

Jagdish vs Deputy Director Of Consolidation, ... on 11 April, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:20791

Court No. - 7

Case :- WRIT - B No. - 1047 of 2024

Petitioner :- Jagdish

Respondent :- Deputy Director Of Consolidation, Barabanki And Others

Counsel for Petitioner :- Virendra Mishra,Shradha Mishra

Counsel for Respondent :- C.S.C.,Ashok Kumar Verma,Mohan Singh,Satyam Singh

Hon'ble Saurabh Lavania,J.

1. Heard SriVirendra Mishra, learned counsel for the petitioner, Sri Hemant Kumar Pandey, learned State counsel appearing for the respondent Nos. 1 & 2 and SriAshok Kumar Verma, learned counsel for the contesting opposite party Nos. 3 to 6.

2. By means of this petition, the petitioner has sought the following main relief(s):-

"(i) To issue a writ, order or direction in the nature of Certiorari for quashing the impugned order dt. 10.10.2024 passed by the respondent no. 1 in the Revision no. 1406 of 2022 and the order dt. 09.03.2007 passed by the respondent no. 2 in an appeal no. 517 filed by the predecessor of the respondent no. 3 to 6 contained in Annexure-1 and 2 respectively."

3. Assailing the impugned orders dated 10.10.2024 and 09.03.2007, learned counsel appearing for the petitioner stated that the impugned orders are liable to be interfered with by this Court, as the same have been passed without considering the genuine grievance of the petitioner as also that the same are against the principles embodied under Section 19 of U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"). It is also stated that to Visheshwar, real brother of the petitioner and predecessor-in-interest of the contesting opposite parties, the chak was provided as per his choice on Gata No. 1043 and accordingly his claim to provide chak over Gata No. 1109 was unsustainable and ought not to have been allowed.

4. Per contra, learned counsel appearing for the side opposite stated that the Chak(s) provided to the petitioner are just and proper and, in fact, he is not aggrieved by the orders impugned in any manner.

5. Considered the submissions advanced by the learned counsel for the parties and perused the record.

6. This case relates to allotment of chak(s), as such, before proceeding further, it would be useful to refer some judgments on the issue involved and the relevant provision of the Act of 1953.

7. Section- 19(1)(e) of the Act of 1953 is as follows:-

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

(a).....

(b).....

(c).....

(d).....

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

Provided that no tenure-holder may be allotted more chaks than three, except with the approval in writing of the Deputy Director of Consolidation:

Provided further that no consolidation made shall be invalid for the reason merely that the number of chaks allotted to a tenure-holder exceeds three."

8. From reading of Section 19(1)(e) and considering the case of the parties, it is clear that consolidation Authorities can not pass arbitrary order. It is no doubt correct that during chak allotment proceedings, the allotment cannot be made in such a manner which may satisfy every

tenure holder but the consolidation authorities are required follow the mandate of the Act/Rules, as explained by the judicial pronouncements.

9. In the context of this case, the following observations of the judgment passed by this Court in the case of Asbaran vs. Deputy Director of Consolidation, Gonda; 1986 A.W.C. 1088, are relevant.

"This provision contained in Section 19(1)(f) enjoins upon the consolidation authorities to allot plot on which exists his private source of irrigation or any other improvement. Apart from it, no other provisions of Section 19 of the Act enjoins upon the consolidation authorities to make allotment of chak to the tenure-holder on his original plot and the consolidation authorities in view of provisions contained in Section 19(1)(e) of the Act are required to allot, as far as possible, a compact area to the tenure-holder at place where he holds largest part of his holding. The word as far as possible occurring in Section 19(1)(e) of the Act cannot be construed so as to give an unfettered discretion to the consolidation authorities in not making an allotment of a chak of compact area at place where the tenure holder holds his largest part of holding. It while making allotment of a chak to the tenure holder the Consolidation Officer finds it difficult to make allotment of chak to him of a compact area at a place where he held the largest part of his holding, then, he has to assign reasons for not doing so. If no good reasons are shown, the allotment would certainly be held to be irregular and cannot be sustained. The aforesaid provisions contained in Section 19(1)(e) of the Act, however, cannot be construed to make it imperative on the consolidation authorities to allot chak of compact area to a tenure holder be imperatively including therein some plot of his original holding. The requirement of said provision, in my opinion, is that the tenure holder has to be allotted a chak of a compact area at a place where he holds the largest part of his holding and not on the plot of his largest part of holding. In making allotment of chaks equity amongst various tenure holders has got to be adjusted, and, as such, if it is not possible to include some of the original land of the tenure holder in the allotted chak; then the allotment of chak cannot be said to be invalid or without jurisdiction, on the ground that no plot of original holding of the tenure holder has been included in his chak although a chak of compact area has been allotted at a place and in the vicinity where the tenure holder holds the largest part of his holding. The requirement of allotting original plot of the holding to the tenure holder in his chak has been mandated only in Section 19(1)(f), according to which, if there exists private source of irrigation or other improvement on the plot in question, then it has got to be allotted in the chak of the tenure holder. The allotment of chak in violation of the provision contained in Section 19(1)(f) would certainly make allotment illegal being violative of specific provisions. But in my opinion, an allotment of a 'Uran' Chak cannot be taken to be illegal and without jurisdiction if such a chak has been allotted at a place quite near the original land held by the tenure holder in its vicinity and not excessively exceeding the valuation of his original plots in that sector."

10. In the above case, this Court held that in view of the provision of Section 19(1)(e) the consolidation authorities are required to allot as far as possible a compact area to the tenure holder at a place where he holds the largest part of the holding and the judgment also says that the aforesaid provision can be construed to make it imperative on the consolidation authorities to allot chak of compact area to a tenure holder including therein some plot of his original holding.

11. In the judgment passed in the case of Mukut Nathi vs. The Deputy Director of Consolidation, Gorakhpur; 1998 R.D. 148, this Court held in paragraph 5 as under:-

"The Consolidation Officer and Settlement Officer of Consolidation have carved out the chak of the petitioner in such a way that its shape was rectangular and was leading up to the P.W.D. road. The Deputy Director of Consolidation for the first time carved out a chak in rectangular shape running from north to south, with the result that the petitioner was deprived of the land towards P.W.D. road. The Deputy Director of Consolidation has not recorded any finding as to whether under the sale deed any specified portion was sold to the petitioner. In case the petitioner was sold a portion which did not lead up to P.W.D. road, the Deputy Director of Consolidation may be justified not to give such portion to the petitioner but if this portion was not specified or he was given a portion which leads up to the P.W.D. road, the order of the Deputy Director of Consolidation will not be valid and justified."

12. In respect to cases where the interference in the allotment of chaks is permissible under Article 226, the issue has been considered by this Court in Writ Petition (Cons.) No. 5001 of 1983 (Ram Udit Vs. D.D.C. & others) decided on 24.09.2014 and in para 29 to 32, this Court has said as under:-

"29. It is not in dispute that the allotment of Chaks is to be made taking into consideration principles laid down under Section 19 of Act 1953. These principles have been considered by this Court in Bechan Singh Vs. Deputy Director of Consolidation and others 1985 AWC 604 All. In para 4 thereof, this Court has said that allotment of Chak has to be made consistent with the principles, namely, (i) every tenure holder should be allotted compact area at the place where he holds largest part of his holding (ii) the tenure holder, as far as possible, should be allotted the plot on which exists his private source of irrigation or any other improvement together with the area in the vicinity equal to valuation of the plot originally held by him and (iii) every tenure holder, as far as possible, would be allotted Chak in conformity with the process of rectangulation. The Court further held that the area held by tenure holder prior to start of consolidation proceedings, is relevant only to ascertain whether the area allotted to the tenure holder, varies by more than 25% or not, as contained in the first proviso of Section 19 of the Act, 1953.

30. In Dr. A.N. Srivastava Vs. DDC 1982 LLJ 42 Hon'ble K. N. Misra J. referring to Section 19(1)(e) of Act 1953 said:

"The petitioners under the provisions of Section 19 (1) (e) of the Act were entitled to get a chak at a place where they had held largest part of their original holding. The words 'as far as possible' used in the said sub-section do not confer any jurisdiction upon the consolidation authorities to act arbitrarily ignoring the provisions contained therein. The Settlement Officer (Consolidation) while altering the chak of the petitioners should have assigned reasons for not making allotment to the petitioners on the aforesaid plots Nos. 1082 and 1087 which were admittedly largest part of their holding. In my opinion the words as far as possible used in Section 19 (1) (e) of the Act require the provisions contained therein to be followed unless their compliance cannot be made for specific reasons to be assigned for it"

31. This was reiterated in Samai Lal Vs. Deputy Director of Consolidation, Pratapgarh and others 1985 LLJ 330 and the Court further said:

"In the present case the Assistant Consolidation Officer appears to have acted illegally and in violation of the provisions contained in Section 19 (1) (e) of the Act which lays down that every tenure-holder, as far as possible, should be allotted a Chak at a place where he held his largest holding. The Assistant Consolidation Officer should have proposed a Chak of the petitioners on this very plot No. 1703 in accordance with the aforesaid provisions and in case it is not possible, then the reasons should have been mentioned for not allotting a Chak to the petitioners on their plot. The words "as far as possible" used in the said sub-section do not confer any jurisdiction upon the consolidation authorities to act arbitrarily, ignoring the provisions contained thereunder."

32. In Doodh Nath Vs. DDC and others 1988(6)LCD 453 the Court held, if a tenure holder has his Chak with private source of irrigation, allotment of chak must be weighed so as to keep intact private source of irrigation of such person. The Court said that there cannot be any legal justification for refusing to allot a Chak to a tenure holder at a particular place, where he had held his private source of irrigation on the ground that his sons or other relations may have been allotted a chak in its vicinity. Every tenure holder would be entitled to get allotment of chak at a place where he could be allotted chak, keeping in view the provisions contained in Section 19 of the Act. The tenure holder would be entitled to get near village Abadi so much of land which he originally held at that place and also at the place of his private source of irrigation. The Court also said that undoubtedly, while deciding objection filed by a tenure holder against proposed allotment of chaks, equities are to be adjusted taking into consideration location of original land-holding of the other tenure holders whose chaks are likely to be affected while determining the objection. But while doing so, just and appropriate claim put forth by the tenure holder cannot be rejected merely on the ground that he is a big tenure holder as compared to the opposite parties or that his son or some other relation has been allotted chak near the place where the objector claims an allotment of chak as against his original holding. The Court added a few words of caution for the consolidation authorities, in the following manner:

"In the matter of allotment of chaks a care is to be taken by the authorities to allot chak to the tenure holders to which they are entitled as against their original holdings. If appropriate chak is not allotted to a tenure holder, he sustains irreparable loss and injury for all times to come. Thus in exercise of powers under Article 226 of the Constitution, this Court is not to feel hesitant in interfering with the impugned orders which are found to be unwarranted in law and facts of the case, merely on the ground that the writ petition could not be taken up earlier for disposal. The impugned orders cannot be left to survive merely on the delay in disposal of the writ petition for no fault of the petitioner." (para-11)

13. Further, as per the judgment passed in the case of Raisa Begum vs. D.D.C. and others, reported in 2011 SCC OnLine All 1930, placed before this Court by the learned counsel appearing for the side opposite, the original tenure holder is entitled to road side land. In this case, road side land was provided to the purchaser of land, which was purchased during consolidation proceedings.

14. In the judgment passed in the case of Ram Badan vs. D.D.C. and others, reported in 2019 SCC OnLine All 6344, relied upon by the learned counsel appearing for the side opposite, this Court after considering the observations made in the judgment passed in the case of Ram Prasad vs. Deputy Director of Consolidation, Allahabad, reported in 2006 SCC OnLine All 1980, Ramadhar Singh vs. Deputy Director of Consolidation, reported in (2009) 106 RD 772, and Sanjay vs. Deputy Director of Consolidation, reported in (2013) 121 RD 561, in para 15 observed as under:-

"15. The consensus of principle that emerges from the decisions in Ram Prasad (supra), Ramadhar Singh (supra) and Sanjay (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."

15. As per the judgment of the Hon'ble Apex Court passed in the case of Hansraj v. Mewalal and others, reported in (2019) 3 SCC 682, till holding is divided in accordance with law, every co-sharer of plot has right on the holding and chak(s) should be carved out in a manner so that everyone gets chak on pitch road.

16. For coming to the conclusion on the basis of principles related to allotment of chak(s) as observed in the judgment(s), referred above, this Court considered the following facts of the case, which are relevant.

(i) The property in issue i.e. Gata No. 1109 situated at Village- Rasauli, Pargana- Pratapganj, Tehsil- Nawabganj, District- Barabanki is the ancestral property and accordingly the petitioner, Visheshwar (predecessor in interest of the respondent Nos. 3 to 6 & 15) and respondent No. 7/Rajesh Kumar, being the co-sharer, were entitled to share over Gata No. 1109.

(ii) The dispute related to allotment of chak over Gata No. 1109 relates to petitioner and Visheshwar.

(iii) Thus, in view of the aforesaid, indisputedly, Gata No. 1109 is 'mool gata/original holding' of the petitioner/Jagdish and contesting respondent Nos. 3 to 6 & 15 namely Ramapati, Dinesh, Suresh, Ranjit, respectively, all sons of Visheshwar, & Sunil s/o Late Vikram s/o Visheshwar.

(iv) Initially chak(s) were allotted to Visheshwar over Gata No. 1043/0.089, which was purchased by Visheshwar, and Gata No. 1575.

(v) Being aggrieved, Visheshwar filed the objection under Section 20 of the Act of 1953, wherein, the following relief was sought:-

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1565 ?? ?????? ?????? ?????? ?? ?? ?? ?? ?? 1102 ?? ?????? ?? ?????? ?????? ?????????? ?? ?? ??
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(vi) The objection of Visheshwar was partially allowed by the Consolidation Officer, Pratapganj, District- Barabanki (in short "CO") vide order dated 17.01.2007. The relevant portion of the order dated 17.01.2007 reads as under:-

"????? ?????? 708 ?? ?????? ?????? ?? ????? 1575 ??? ?? ? ??? 1043 ?? ????? ??? ????? ??
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 120, 728, 667, 1050, 1258, 1285, 708, 303, 238, 921, 1366, 364, 1122, 210, 404, 1235,
 155, 1062, 1132, 170, 230, 393, 396, 1191, 1161, ??????, ?? ?????????? ?????? ??????????
 ?????????? ?? ?????????? ?????? ?? ?? ?????????? ?? ?????????? ?????? ?????? ???"

(vii) In the appeal filed by Visheshwar registered as Appeal No. 517 (Visheshwar vs. Rajesh and others), under Section 21(2) of the Act of 1953 challenging the order dated 17.01.2007 passed by CO, an order was passed by Settlement Officer of Consolidation, Barabanki (in short "SOC") on 09.03.2007. By the order dated 09.03.2007, the SOC provided chak to Visheshwar, predecessor in interest of the respondent Nos. 3 to 6 & 15, over Gata No. 1109. The relevant portion of the order dated 09.03.2007 reads as under:-

"????? ?????????? ?? ?????? ?? ????? ?? ?????????? ?? ?????? ?? ?? ?????? ?????? 1575 ??
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 ?????????? 4.50 ? 1575?? ?????????? 7.32 ?????? ?? ?????????? ?? ?? ?????? ??????
 1109???, 1115?? ?????????? 11.82 ?? ?????? ?? ?????? ?? ?????? ?? ?? ?????????? ?????
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 1108, 1109 ?????????? 11.82 ?????? ?? ?????? 1132 ?? ?????? ?? ?????? ?? ?? ??????
 393 ?? ?????????? ?? ?? ?? ?????? ?????? 1570 1575 ?????????? 11.82 ?????? ?? ??????
 393 ?? ?????????? ?????? ?????? ?? ?????? ?????????? ?????? ?????? ?? ?? ?????? ?? ?-

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(viii) The order of SOC dated 09.03.2007 was challenged by means of Revision Nos. 861/466 (Jagdish vs. Visheshwar and others) and 850/459 (Rajesh Kumar and others vs. Visheshwar and others). Both these revisions were decided vide order dated 11.11.2008, favourable to the petitioner, passed by Deputy Director of Consolidation, Barabanki (in short "DDC").

(ix) The order dated 11.11.2008 passed by DDC was challenged by Visheshwar by means of Writ-B No. 795/2008 (Vishaisher vs. Deputy Director Consolidation Barabanki), which was decided vide order dated 28.04.2022 and the matter was remanded back to DDC for deciding the dispute between the parties afresh.

(x) By the impugned order dated 10.10.2024, the DDC rejected the claim of the petitioner with regard to Gata in issue i.e. Gata No. 1109. The relevant portion of the impugned order dated 10.10.2024 is extracted hereunder:-

"???? ????????, ??????, ??-????? ?? ?????? ?????? ?????? ?? ?????? ?? ?? ??????
 ?????????????? ?????? ??????-393 ?????? ?????? ?????????? ?? ??? ??? ?????? ??????
 1109/0.447, 1575/1/0.025, 1575/2/0.025, 1575/3/0.536 ??? ??? ?????? 1.032???
 ?????????? 76.10 ??, ?????? ???? ??? 1/3 ??? ??? ?????? ???????? ???????? ?????? ????
 ?????? ?? ?? ?? ?????? ??? ?????? ?????? 1109 ??0/0.269??? ?? ??? ?????? ?????? ?????? 1108
 ??0/0.015 ??0, 1110 ???/0.005???, 1111 ??0/0.010??? ? 1115 ??0/0.005 ??? ?? ?????
 ??? ??? ?????? ?????? 0.306 ??? ?? ?????????? ??? ??? ???????? ???????? ?????? ??? ??
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 ??0/0.105 ?? ??? ?????? ?????? 1570??0/0.075 ??? ?? ?????? ??? ??? ?? ?????? 0.180
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(a) During pendency of revision(s), indicated above, the petitioner sold the property in issue through registered sale deed dated 17.08.2022 to one Uday Singh. In this regard, relevant paragraphs 3 and 4 of the supplementary affidavit dated 03.11.2024 are reproduced hereunder:-

"3) That during consolidation the number of Gata no. 1109 was changed and became 804.

4) That an area 0.305 hec. over gata no. 804 (old 1109) recorded in the khatauni in the name of petitioner has been transferred to Sri Uday Singh son of Sri Ramesh Singh resident of Mohalla Dasharabagh, Pargana and Tehsil Nawabganj Distt. Barabanki vide registered sale deed registered in the office of Sub-Registrar Sadar Barabanki on 17.08.2022 in Bahi No. 1, Zild No. 15427 Page 209 to 228 Sl. No. 18355. True copy of the sale deed dated 17.08.2022 is being filed herewith as Annexure SA1."

(b) Uday Singh, purchaser of the property in issue, challenging the orders in issue also filed Writ-B No. 1091 of 2024 (Uday Singh vs. Deputy Director Of Consolidation, Barabanki And Others). This petition was decided vide order dated 12.02.2025, which reads as under:-

"Shri D. S. Pandey, learned counsel for the petitioner submits that he does not wish to press the instant Writ-B No.1091 of 2024 as his predecessor-in-interest has already assailed the order impugned in the connected Writ-B No.1047 of 2024.

In view of the statement of Shri D. S. Pandey, the instant petition is dismissed as not pressed."

17. Upon due consideration of the aforesaid, this Court is of the view that the allotment of chak(s) to Visheshwar (predecessor in interest of the respondent Nos. 3 to 6 & 15) over Gata No. 1043/0.089, purchased by Visheshwar, and Gata No. 1109, 'mool gata/original holding' of Visheshwar, by SOC vide impugned order dated 09.03.2007 affirmed vide impugned order dated 10.10.2024 passed by DDC is justified and proper. Hence, no interference in the orders impugned is required by this Court in exercise of power vested under Article 226/227 of the Constitution of India. The petition is accordingly dismissed. Cost made easy.

Order Date :- 11.4.2025 Arun/-