

Smt.Santosh Devi And Others vs Deputy Director Of Consolidation ... on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69737

Court No. - 50

Case :- WRIT - B No. - 11809 of 2012

Petitioner :- Smt.Santosh Devi And Others

Respondent :- Deputy Director Of Consolidation Saharanpur And Others

Counsel for Petitioner :- S.K.Pundir,Shashi Kant Srivastava

Counsel for Respondent :- Madhusudan Dixit,Rekha Pundir,Satya Prakash Mishra,Sunil Kumar

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. S.K. Pundir, learned counsel for the petitioner, Mr. Sunil Kumar Mishra, learned counsel for respondent nos. 5, 12 and 13 and Mr. Ashutosh Kumar Rai, learned Additional Chief Standing Counsel for the State respondents.

2. Brief facts of the case are that petitioner no.1 is chak holder No. 50-Sa, petitioner no.2 is chak holder No. 50-Aa, petitioner no.3 is chak holder No. 50-Ba, respondent no.4 is chak holder No. 381, respondent no.5 is chak holder No. 1003, respondent no.6 is chak holder No. 526, respondent no.7 is chak holder No. 426, respondent no.8 is chak holder No. 418, respondent no.9 is chak holder No. 604, respondent no.10 is chak holder No. 759, respondent no.11 is chak holder No. 210 and respondent no.12 is chak holder No. 907. Assistant Consolidation Officer proposed first chak to petitioners on plot No. 955 etc and second chak was proposed on plot No. 713 etc. Plot No. 1344 is the largest original roadside holding of the petitioners but petitioners have not been proposed chak over their largest original roadside plot of the petitioners (Aplana- Yamuna Nagar Road). The share

of petitioners in the aforementioned largest original roadside plot is 1/2. Petitioners filed chak objection under Section 21 (1) of the U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act claiming allotment over largest original roadside plot No. 1344. Consolidation Officer vide order dated 9.4.2010 dismissed the petitioners' chak objection. Petitioners filed chak appeal against the order dated 9.4.2010 under Section 21 (2) of the U.P.C.H. Act which was dismissed by Settlement Officer of Consolidation vide order dated 26.10.2010. Revision filed by petitioners have also been dismissed vide order dated 3.12.2011 hence this writ petition for the following relief:-

"(i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 3.12.2011 passed by D.D.C. (the respondent no.1) in revision No. 817 (Smt. Santosh Vs. Narpal and others), revision No. 869 (Sachi Vs. Narpal and others) and revision No. 870 under Section 48 (1) of the U.P.C.H. Act (Abhishek Vs. Narpal and others) to the writ petition as well as an order dated 26.10.2010 passed by S.O.C. (the respondent no.2) passed in petitioners respective appeal No. 386, 387 and 395 u/s 21 (2) of U.P.C.H. Act (Santosh Devi Vs. Narpal and others and order dated 9.4.2010 passed by C.O. (the respondent no.3) in respective objection/ case Nos. 198, 209 and 217 (Santosh Devi Vs. Satpal)

(ii) Issue a writ of mandamus directing the parties to maintain status quo, since the impugned chaks" allotment is to be adjusted in between none the else but amongst the co-sharer i.e. the petitioners and the respondents, and in respect to the chaks in dispute the petitioners is/ are in possession according to their earlier family settlement as the order impugned passed by C.O., S.O.C. and D.D.C. has yet not been implemented on the spot, to secure ends of justice. Otherwise the applicants/ petitioners shall suffer irreparable loss and injury."

3. This Court entertained the matter on 2.3.2012 and granted interim order.

4. In pursuance of the order dated 2.3.2012, no counter affidavit has been filed by private respondents.

5. Counsel for the petitioner submitted that petitioner has been deprived from their largest original holding which is situated adjacent to the highway. He submitted that proper pleading was made before the consolidation authorities for allotment of chak on their largest original holding situated adjacent to the road but all the three consolidation authorities have negated the petitioner's claim on misconceived ground to the effect that petitioner has been allotted other chak on their original plots.

6. On the other hand, counsel for private respondent nos. 5, 12 and 13 and learned Additional Chief Standing Counsel for the State respondents submitted that no interference is required against the concurrent judgement of all the three Courts passed in chak allotment proceeding, as such, the writ petition is liable to be dismissed.

7. I have considered the arguments advanced by counsel for the parties and perused the records.
8. There is no dispute about the fact that plot No. 1344 is largest original holding of the petitioners and the aforementioned plot is situated adjacent to the highway.
9. The perusal of C.H. Form 23 of the petitioner as well as private respondents and the orders passed by the consolidation authorities fully demonstrate that petitioners have been deprived from their largest original holding which is situated adjacent to the highway.
10. This court has held from time to time that original road side plot cannot be allotted to anybody except to the original tenure holder or the same should be declared as C.H. 18. The relevant case law for allotment of road side plot to original tenure holders are as under:

I. 993 R.D. 219 Raghuvansh Shukla Vs. Joint Director of Consolidation & others.

II. (2006) 100 RD 212 Ram Chandar Vs. Deputy Director of Consolidation Varanasi & others.

III. (2020) 147 RD 219 Ram Badan Vs. D.D.C. & others.

11. Paragraph Nos. 15 and 16 of the judgment rendered by this Court in the case of Ram Badan (Supra) will be relevant for perusal which is as under:

¶15. The consensus of principle that emerges from the decisions in Ram Prasad (supra), Ramadhar Singh (supra) and Sanjay and another (supra) is that valuable roadside land that is the original holding of a tenure holder, is to be declared chak out or allotted to him as part of his Chak, unless it be imperative on account of some compelling circumstances that may require some marginal departure from the Rule. There is no finding recorded by the Deputy Director of Consolidation or the Settlement Officer that allotment of the entire area of Khasra No. 60/3 (old) to the petitioner, that is part of the petitioner's original holding lies in front of the third respondent's Abadi and would cause the third respondent some great inconvenience or irreparable injury as spoken of in the decision of this Court in Ram Shanker (supra). The remark of the Deputy Director of Consolidation that though it is not appropriate to include any part of this plot in the third respondent's chak as it is not part of his original holding, considering his Abadi, the same may not be disturbed as ordered by the Settlement Officer of Consolidation, is flawed. To this, is added a remark that, therefore, it would not be proper to remove the part of the plot in dispute included in the Chak of the third respondent. For one, it is not reason enough to deprive the petitioner of a substantial part of his valuable roadside land in favour of the third respondent. Moreover, a look at the confirmed consolidation map shows that between one part of old Khasra No. 60/3 (now renumbered as 369) and included in the third respondent's chak and the third respondent's Abadi, there is a sector road running through. This confirmed map is on record as part of Annexure No. SRA-1 to

the supplementary rejoinder affidavit dated 18th July, 2019 filed on behalf of the petitioner. There is no dispute about this.

16. The added fact that a sector road now runs through between those plots where the third respondent claims his Abadi and old Khasra No. 60/3 that is the petitioner's original holding, occurrence of even a slight prejudice to the third respondents, let alone a compelling circumstance that may leave no option with the Authorities but to deprive the petitioner of some part of his valuable roadside land, part of Khasra No. 60/3 (old), is a conclusion that cannot be said to be a legitimate exercise of discretion by the Consolidation Authorities, one way. Here is a case where the Deputy Director of Consolidation affirming the Settlement Officer of Consolidation has deprived the petitioner of valuable roadside land in violation of settled legal principles that valuable roadside land is either to be excluded from consolidation operations or included in the Chak of that Chakholder, who held it as original holding. This principle is to be departed from for very compelling reasons that are not forthcoming in this case.?

12. Considering the entire facts and circumstances of the case, the impugned revisional order dated 3.12.2011 passed by respondent no.1 in revision No. 817, 869 and 870 order dated 26.10.2010 passed by respondent no.2 and order dated 9.4.2010 passed by respondent no.3 are liable to be set aside and the same are hereby set aside.

13. The writ petition stands allowed and matter is remitted back before respondent no.1, Deputy Director of Consolidation, Saharanpur to register the revision Nos. 817, 870 and 869 on their original number and decide the same afresh after issuing notice to all the parties in the aforementioned revision expeditiously preferably within period of three months from the date of production of certified copy of this order in the light of the observation made in the body of this judgement.

14. No order as to costs.

Order Date :- 1.5.2025 Vandana Y.