

## Abhilakh Vs D.D.C.

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Feb. 13, 2017

**Acts Referred:** Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9

**Citation:** (2017) 135 RD 28

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

**Bench:** Single Bench

**Advocate:** K. Ajit, Advocate, for the Petitioner; C.S.C, K.P. Singh and Tariq Maqbool Khan, Advocates, for the Respondent

**Final Decision:** Dismissed

### Judgement

Anjani Kumar Mishra, J.â€"Shri K.P. Singh, learned counsel for the caveator, the sole contesting respondent No. 5 has not appeared despite a

notice having been served upon him by learned counsel for the petitioner.

The notice served upon him is taken on record.

In any case, learned counsel for the petitioner submits that Shri K.P. Singh does not represent any party in the writ petition and, therefore, his

appearance, is not required.

Heard Shri K. Ajit, learned counsel for the petitioner, Shri Tariq Maqbool Khan for the Gaon Sabha and learned Standing Counsel for the State-

respondents.

2. The dispute in the writ petition pertains to plot Nos. 152 and 137 situated in Mauza Bagahibhari, Tappa Bhari Vaisi, Pargana Haveli, Tehsil

Campierganj, District Gorakhpur.

3. It is contended that the petitioners are the owners of these two plots. Some area of both these plots were reserved for Harijan Abadi.

4. The petitioners therefore, filed an objection under Section 9 that the Harijan Abadi on plot No. 152 be shifted to plot No. 137 and the chak of

the petitioner be adjusted accordingly because on account of some area on both plots being reserved for Harijan Abadi, the chak of the petitioners

stood divided into two parts.

5. The Consolidation Officer, by his order dated 10.08.1999, dismissed the objection on the ground that the area regarding Harijan Abadi on plot

Nos. 137 and 152 had already been modified by the Consolidation Officer, while deciding an objection under Section 20 of the Act in the year

1995. It was therefore opined that another order could not be passed by the Consolidation Officer, as it would amount to review.

6. Against this order of the Consolidation Officer, the petitioner preferred an appeal. It appears that at the appellate stage, it was pleaded that the

Chairman of the Land Management Committee, the Pradhan had no objection to the prayer made by the petitioners.

7. The Settlement Officer Consolidation refused to grant the relief prayed for observing that the land of plot No. 137, which the petitioners wanted

to get reserved for Harijan Abadi was low lying land and, therefore, it was not fit for being reserved for abadi. It accordingly dismissed the appeal.

8. This appellate order has been affirmed by the revisional Court. Hence this writ petition.

9. Although, no counter affidavit has been filed, either by the Gaon Sabha or the State, I have heard counsel representing the Gaon Sabha as also

learned Standing Counsel in opposition to the petition. They have supported the impugned orders.

10. I have considered the submissions made by learned counsel for the parties and have perused the record.

11. The primary contention of learned counsel for the petitioner is that since the Chairman of the Land Management Committee had agreed for

shifting the Harijan Abadi allotted on plot No. 152 to the area of plot No. 137 allotted in the chak of the petitioner, the Courts below have

committed manifest illegality in rejecting the petitioner's prayer.

12. On a pointed query, learned counsel for the petitioner could not point out anything, which would lead to a conclusion, even prima facie, that the

Chairman of the Land Management Committee, the Pradhan, had ever been granted permission by the Collector to enter into a compromise with

the petitioner. In my considered opinion, in the absence of such material, it cannot be said that a valid compromise had been entered into.

13. Besides, the Deputy Director of Consolidation observed that the alleged compromise was not one before the Court, but was one outside

Court and, therefore, discarded the same.

14. In the facts and circumstances of the case, I do not find any illegality in the approach of the consolidation authorities.

15. Moreover, from the facts of the case, it appears that two chaks on plot Nos. 152 and 137 were carved out in the names of two brothers,

Badri and Shri Ram. Badri is stated to have been died issue less. The petitioners, who are the sons of Shri Ram, therefore, inherited the chaks of

the two brothers and it is only thereafter that the objection under Section 9 was filed.

16. There is yet another aspect, which emerges from the record. The order of the Consolidation Officer passed on the objection filed by the

petitioner, recorded that the area reserved for Harijan Abadi had been modified by means of another order passed in the year 1995. This order is

stated to have been passed on an objection under Section 20 of the Act.

17. Once the reservation for Harijan Abadi of certain areas on plot Nos. 152 and 137 had been made in proceedings for allotment of chaks and

on an objection under Section 20, the same in my considered opinion could not be modified, even by a compromise order, on an objection under

Section 9 of the Act. No effective relief can be granted to the petitioner till the order, whereby the reservation was made or modified by the

Consolidation Officer, in the year 1995, is challenged. This has not been done. This is an additional reason why no relief can be granted to the

petitioner.

18. In view of the foregoing discussion, the writ petition fails and is dismissed.