

(2011) 04 AHC CK 0464

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 14720 of 2006

Dasha

APPELLANT

Vs

Dy. Director of Consolidation,
Mau and Others

RESPONDENT

Date of Decision: April 1, 2011

Citation: (2011) 4 ADJ 525 : (2011) 4 AWC 3322

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

Bench: Single Bench

Judgement

A.P. Sahi, J.

The challenge is to the orders passed by the Settlement Officer Consolidation and the Deputy Director of Consolidation with regard to the allotment over plot No. 90.

2. The Petitioner admittedly purchased the land prior to the consolidation operations and thereafter he was recorded as Sah-khatedar of the plot in dispute. When the Chaks were being carved out, the Petitioner is being proposed Chak on the Northern side of the plot whereas he claims to be in possession over the plot on Southern side. This claim has been rejected and the Petitioner has been allotted land on the Northern side of plot No. 90.

3. The contention raised is that on the Southern side the plot is bounded by a road and, therefore, the Petitioner has been deprived of his right to claim his share on the road side frontage of the said plot. Learned Counsel for the Petitioner tried to contend that his possession was established on Southern side.

4. Learned Counsel for the Respondents Sri Pramod Kumar Pandey contends that the claim of the Petitioner has been disbelieved and even otherwise the Settlement Officer Consolidation has recorded that if strips are prepared North to South, there is every likelihood that the tube-well of the Respondent may fall in the share of the Petitioner and, therefore, the claim of the Petitioner has been rejected. Learned Counsel submits that the said findings having been arrived at, the Petitioner cannot

claim any relief. He has also invited the attention of the Court to the Chak map as also the findings recorded by the Deputy Director of Consolidation.

5. In rejoinder Sri P.K. Rai, learned Counsel for the Petitioner has invited the attention of the Court to the site plan prepared by the Chakbandikarta dated 15.9.2005 to contend that the shape of the plot is clearly decipherable and the Petitioner can be accommodated in accordance with his share that has been purchased by him.

6. The contention raised by the Petitioner is that he has an established possession on the Southern side of plot, but the learned Counsel has unable to point out any error. The Khata was admittedly a joint Khata and the partition of the holding has not taken place. This is further corroborated by the recital contained in the sale deed where the Petitioner has only purchased the share of one of the Sahkhatedars without defining the boundary thereof. Admittedly the Khata had not been partitioned and, therefore, the claim of the Petitioner that he has purchased the land only on the Southern side of plot No. 90, where his Madaha exists cannot be accepted.

7. So far as, the issue relating to allotment of land by giving strips towards the road side frontage is concerned, the finding of Settlement Officer Consolidation that the tube-well of the Respondent Nos. 4 and 5 might fall in the share of somebody else, is a finding based on surmises and conjectures without carrying out any spot inspection.

8. In such a situation, the finding of the Settlement Officer Consolidation to that extent as affirmed by the Deputy Director of Consolidation cannot be sustained. The orders impugned to the aforesaid extent are, therefore, set aside and the matter is remanded back to the Deputy Director of Consolidation to get a spot inspection carried out and then accordingly allocate the strips to the Petitioner and the contesting Respondents according to their shares in plot No. 90. This exercise may be undertaken by the Deputy Director of Consolidation within a period of three months from the date of presentation of a certified copy of this order before him. The writ petition is partly allowed.