it has a consequence of enormous practical implications

and it results in undue hardship to the marginal farmers, whose small holdings are fragmented. The unwise and mechanical approach of the

consolidation authorities adversely affects the livelihood of the marginal farmers whose only source of livelihood is their small holdings. Therefore,

any casual approach by the consolidation authorities affect the livelihood of a farmer and it violates Article 21 of the Constitution.

17. The Court finds that there are large number of writ petitions relating to allotment of Chaks are pending in this Court. A marginal/ small farmers

are made to suffer on account of the blase approach of the Consolidation Authorities. In case of a small farmer, if his holdings are fragmented and

scattered it becomes unmanageable, a farmer cannot afford several source of irrigation at each of his scattered holdings/chaks. The net result is low

yield of his crops. Therefore the main object of the Consolidation of Holding act, 1953 is got frustrated and defeated. In case of most of the

farmers their holdings are only source of their livelihood. In several part of the country the farmers are committing suicide for multiple reasons. One

of the reason is rising cost of inputs such as fertilizers, seeds and pesticides etc.

18. The Supreme Court has taken note of pitiable condition of farmers, a stray observations made by the Supreme Court in the case of Indian

Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , are relevant. The Supreme Court noted as follow:

50.....Large -scale suicides by farmers in several parts of the country also show the level of unemployment. These are the social and economic

realities of the country which cannot be ignored.

In another case the Supreme Court in Raghbir Singh Sehrawat Vs. State of Haryana and Others, , has highlighted the negligence of agricultural

sector:

3.....In 1947, the first Prime Minister of India Pt. Jawahar Lal Nehru said ""everything else can wait, but not agriculture"". In its fifth and final report,

the National Commission on Farmers headed by Dr. M.S. Swaminathan observed that prime farmland must be conserved for agriculture and

should not be diverted for non-agricultural purposes, else it would seriously affect the availability of food in the country where 60% of the

population still depends on agriculture and people living below poverty line are finding it difficult to survive.

In the same judgment the Supreme Court has also highlighted the miserable conditions of the farmers in the following words:

42.....After independence, the administrative apparatus of the State has not spent enough investment in the rural areas and those who have been

doing agriculture have not been educated and empowered to adopt alternative sources of livelihood.

19. In my view any blase/off hand approach of the Consolidation Authority against the Scheme of Act result serious consequences for the farmers.

The Consolidation Act, 1953 cast a statutory obligations on the Assistant Consolidation Officer to propose the Chaks to the tenure-holders in the

light of the guidelines provided under the Act and the Rules thereunder, the Consolidation Officer is expected to decide the objections of the

tenure-holders against the proposed Chaks objectively and each case of the tenure-holder should be decided by him keeping in view of main

object of the Act i.e. Compactness of the Chaks, similarly the Settlement Officer Consolidation who is the Appellate Authority is also enjoined by

the Act to decide the Appeal in a quasi judicial manner and the similar obligation is cast upon the Deputy Director of Consolidation who exercise

revisional jurisdiction.

20. In the present case the authorities have approached the matter in a perfunctory way, even the basic and fundamental of the law have been

ignored that a person who is not a party should not be adversely affected by the order of the Court/Tribunal/Authorities.

21. In the totality of the circumstances the order of the Deputy Direction of Consolidation is liable to be set aside and is accordingly set aside.

22. The matter is remitted back to the Deputy Director of Consolidation, Ghazipur to pass a fresh order after affording opportunity of hearing to

the petitioner. Till the decision of the Deputy Direction of Consolidation the possession of the petitioner may not be disturbed as an interim order

was passed in his favour on 18.3.2004. The writ petition is allowed.

However, no order as to costs.