

(2012) 02 AHC CK 0370**Allahabad High Court****Case No:** C.M.W.P. No. 6172 of 2012

Radhey Shyam and another

APPELLANT

Vs

D.D.C., Ghazipur and others

RESPONDENT

Date of Decision: Feb. 3, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: (2012) 5 ADJ 632 : (2012) 3 AWC 2416**Hon'ble Judges:** A.P. Sahi, J**Bench:** Single Bench**Advocate:** A.K. Singh and Anish Kumar Singh, for the Appellant; A.K. Malaviya and C.S.C., for the Respondent**Final Decision:** Dismissed**Judgement**

A.P. Sahi, J.

Heard Sri A.K. Singh, learned counsel for the petitioners and Sri A. K. Malaviya for respondent No. 2. A very interesting question has arisen in this case in relation to the impact of a compromise, which is said to have been entered into between respondent No. 2 and respondent Nos. 5 and 6 in relation to chak No. 982 particularly plot Nos. 216 and 217.

2. The petitioners' original holding is also plot No. 220. They had filed an objection claiming that they should be given land adjacent to it particularly plot No. 213 and in the alternative if it is not possible then to give some allotment with adjustment over plot No. 216.

3. The respondents are the original tenure holder of plot No. 290 as well. Plot No. 286 is adjacent to the said plot and the petitioners contend that the respondents could be adjusted over plot No. 286, as such the petitioners and the respondents can be accommodated as per their aforesaid demand.

4. During the course of proceedings in the objection filed u/s 20. a compromise was entered into and a copy of the said compromise has been placed before the Court. Paragraph No. 1 of the compromise categorically recites that respondent Nos. 5 and 6 and the respondent No. 2 agree for the adjustment of their chaks whereby plot Nos. 216 and 217 were accommodated infavour of respondent No. 2. There were other clauses of the compromise in relation to other plots and the said compromise has been signed by the affected Chak-holders including the petitioners. The petitioners Radhey Shyam and Anil have also endorsed their signatures thereon. The aforesaid fact of being a signatory to the memo of compromise is not denied nor is the factum of the compromise challenged.

5. The submission of Sri A. K. Singh is that the compromise cannot be read against the petitioners in relation to plot Nos. 216 and 217 as it was an exclusive agreement between the respondent No. 2 and respondent Nos. 5 and 6 only. The said compromise, therefore, cannot be read as an agreement between the petitioner and respondent No. 2. Sri Singh, therefore, contends that he filed an appeal and this aspect of the matter as also the convenience of the parties was raised which has not been considered and the compromise has been treated to be binding thereby rejecting the claim of the petitioner by the Deputy Director of Consolidation. He contends that the Settlement Officer. Consolidation had accepted this but the order of reversal by the Deputy Director of Consolidation proceeds on erroneous assumptions of fact and law as narrated hereinabove.

6. Sri Malaviya. on the other hand, submits that the petitioners are signatory to the said compromise and they had full knowledge about the allotment of plot Nos. 216 and 217 in the chak of respondent No. 2. They did not raise any objection to the same at the time of compromise and to the contrary, are signatories to the compromise which also includes the aforesaid clause. He, therefore, submits that the petitioners have acquiesced to the said arrangement and they cannot be now permitted to turn around and take a contrary stand. He, therefore, contends that the finding recorded by the Deputy Director of Consolidation is correct and the order of the Settlement Officer, Consolidation has rightly been set aside.

7. Having heard learned counsel for the parties, one can refer to the provisions of Order XXIII, Rule 3 of the CPC and the High Court amendment of Allahabad High Court as added there to where it is provided that the expression agreement and compromise include a joint statement of the parties concerned or their counsel recorded by the Court. The said ingredients are, therefore, necessary for the purpose of a compromise.

8. This is a peculiar case where the statement of compromise between the respondent No. 2 and the respondent Nos. 5 and 6 has been witnessed and endorsed by the petitioners. The Signatures of the petitioners are very much there on the compromise memo which is not denied and it is, therefore, clear that this dispute relating to adjustment of chaks was clearly made in front of the petitioners

which they have accepted with open eyes without any demur. They have, therefore, allowed the said compromise to come into existence and the recording thereof is not disputed. Thus, the petitioners' conduct amounts to an acquiescence. They can, therefore, be prevented from taking a contradictory stand on the principles of estoppel by conduct.

9. Even otherwise if the petitioners were not accepting the compromise, then they ought to have raised this issue before the Court itself where the compromise was entered into. The petitioners do not appear to have made any such attempt to deny the compromise nor is there any denial to the proceedings of the compromise even before this Court. In my opinion, the sum and substance of the said compromise is to the effect that the petitioners while pursuing their cause were well aware of the status of plot Nos. 216 and 217 which by virtue of the same compromise was being handed down and adjusted in the holding of the respondent No. 2. This having not been objected to at the time of compromise, the petitioner cannot be permitted to do so now. The allotment proceedings are a rearrangement of the holdings. The arrangement in the present case was undertaken under the memo of the compromise witnessed by the petitioners themselves. They cannot now wriggle out of the same. The compromise has to be assessed as a whole and its impact has to be assessed accordingly. In the absence of any contrary statement or clause in the compromise, it can be safely presumed that the petitioners had no objection to the allotment of plot Nos. 216 and 217 to the respondents.

I, therefore, see no reason to interfere with the impugned order. The writ petition is dismissed.