

Neutral Citation No. **2023:AHC:224845**

Reserved -: **23/11/2023**

Delivered -: **29/11/2023**

Court No. - 48

Case :- WRIT - B No. - 3890 of 2023

Petitioner :- Ram Sanahi Maurya And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Bhagwan Dutt Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsheery,J.

1. This is second round of litigation. The petitioners have earlier approached this Court by way of filing a Writ B No. 795 of 2023 which was disposed of by an order dated 25.08.2023 having Neutral Citation No. **2023:AHC:172269** and same is reproduced in entirety in order to indicate facts of present case.

“1. Heard Sri Bhagwan Dutt Pandey, learned counsel for the petitioners and Sri Shailendra Kumar Singh, learned counsel for the respondent.

2. The petitioners have approached this Court being aggrieved by order dated 24.01.2023, passed by the Deputy Director of Consolidation, Maharajganj, whereby the Settlement Officer Consolidation has been directed to conduct measurement for remaining chaks of 03 sectors.

3. Sri B.D. Pandey, learned counsel for the petitioners submits that since the consolidation proceedings has already been over and notification under Section 52 of U.P. Consolidation of Holdings Act, 1953 was notified on 05.11.2004 therefore Consolidation Officer or Authorities under the Consolidation Act, has no power. This Court by an order dated 15.03.2023 has directed to stay the effect and operation of the order dated 24.01.2023 as well as consequential orders thereof passed on 27.01.2023 and 08.02.2023 by the

Settlement Officer Consolidation. Undisputedly no objection or any application was filed by the petitioners before approaching this Court. An application purportedly was filed to point out the legal issues as referred above before the District Magistrate/Deputy Director of Consolidation on 04.02.2023. However, the receipt thereafter is not on record.

4. Taking note of the above submissions and considering the legal issues, there is no justification to keep this matter pending before this Court and it is disposed of that the District Collector/Consolidation Officer will consider the objection of the application if filed fresh by the petitioners within a period of two weeks disclosing all the averments and the legal position and if necessary a copy of this writ petition may also be annexed. The concerned authority will decide the same within a four weeks thereafter.

5. Since this Court has already passed an interim order, the same will be remain in operation till six weeks from today or till the decision of District Magistrate/Deputy Director of Consolidation, whichever is earlier.”

2. In pursuance of above order, petitioners have filed a fresh representation dated 12.09.2023 and relevant part is quoted below -:

“यह कि डी.डी.सी. ने वर्ष 1997-1998 में विला किसी विवाद के चकबन्दी कार्यवाही फाईनल कर दिया। तत्पश्चात वर्ष 1998 में धारा 24 व 48 का प्रकाशन हुआ तथा चकदारों को चको पर कब्जा दिया गया अन्ततः दिनांक 05.11.04 को गांव में उ० प्र० जो० चकबन्दी अधि० की धारा 52{1} का प्रकाशन होने के बाद सारे कागजात तहसील को भेजे गये। इस प्रकार दिनांक 05.11.2004 के पश्चात चकबन्दी विभाग के समस्त कागजात व अधिकार तहसील फरेन्दा को हस्तांतरित होने के पश्चात चकबन्दी विभाग को पुनः चको की पैमाईश कराने का कोई अधिकार नहीं रह गया था।

यह कि गांव के रामपलट के दरखास्त पर डी.डी.सी. महोदय ने दिनांक 24.01.2023 को तीन सेक्टरों के चको के सीमांकन हेतु एस.ओखी को पत्र लिखा पुनः डी.डी.सी. ने दिनांक 27.01.2023 को एस.ओखी को एक पत्र सेक्टर तीन के सीमांकन हेतु भेजा जिस पर यस०ओ०सी० महाराजगंज स्थान फरेन्दा ने दिनांक 08.02.2023 को एक संयुक्त टीम गठित कर तीन सेक्टरों के चको का सीमांकन करने हेतु आदेश पारित किया जिसके विरुद्ध याचीगण ने माननीय उच्च न्यायालय इलाहाबाद में सी०एम.डब्ल्यू. पी० {रिट वी} नं० 795/2023 रामसनेही व अन्य बनाम उ० प्र० सरकार व अन्य दाखिल किया जिसमें माननीय न्यायालय ने आप को प्रत्यावेदन देने हेतु व उसकी निस्तारण हेतु आदेशित किया है।

यह कि चूंकि मौजा में धारा 52 {1} का प्रकाशन लगभग 19 वर्षों पूर्व हो चुका है तथा तीन सेक्टरों के चकदार या अन्य लोगों में से किसी की चक आपत्ति, अपील, निगरानी किसी न्यायालय में लम्बित नहीं है और ना ही किसी अदालत का आदेश ही है जिसके तहत पुनः सीमांकन कराया जाए तो आप श्रीमान जी द्वारा विला अधिकार के सेक्टर-3 का पुनः सीमांकन करने का आदेश कैसे पारित किया गया यह आश्चर्य का विषय है।

यह कि मौजा वरातगाड़ा में चकबन्दी प्रक्रिया समाप्त हो चुकी है और धारा 52 {1} का प्रकाशन दिनांक 05.11.2004 को हो चुका है ऐसे में पुनः गजट के बिना चकबन्दी प्रक्रिया शुरू नहीं हो सकती है और ना ही चको का सीमांकन चकबन्दी विभाग द्वारा कराया जा सकता है यदि किसी पक्ष को परेशानी हो तो वह राजस्व संहिता की धारा 24 के तहत अपने गाटा नम्बर का सीमांकन करा सकते हैं।

यह कि तथ्यों एवं परिस्थितियों के दृष्टिगत मौजा वरातगाड़ा में पुनः चकबन्दी विभाग द्वारा सीमांकन की प्रक्रिया को समाप्त किया जाना न्याय संगत है।”

3. Above referred representation dated 12.09.2023 was decided by District Collector/Deputy Director of Consolidation, Maharajganj by an order 04.11.2023 whereby representation of petitioners was rejected with specific reasons. Relevant part of order dated 04.11.2023 is quoted below -:

“उपरोक्त के आलोक में बन्दोबस्त अधिकारी चकबन्दी एवं अपर जिलाधिकारी (वि०/रा०)/ उप संचालक चकबन्दी से प्राप्त आख्या का

अवलोकन एवं दोनों पक्षों के कथनों के परिशीलन के उपरान्त मेरा निष्कर्ष है कि मौजा बरातगाडा, तहसील फरेन्दा, जिला महाराजगंज में कई चकदारों के चकों का चक सीमांकन/कब्जा परिवर्तन नहीं हुआ है, जिस कारण काश्तकारों द्वारा कृषि कार्य करने में असुविधा हो रही है। प्रायः चकों के सम्बन्ध में ग्राम में आपस में विवाद बना रहता है, तथा काश्तकारों के हितों को दृष्टिगत रखते हुये ग्राम में अवशेष चकों का चक सीमांकन/ कब्जा परिवर्तन कराया जाना विधिसम्मत है। जहां तक प्रार्थी श्री रामसनेही द्वारा कथन किया गया है कि ग्राम में चक सीमांकन न किया जाय। यदि प्रार्थी द्वारा किये गये कथन के आधार पर ग्राम में चक सीमांकन कार्य नहीं किया जायेगा, तो ग्राम के कई काश्तकार इससे प्रभावित रहेंगे, जो जनता के हित में नहीं है। उल्लेखनीय है कि श्री रामपलट पुत्र विपत आदि निवासी ग्राम द्वारा प्रार्थना-पत्र प्रस्तुत करते हुये ग्राम के अवशेष चकों के चक सीमांकन/कब्जा परिवर्तन कराये जाने का कथन किया गया है। जोत चकबन्दी अधिनियम की धारा - 2(3) में विधिक व्यवस्था भी है।

तत्क्रम में उपरोक्त विवेचना के आधार पर ग्राम बरातगाडा, तप्पा सुम्हाखोर, परगना हवेली, तहसील फरेन्दा, जनपद महाराजगंज के अवशेष चकों का सीमांकन/कब्जा परिवर्तन कराया जाना विधि सम्मत है। तदुसार उपरोक्त विवेचना के आधार पर श्री रामसनेही आदि का प्रत्यावेदन निस्तारित किया जाता है।”

4. Sri Bhagwan Dutt Pandey, learned counsel for petitioners has submitted that issue raised in representation filed by petitioners was not considered and it was rejected in a cursory manner. He has also referred some grounds taken in writ petition which are reproduced hereinafter -:

“III. Because, no other tenure holder except the complainant Ram Palat had ever made any complaint/request for getting paimise / delivery of possession of their chaks allotted during consolidation proceeding which came to be an end in the year 2004 and all the tenure holders are satisfied with their chaks but the respondent no. 2 without making any spot inspection and without making any enquiry as required under the law to be done and without getting response of any other tenure holder of the village concerned and because of illegal gratification offered by Mr. Ram Palat and to provided undue advantage, the respondent no. 2 has passed the order impugned

directing to get paimise/ demarcation & delivery of possession illegally under the order impugned.

IV. Because, the question was before the respondent no. 2, whether after notification under section 52 of U.P.C.H. Act in the village concerned, the consolidation authorities has got power to make any changes in the possession or any chak or to entertain any application for making paimise / delivery of possession, but without deciding the issue involved the respondent no. 2 has passed the order impugned without recording any finding and committed gross illegality.

V. Because, in the objection dated 12.09.2023 the petitioner has categorically stated that the publication under section 24 & 48 of U.P.C.H. Act was made in the year 1998 and the delivery of possession was given to the respective chak holders but without recording any finding in this regard the respondent no. 2 has passed the order Impugned and committed gross illegality.

VI. Because, in the objection dated 12.09.2023 the petitioner has also stated the fact that there is no objection in regard to the chak allotment proceeding either the chak holder of section -3 or of any village concerned and no appeal, objection or revision is pending as such the palmise was not permissible under the law, but while passing the order impugned the Deputy Director of Consolidation failed to record any finding and by cryptic and unreasoned order the application of the petitioners has been rejected vide order dated 04.11.2023.”

5. Per contra, Sri A.K. Rai, learned Additional Chief Standing Counsel for State has supported the impugned order that in order to give effect of orders passed in consolidation proceedings and that on basis of reports that number of chak holders have not been allotted their proposed chaks as well as in light of

provisions of Section 27 of U.P. Consolidation of Holdings Act, 1953, Authorities have right to measure even after proclamation of notification under Section 52 of the Act, 1953.

6. Heard learned counsel for parties and perused the records.

7. The Consolidation Authorities are under legal obligation to measure allotted chak and give possession thereof to respective chak-holders who have been allotted chaks under Consolidation Act and for that Section 27 and 28 of the Act would be relevant which provide power to implement orders passed under consolidation proceedings. Section 28 provides delivery of possession after new revenue records were prepared i.e. even after notification under Section 52 of the Act was issued. For reference, both Sections are reproduced below -:

“27. New revenue records. - (1) As soon as may be, after the final Consolidation Scheme has come into force, the District Deputy Director of Consolidation shall cause to be prepared for each village, a new map, field-book and record of rights in respect of the consolidation area, on the basis of the entries in the map, as corrected under Section 7, the *Khasra chakbandi*, the annual register prepared under Section 10 and the allotment orders as finally made and issued in accordance with the provisions of this Act. The provisions of the Uttar Pradesh Land Revenue Act, 1901, shall, subject to such modifications and alterations as may be prescribed, be followed in the preparation of the said map and records.]

[(2) All entries in the record of rights prepared in accordance with the provisions of sub-section (1) shall be presumed to be true until the contrary is proved.(3) After the issue of notification under Section 52, the Collector shall, instead of the map, field-book and record-of-rights previously maintained by him,

maintain the map, field-book and record of rights prepared in accordance with the provisions of subsection (1)] [and the provisions of the U.P. Land Revenue Act, 1901, relating to the maintenance and correction of such map, field-book and record-of-rights shall *mutatis mutandis* apply].

[28. Delivery of possession. - (1) The Assistant Consolidation Officer, on the application of the tenure-holder or the Land Management Committee, to whom *chak* or lands have been allotted under the final Consolidation Scheme,] [may, and where any land has been allotted to the State Government shall, without any application of the State Government, within six months of the date on which the said Scheme has come into force, put the tenure-holder or the Land Management Committee or the State Government, as the case may be, in actual physical possession of the allotted *chak* or lands,]; and for so doing shall have all the powers, including powers as regards contempt, resistance and the like as are exercisable by a Civil Court in execution of a decree for delivery of possession of immovable property :

Provided that the delivery of possession as aforesaid shall not affect the right of the person from whom possession is transferred to tend and gather the crops standing on such *chaks* or land or part thereof, on the date of the delivery, unless the Assistant Consolidation Officer decides, for reasons to be recorded, that the possession over the crop also shall be delivered :

Provided further that the person tending and gathering the standing crop, in accordance with the first proviso, shall be liable to pay to the persons who have been allotted the *chak*, or lands, compensation for the use of the land at such rate and in such manner as may be prescribed.

(2) On the expiry of six months from the date on which a tenure-holder or Land Management

Committee [or the State Government] became entitled to enter into possession of the *chak* or lands allotted, whether before or after the coming into force of the Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1962, or on the expiry of six months from the date of the coming into force of that Act, whichever is later, the tenure-holder or the Land Management Committee [or the State Government] as the case may be, shall, unless possession has been obtained earlier, be deemed to have entered into actual physical possession of the allotted *chak* or lands ;

Provided that the fact that a tenure-holder or Land Management Committee [or the State Government] has thus entered into possession shall not affect the right of the person from whom possession is deemed to have been transferred to tend and gather the crop standing on the *chak* or lands, or part thereof, on the date of the expiry of the period of six months aforesaid.”

8. The crux of argument of learned counsel for petitioners is that there is no dispute pending in regard to allotment of *chak* as well as no villager has come forward in regard to any complaint about measurement and exercise of measurement was proposed only on basis of a complaint made by one person.

9. In order to consider above submissions, I have carefully perused the impugned order whereby the representation of petitioners was considered and was rejected. It is evident that order was passed on basis of report submitted by Settlement Officer of Consolidation and Additional District Magistrate (Revenue) that in Mauja Baratgada, Tehsil Pharenda, District Maharajganj, number of *chaks* allotted to number of *chak* holders were not measured and possession were not handed over.

10. In absence of any substantial material, the aforesaid observation based on report made by a senior officer in the department could not be put under clouds of doubt.

11. Therefore, in aforesaid circumstances and that there is no absolute power rather above referred Sections 27 and 28 of the Act provide a legal obligation upon the Authorities to implement the orders passed in consolidation proceedings including the measurement of allotted chaks and possession thereof as well as to handover possession to their respective chak-holders.

12. In these circumstances, I do not find any illegality of perversity in the impugned order.

13. However, in order to remove any apprehension of any malafide or any other circumstances, this writ petition is finally disposed of with an observation that -:

(i) Proposed team at first instance shall ensure by villagers/chakdars about any dispute of measurement and only thereafter will proceed.

(ii) The process of measurement should be with an object of resolve any dispute, if any, and not to create any further dispute which could be avoided.

(iii) All proceedings should be recorded in writing duly signed by concerned chakdars.

14. In view of above observations, this writ petition is **disposed of**.

Order Date :- November 29, 2023

Nirmal Sinha

[Saurabh Shyam Shamshery, J.]