

SUPREME COURT OF INDIA

Hansraj

Vs.

Mewalal

C.A.No.87-88 of 2019

(Ashok Bhushan and K.M.Joseph,JJ.,)

09.01.2019

JUDGMENT

Ashok Bhushan,J.,

1. The appellant aggrieved by the judgment of the High Court of Allahabad in Writ-B No.55952 of 2012 has come up in these appeals. The High Court by the impugned judgment dated 25.07.2013 has allowed the writ petition filed by the private respondents by setting aside the order dated 28.04.2012 of the Settlement Officer Consolidation and order dated 19.07.2012 of Deputy Director of Consolidation.

2. The brief facts necessary to be noticed for deciding these appeals are:

The appellant along with his brother Bansraj were Bhumidhar of Plot No.677 of Village Bahria, District Basti. Bansraj, brother of the appellant by sale deed dated 12.10.1989 sold his 1/2 share in favour of respondents. The Village in question was brought under Consolidation operation after issuance of notification under the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'the Act'). The Assistant Consolidation Officer prepared a provisional Consolidation Scheme proposing chaks to the appellant as well as respondents on Plot No.677 of which appellant was original tenure holder and the respondents were co-tenure holders by virtue of sale deed from Bansraj. In the northern side of Plot No.677 a pitch road was constructed six years before start of Consolidation operation. The Assistant Consolidation Officer proposed chaks to the appellant and the respondents opening towards pitch road in the north of Plot No.677. The respondents filed belated objection under Section 21 of the Act objecting to the chaks as proposed by the Assistant Consolidation Officer. The case of the objectors was that they should be proposed chaks on Plot No. 677 in accordance with their possession. They stated that Their possession is towards north of the plot whereas the appellant is in possession towards South of the Plot No.677. The Consolidation Officer allowed the objection filed by the respondents. The respondents were allotted chaks on the pitch road

towards north, the chak of appellant was carved on the south of the plot away from the pitch road.

3. The appeal was filed by the appellant before the Settlement Officer Consolidation under Section 21(2) of the Act. The Settlement Officer Consolidation noted that appellant was original tenure holder of Plot No.677 and Ram Milan etc. have also become joint holders on the basis of the sale deed. Ram Milan was constructing a house on the north east side of the plot after obtaining permission of Settlement Officer Consolidation which construction was stopped on the objection of the appellant. The Settlement Officer Consolidation concluded that it would be legal and appropriate to give chak to all the joint holders adjacent to pitch road. The appeal was allowed. Ram Milan was given chak on the north east side where he started construction. The appellant was given chak on the pitch road including area where his boring and pumping set was situated.

4. Against the order of the Settlement Officer Consolidation revision was filed by the respondents under Section 48 of the Act. The Deputy Director, Consolidation affirmed the order of the Settlement Officer Consolidation. The Deputy Director, Consolidation has also inspected the spot and found that all the co-tenure holders have been allotted chak adjacent to the pitch road and if the claim of the revisionist is allowed the appellant shall not get chak adjacent to pitch road which would be illegal.

5. Aggrieved by the order of the Deputy Director, Consolidation a writ petition was filed by the respondents. Learned Single Judge while allowing the writ petition has given the following reasons:

"I have considered the arguments of the learned counsel for the parties and examined the material available on record. From the perusal of the order of Consolidation Officer, it is proved that the house of one of the petitioners is situated in the northern side and boring and pumping set of respondent no.3 are situated in the southern side as such severance of the possession on the spot is fully proved. In the circumstances of the case, the Consolidation Officer has rightly allotted the chak to the petitioners in the northern side and no interference was required in it. The orders of Settlement Officer Consolidation as well as Deputy Director of Consolidation are illegal and are liable to be set aside."

6. Learned counsel for the appellant submits that appellant being original tenure holder of Plot No.677 he was co-sharer on the entire plot and was rightly proposed chak by the Assistant Consolidation Officer on a part of the pitch road. The area on the pitch road became valuable after construction of the road and the appellant could not have been denied his chak on the part of pitch road. The Consolidation Officer committed error in setting aside chak proposed by the Assistant Consolidation Officer, which was rightly reversed by the Settlement Consolidation Officer and Deputy Director, Consolidation. He submitted that there was no partition of the agricultural land in accordance with law nor there was any right in the respondents to claim chak comprising the entire area of the plot on the pitch road.

7. No one appeared for the respondents.

8. As noted above, the Assistant Consolidation Officer has proposed chaks to the parties which were all on the pitch road. The Consolidation Officer allowed the objection filed by the respondents under Section 21(1) by allocating chaks to the respondents on the northern side of the plot on the pitch road by carving the chak of the appellant on the southern side away from the pitch road. The Consolidation Officer allowed the objection of the respondents by noticing following reasons:

"(i) The objectors are cultivating as per the sketch maps produced by them.

(ii) The House of Ram Milan is situated on the northern eastern corner.

(iii) The Assistant Consolidation Officer has not shown the chak of Ram Milan in his proposal."

9. The Settlement Officer Consolidation set aside the order of Consolidation Officer in the appeal filed by the appellant. The Settlement Consolidation Officer has allotted the chak to Ram Milan on the north east corner. The Settlement Officer Consolidation allocated the chaks of the parties in the manner that every one was allotted the chak on the pitch road. The reason for altering the chaks by the Consolidation Officer with regard to Ram Milan was fully satisfied by the Settlement Officer of Consolidation since he was allotted the chak where he was constructing the house. In the chak of the appellant, the trees and boring and pumping set were also included to maintain the possession of the parties on the plot.

10. The appellant was original holder of the Plot No. 677/1 . When in the northern side of the plot a pitch road was constructed which was prior to consolidation operation, the co-sharers of Plot No.677 were entitled to get the benefit of road and when the Settlement Officer of Consolidation had carved the chaks in the manner that all the co-sharers including the appellant and respondents were given the chaks on the pitch road which order was confirmed by the Deputy Director of Consolidation, we see no valid reason for the High Court to reverse the orders passed by the Deputy Director of Consolidation and the Settlement Officer Consolidation. The reasons as given by the High Court, as noticed above, indicate that the High Court had noticed that as house of one of the petitioners (writ petitioners) is situated in the north-eastern side and boring and pumping set of the appellant is situated in the southern side, the High Court has justified the order of the Consolidation Officer. The High Court has lost sight of the fact that by amendment made by the Settlement Officer Consolidation, one of the writ petitioners, Ram Milan was allotted chak at the north east corner on the Plot No.677 where his house was in existence and the appellant was given the chak also on pitch road including his boring and pumping set.

11. There is one more reason due to which no interference was required in the order of the Settlement Officer Consolidation and the Deputy Director, Consolidation, i.e., the appellant and the respondents were all co-sharers of Plot No.677. Even though parties were in possession of some portions of the plot by mutual arrangement, there was no partition of

holding. It is relevant to note that agricultural holding can be partitioned by instituting the proceedings under Section 176 of U.P. Zamindari Abolition & Land Reforms Act, 1950 which is as follows:

"176. Holding of a bhumidhar or sirdar divisible. - (1) A bhumidhar may sue for [division] of his holding.

(2) To every such suit the Gaon Sabha concerned shall be made a party." Till holding is divided in accordance with Section 176 every co-sharer of plot has right on the holding.

12. It is not the case of any of the parties that holding was partitioned by an order obtained under Section 176. All the co-sharers had right in the plot in question and holdings were not partitioned as per law. The appellant was fully justified in claiming right of allotment on a portion of plot on the pitch road. The Assistant Consolidation Officer has proposed the chaks to the parties in a manner so that every one gets chak on the pitch road. The Consolidation Officer has reversed the allotment of chaks by putting the appellant on the southern side away from the road and allocating the chaks on the pitch road in favour of the respondents which order was rightly reversed by the Settlement Officer of the Consolidation which was an equitable order by which Ram Milan who was given chak including the area where he was constructing the house on the north-eastern portion of the plot. The appellant was allotted an area comprising his pumping set and also by allocating chak part of which was on pitch road, other respondents were allotted the chak in such a manner that everyone got their chak on the pitch road. There was no justifiable reason for setting aside the order of the Settlement Officer Consolidation and Deputy Director, Consolidation. It is to be noticed that Settlement Officer Consolidation and Deputy Director while passing their orders have also inspected the spot and the orders passed by them were on the basis of spot inspection. The High Court in exercise of its jurisdiction under Act 226 committed error in allowing the writ petition by restoring the order of the Consolidation Officer which was an inequitable order. In the facts and circumstances of the present case, equity was adjusted by the order of Settlement Officer of Consolidation in making the chak in the manner that chak of every co-sharer was on the pitch road which order needed no interference by the High Court. The appellant filed a review which was too dismissed by the High Court on 20.01.2014.

13. In view of the foregoing discussion, we are of the view that orders of the High Court are unsustainable and are hereby set aside. The appeals are allowed, judgment dated 25.07.2013 as well as order dated 20.01.2014 are set aside. The writ petition filed by the respondents stand dismissed. No costs.