

**(2014) 08 AHC CK 0141**

**Allahabad High Court**

**Case No:** Civil Misc. Writ Petition No. 2966 of 1979

Baijnath Tewari

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

**Date of Decision:** Aug. 6, 2014

**Citation:** (2014) 8 ADJ 341

**Hon'ble Judges:** Anjani Kumar Mishra, J

**Bench:** Single Bench

**Advocate:** Faujdasr Rai and C.K. Rai, Advocate for the Appellant; R.N. Pandey, Advocate for the Respondent

### **Judgement**

@DELETEUPPERDATA

Anjani Kumar Mishra, J.

Heard Sri C.K. Rai, learned counsel for the petitioner. None has appeared for the respondents even in the revised list. This writ petition arises out of proceedings for allotment of chak and is directed against the order dated 2.8.1978 and 3.1.1979. The petitioner is holder of chak No. 51.

2. It has been contended by the counsel for the petitioner that impugned order was passed ex parte. The petitioner, therefore, filed restoration application which has been dismissed.

3. The Deputy Director of Consolidation, Azamgarh (the DDC) has recorded that the signature of the petitioner was available on the order sheet of the date, the matter was heard and therefore the order was not ex parte, and rejected the restoration application vide order dated 3.1.1979.

4. In view of the finding above, the counsel for the petitioner has limited his submissions on the merits of the order dated 2.8.1978.

5. The first submission on merits is that by the impugned order the number of the petitioner's chak has increased to four.

6. The second submission raised is that by the impugned order, the petitioner has been allotted two chaks in one sector which is not permissible under law.

However, counsel for the petitioner could not place any material or provision of law whereby it can be said that there is a bar to allotment of two chaks in one sector. Therefore, the only point that survives for consideration is whether the DDC was justified in increasing the number of chaks allotted to the petitioner to four as has been done by the impugned order.

7. In this connection, the counsel for the petitioner referred the averments made in paragraph-6 of the writ petition in which it has been stated that number of chaks allotted to the petitioner has become four. This averments has been replied by means of paragraph-6 of the counter-affidavit. A perusal of paragraph-6 of the counter-affidavit shows that it has been averred therein that a person can be allotted four chaks with prior permission of the DDC. It is further averred that since four chaks have been allotted by the DDC himself and same cannot be faulted.

8. In view of the aforesaid discussion, the averment that the petitioner has been allotted four chaks by the impugned order, stands admitted on record. The only aspect which therefore requires consideration is whether or not the DDC should have recorded cogent reasons for such allotment. A perusal of the impugned order does not disclose any reason whatsoever for allotting four chaks to the petitioner.

9. The proviso to Section 19(c) provides that a person can be allotted more than 3 chaks with the approval in writing of the Deputy Director of Consolidation. The second proviso states that no consolidation shall be invalid only for the reason that the number of chak allotted is more than 3. A conjoint reading of the provisions leads to the conclusion that in case there is approval in writing of the DDC for allotting more than 3 chaks the same cannot be faulted. However, in the instant case, no such approval in writing is available nor any such approval has been recorded in the impugned order. On the contrary the order is totally silent on this point. Therefore, in my considered opinion the impugned order cannot be sustained. Accordingly and for the reasons given above I allow the writ petition, set aside the order date 2.8.1978 and remand the matter back to the DDC to pass fresh orders after hearing the parties concerned. Since the matter is extreme old, it is expected that this exercise shall be completed expeditiously by the DDC preferably within a period of 3 months from the date of production of a certified copy of this order before him.