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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

LIYAKAT BIBI — Appellant

Vs.

DEPUTY DIRECTOR OF CONSOLIDATION, HARDOI AND OTHERS —

Respondent

(Before : S.N.Shukla, J)

Writ Petition No. 926 of 2005

Decided on : 11-11-2008

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 19(1)

A. Consolidation of Holdings — Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1)(e) — Allotment of Chaks — Principles — This provision mandates that every tenure holder should, as far as possible, be allotted a compact area where they hold the largest part of their original holding — Revisionary powers of Deputy Director of Consolidation invoked when a party was ousted from their original, superior quality holding (Gata Nos. 268 and 269) and allotted an inferior, unpossessed parcel (Gata No. 238), in contradiction to the statutory principle — The petitioner's claim for allotment adjacent to her husband's chak, displacing the tenure holder with the largest share, was deemed unreasonable and contrary to the spirit of the Consolidation Scheme — Deputy Director's order found to be without error. (Paras 3, 5, 7, 8, 9)

B. Consolidation of Holdings — Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 19(1)(e) — Purpose and Scope — The objective is to allot a compact area to each tenure holder where they possess the largest portion of their holding — This ensures that valuable land or land where a tenure holder had the largest share is not unjustly taken away — The Deputy Director of

Consolidation correctly applied this principle by amending chaks to rectify an earlier erroneous allotment that disproportionately affected the tenure holder with the largest original share, even if it meant displacing an allotment made to another party who sought land adjacent to her husband. (Paras 7, 8)

C. Consolidation of Holdings — Allotment of Land — Dispute Resolution — Role of Deputy Director of Consolidation — The Deputy Director of Consolidation has the authority to amend chaks and rectify errors in allotment that contradict the principles of the Consolidation Scheme, specifically Section 19(1)(e) of the U.P.C.H. Act, 1953 — This includes re-evaluating the quality of land and prior possession to ensure fairness and adherence to the statutory framework, even if it means overturning decisions made by lower authorities. (Paras 3, 5, 8, 9)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. Mohd. Arif Khan, learned Senior Advocate for the petitioner and Mr. Anurag Shukla, learned Counsel for opposite party No. 2.

2. The petitioner has challenged the order dated 28.9.2005, passed by the Deputy Director of Consolidation, Hardoi in revision No. 459, whereby the chaks allotted to the parties have been amended.

3. After perusal of the documents brought on record, the facts of the case as emerged out are that at the stage of Consolidation Officer they were allotted different chaks, but since they were not satisfied with the said allotments, different appeals were filed before the Settlement Officer, Consolidation. Some of them were allowed by the Settlement Officer, Consolidation and some of them were dismissed. The petitioner purchased some of the plots from Rai Singh and Ram Niwas, sons of Bhikham, who were cosharers, as well as from the father of opposite parties 2 to 4. Although the opposite party No. 2 had not filed any appeal before the Settlement Officer, Consolidation against allotment of chaks, but being aggrieved with the order passed by the Assistant Settlement Officer, Consolidation, he filed a revision with the prayer for allotment of chaks on plot Nos. 268 and 269 as the plot No. 269 was not allotted to him, in the result of changes in the chaks. The Deputy Director of Consolidation allowed the revision and allotted plot Nos. 238 and 239 to the opposite party No. 2, although no claim was put forward for those gatas. Thus deprived the petitioner from of the source of irrigation.

4. The petitioner claims that since she has purchased the plot from Rai Singh and Ram Niwas, sons of Bhikham Singh, who were cosharers having 1/8 shares in Original Plot Nos. 237, 238, 239, 268 and 269, accordingly she is entitled to get a chak at least on one of the Original plots.

5. Through the counter affidavit the opposite party No. 2 has submitted that the Settlement Officer, Consolidation by means of his order completely ousted the opposite party No. 2 from his original holding. The order passed by the Settlement Officer, Consolidation being in utter violation of section 19 (1)(e) was challenged by the opposite party No. 2 before the Deputy Director of Consolidation, who after considering the relevant facts and circumstances of the case has passed the order impugned. It has further been submitted that section 19(1) of U.P.C.H. Act, 1953 provides that the Consolidation Scheme shall fulfil the following condition, namely, every tenure holder, as far as possible, be allotted a compact area at the place where he holds the largest part of his holding. After spot inspection the Deputy Director of Consolidation has passed the order impugned with the observations that Gata Nos. 237 and 238 in comparison to Gata Nos. 268 and 269 are of inferior quality. So far the order of the Settlement Officer, Consolidation is concerned, he allotted the chak to the petitioner adjoining to the chak of her husband, namely Shri Sajid Ali treating the same as her original Gata.

6. Through the supplementary affidavit the petitioner has brought on record the spot map and it has been submitted that the petitioner purchased the plot from the sons of Bhikham, namely, Ram Niwas and Rai Singh under two registered sale deeds and was allotted the chak on plot Nos. 272 and 273 by the Consolidation Officer. Since the opposite party No. 2 was not aggrieved with the said allotment, he did not challenge the same in the appeal, whereas 18 appeals were filed. However, after the order dated 8th of April, 2005, passed by the Assistant Settlement Officer, Consolidation, the opposite party No. 2 felt aggrieved and preferred a revision before the Deputy Director of Consolidation with the prayer for allotment of chak on plot No. 268 and 269.

7. It is not in dispute that on the basis of the sale deed in her favour executed by Mr. Rai Singh and Mr. Ram Niwas, sons of Bhikham, she is entitled for the shares held by the aforesaid persons in the family. After perusal of the order passed in appeal, I find that the opposite party No. 2 was deprived of his original holding i.e. Gata No. 268 and 269, which are better in quality and in place of the aforesaid Gatas he has been allotted the chak on Gata No. 238, which is of a lesser value and moreover the petitioner was holding small share therein, whereas Amjadi and Liyakat Bibi (petitioner) were entitled for chaks on Gata No. 237 and 238 for most of their land, but they have not been allotted chaks there at. There is also a finding in the order of revision that the land which was in possession of the opposite party No. 2 has been taken out and he has been allotted the chak on Gata No. 238 over which he had never been in possession. The petitioner was also cosharer in all the plots, therefore, she can also be allotted chaks on any of plots. Section 19(1)(e) is reproduced hereunder:

"19. Conditions to be fulfilled by a Consolidation Scheme(1) A Consolidation Scheme shall fulfil the following conditions, namely

(a) the rights and liabilities of a tenureholder, as recorded in the annual register prepared

under section 10, are, subject to the deductions, if any, made on account of contributions to public purposes under this, Act secured in the lands allotted to him;

(b) the valuation of plots allotted to a tenureholder, subject to deductions, if any, made on account of contributions to public purposes under this Act, in equal to the valuation of plots originally held by him:

Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenureholder shall not differ from the area of his original holding or holdings by more than twentyfive per cent of the latter:

(c) the compensation determined under the provisions of this Act, or the rules framed thereunder is awarded

(1) to the tenureholder

(i) for trees, wells and other improvements, originally held by him and allotted to another tenureholder; and

(ii) for land contributed by him for public purposes;

(2) to the Gaon Sabha, or any other local authority, as the case may be, for development, if any, effected by it in or over land belonging to it and allotted to a tenureholder;

(d) the principles laid down in the Statement of Principles are followed:

(e) every tenureholder is, as far as possible, allotted a compact area at the place where he holds the largest part of his holding:

Provided that no tenureholder may be allotted more chaks than three, except with the approval in writing of the Deputy Director of Consolidation.

(f) every tenureholder is, as far as possible, allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in the vicinity equal to the valuation of the plots, originally held by him there; and

(g) every tenureholder is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangulation units;

(2) A Consolidation Scheme before it is made final under section 23, shall be provisionally drawn up in accordance with the provisions of section 19A."

8. In the light of the aforesaid provisions, I am of the view that the opposite party No. 2 was entitled for allotment of chak at Gata No. 268 and 269 upon which he was holding the largest part of land in his share. The claim of allotment of chak just adjoining to chak of her husband and thereby disturbing the tenure holder having largest part of the area thereon is not reasonable and that is also not the spirit of the Consolidation Scheme.

9. In view of the aforesaid facts and circumstances of the case, I do not find any error in the order impugned. The writ petition is dismissed.