

Court No. - 7

Case :- WRIT - B No. - 1136 of 2023

Petitioner :- Shaukin Khan And Others

Respondent :- Deputy Director Of Consolidation, Lakhimpur Kheri And Another

Counsel for Petitioner :- Gibran Akhtar Khan, Mohammad Asmar Ansari, Mohammed Samar Ansari

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

1. Heard Sri Gibran Akhtar Khan, along with Mohd. Samar Ansari, learned counsel appearing on behalf of the petitioners and Sri Hemant Kumar Pandey, learned State Counsel.

2. By means of the present petition, the petitioners have assailed the order dated 10.08.2023 passed by the respondent No. 1/Deputy Director Consolidation, District- Lakhimpur Kheri (in short "D.D.C.") in Reference No.65/202254104300000358 (State vs. Navisan Begum and Others) instituted under Section 48 (3) of U. P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"), annexed as Annexure No.1 to this petition.

3. The impugned order dated 10.08.2023 passed in exercise of power under Section 48(3) of the Act of 1953 has been challenged broadly on the ground that D.D.C. has no power to review its order(s) on merits.

4. In support of his submission, learned counsel for the petitioners has placed reliance on the following judgments rendered in **WRIT - B No. 4510 of 2013 (Bhadiya vs. D.D.C. and Others); Civil Misc. Writ Petition No. 33955 of 1997 (Shivdhari vs. Deputy Director of Consolidation & Ors.); Writ Petition No. 721 of 2005 (Cons) (Jogi vs. Deputy Director of Consolidation and Others); Bux Singh vs. Joint Director of Consolidation and Ors. MANU/UP/0051/1966; Babu Lal and Ors. vs. Director of Income Tax (Investigation) and Ors. MANU/UP/0153/2005; and Smt. Shivraji and Others vs. Dy. Director of Consolidation, Allahabad and Others 1997 SCC OnLine All 505**. Reliance has also been place on the judgment of Hon'ble Apex Court rendered in the judgment of **Jagdamba Prasad (dead) through legal representatives and Others vs. Kripa Shankar (dead) through legal representatives and Others 920140 5 SCC 707**.

5. Upon due consideration of the facts of the case including the submission advanced by learned counsel for the parties, this Court is not inclined to entertain this petition, challenging the order impugned dated 10.08.2023 for the facts and reasons given hereinafter:-

(i) Gata No.1761 area 0.312 Hectare and Gata No.953 area 0.926 Hectare of Khata No.679 were recorded in the name of Rafeeq Khan, Shafeeq Khan and Vakeel Khan.

(ii) Rafeeq Khan executed a sale deed of his share in favour of respondent no.2/ Navisan Begum and this sale deed relates to Gata No.1761.

(iii) Vide order dated 01.02.2016, the Consolidation Officer, Rampur Grant (in short C.O.) decided the Case No.290 instituted under Section 9A(2) of the Act of 1953.

(iv) As per the order dated 01.02.2016, Rafeeq Khan, predecessor in interest of the petitioners, was declared owner of 1/3 share of Gata No.953 area 0.926 Hectare.

(v) The order dated 01.02.2016 also says that the name of Navisan Begum/respondent no.2 be deleted from Form 41 and 23 of Gata No.953 area 0.926 Hectare.

(vi) The order dated 01.02.2016 further provides that excluding chak out land, respondent no.2/Navisan Begum would be entitled to 1/3 share, Sharif Khan would be entitled to 1/3 share and Jamman Khan & Achchaan Khan would be entitled to 1/2 share each over Gata No.1761/0.312.

(vii) Thus, it is undisputed that the original Gata of the predecessor-in-interest of the petitioners was Gata No.953.

(viii) After the aforesaid, a reference no. 65 of 2016, under Section 48(3) of the Act of 1953, was decided by the D.D.C. concerned by a cryptic order dated 14.12.2016, which reads as under:-

"पत्रावली प्रस्तुत हुयी। पुकार कराई गई। किसी भी पक्ष द्वारा कोई आपत्ति नहीं प्रस्तुत की गई है। सन्दर्भ पत्रावली का परिशीलन किया गया। यह सन्दर्भ अभिलेख मिलान करते समय पायी गयी त्रुटियों को दुरुस्त करने हेतु तैयार किया गया है। बन्दोबस्त अधिकारी चकबन्दी ने सन्दर्भ अनुमोदित किए जाने की संस्तुति की है। तत्क्रम में प्रश्नगत सन्दर्भ स्वीकार किया जाता है। इस सन्दर्भ से चक संख्या-662 तथा 662 अ प्रभावित होती है। पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर हो।"

(ix) From the above quoted portion, it is apparent that no opportunity was provided to respondent No.2/Navisan Begum by the D.D.C. concerned while passing the order dated 14.12.2016.

(x) Respondent No.2/Navisan Begum upon coming to know about the

order dated 14.12.2016, preferred an application dated 17.12.2020 for recall of order dated 14.12.2016 and restoring the case to its original number, which is annexed as Annexure No.SA-1 to the supplementary affidavit dated 04.01.2024.

(xi) Vide order dated 05.07.2022, the restoration application of the respondent No.2/Navisan Begum dated 17.12.2020 was allowed and thereafter vide order dated 28.03.2023, the D.D.C. concerned approved the earlier order dated 14.12.2016. For ready reference, the order dated 28.03.2023 is extracted here-in-under:-

"चकबन्दी अधिकारी द्वारा चक संख्या-662 में मूल गाटा संख्या-953 का मूल्यांकन अधिक प्रदिष्ट होने तथा यह गाटा संख्या -953 अन्य कृषक का होने का उल्लेख करते हुए अभिलेख शुद्ध किये जाने हेतु सन्दर्भ इस न्यायालय को प्रेषित किया गया था, जिसे एकपक्षीय रूप से उप संचालक चकबन्दी द्वारा दिनांक 14.12.2016 को अनुमोदित किया गया। इस आदेश के विरुद्ध प्रभावित चकदार संख्या -662 द्वारा एक वाजदायर प्रार्थना-पत्र प्रस्तुत किया गया, जिसे न्यायहित में सुनवाई का अवसर प्रदान किये जाने हेतु दिनांक 05.07.2022 को स्वीकार किया गया। मूल सन्दर्भ पर पुनः मूल चकदार संख्या-662 को सुना गया तथा मूल सन्दर्भ का अवलोकन किया गया। मूल सन्दर्भ से स्पष्ट है कि चकदार संख्या-662 के चक में गाटा संख्या-953 का मूल्यांकन त्रुटिपूर्ण प्रदिष्ट है, जिसके शुद्ध किये जाने विषयक सन्दर्भ तैयार कर प्रेषित किया गया है, जो उचित है। प्रस्तुत सन्दर्भ में किसी प्रकार की अनियमितता नहीं है। इसलिए उप संचालक चकबन्दी द्वारा पूर्व में अनुमोदन आदेश दिनांक 14.12.2016 उचित है, जिसकी पुष्टि किया जाना न्यायोचित है। तदनुसार सन्दर्भ निस्तारित करते हुए उप संचालक चकबन्दी द्वारा पारित आदेश दिनांक 14.12.2016 की पुष्टि की जाती है। पत्रावली बाद आवश्यक कार्यवाही संचित अभिलेखागार हो।"

(xii) It would be apt to indicate that in the application for restoration dated 17.12.2020, respondent No.2/Navisan Begum specifically indicated the facts related to her original Gata No. 927 as also that while providing the chak, this aspect has been ignored.

(xiii) It appears from Form 23 (annexed at page no.42 of the paper-book) that Gata No.927/1 area 0.012 Hectare and Gata No.927/2 area 0.783 Hectare are the original gatas of respondent No.2/Navisan Begum. It further appears that Gata No.927/2 was the largest holding of the respondent No. 2.

(xiv) From a conjoined reading of the aforesaid facts, it is apparent

that the D.D.C. concerned while passing the order(s) dated 14.12.2016 & 28.03.2023 failed to take note of the principles laid down under Section 19 of the Act of 1953 according to which allotment of chak(s) should be made during consolidation proceedings.

(xv) 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."

(xvi) 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 various judicial pronouncements.

(xvii) In the case of **Asbaran v. Deputy Director of Consolidation, Gonda; 1986 A.W.C. 1088**, this Court has observed:-

"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."

(xviii) 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.

(xix) In the judgment passed in the case of **Mukut Nathi v. 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."

(xx) 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 stated 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"

(emphasis added)

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."

(emphasis added)

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)

(xxi) 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.

(xxii) 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."

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."

(xxiii) After the order dated 28.03.2023, respondent No.2/Navisan Begum again preferred an application for restoration with regard to the order dated 14.12.2016 and vide impugned order dated 10.08.2023, the D.D.C. concerned took note of the facts pertaining to original holdings of respondent No.2/Navisan Begum i.e. Gata No.927 and thereafter passed the order impugned dated 10.08.2023, which reads as under:-

"चकबन्दी अधिकारी द्वारा चक संख्या-662 में मूल गाटा संख्या-953 का मूल्यांकन अधिक प्रदिष्ट होने तथा यह गाटा संख्या -953 अन्य कृषक का होने का उल्लेख करते हुए अभिलेख शुद्ध किये जाने हेतु सन्दर्भ इस न्यायालय को प्रेषित किया गया था, जिसे एकपक्षीय रूप से उप संचालक चकबन्दी द्वारा दिनांक 14.12.2016 को अनुमोदित किया गया। इस आदेश के विरुद्ध प्रभावित चकदार संख्या -662 द्वारा एक वाजदायर प्रार्थना-पत्र प्रस्तुत किया गया, जिसे न्यायहित में सुनवाई का अवसर प्रदान किये जाने हेतु दिनांक 05.07.2022 को स्वीकार किया गया। मूल सन्दर्भ पर पारित आदेश दिनांक 14.12.2016 की पुष्टि की गयी। इस आदेश के विरुद्ध पक्षकार नवीसन बेगम द्वारा पुनः वाजदायर प्रार्थना-पत्र दिनांक 09.05.2023 प्रस्तुत कर पूर्व पारित आदेश दिनांक 14.12.2016 से सहमत व्यक्त की गयी, परन्तु सन्दर्भ में उसे बिना मूल नम्बर की भूमि गाटा संख्या-928 पर प्रदिष्ट चक के स्थान पर उसके मूल गाटा संख्या -

926 व 927 पर चक प्रदिष्ट किये जाने की मांग की गयी। इस सम्बन्ध में उभयपक्षों को सुना गया तथा ग्राम के अभिलेखों का अवलोकन किया गया। अवलोकन से स्पष्ट है कि वाजदायरकर्ती को उसके मूल नम्बर के विपरीत अन्य नम्बर पर सन्दर्भ के माध्यम से बिना सुने हुए चक प्रदिष्ट किया गया है, जो न्याय के विपरीत है। इसलिए न्यायहित में प्रस्तुत वाजदायर प्रार्थना-पत्र स्वीकार करते हुए पूर्व पारित आदेश दिनांक 28.03.2023 निरस्त किया जाता है तथा उभयपक्षों को सुनकर गुण-दोष के आधार पर आदेश पारित किया जाना उचित है। तदनुसार चकदार संख्या 662 को चकबन्दी अधिकारी के मूल वाद संख्या -290 में पारित आदेश दिनांक 01.02.2016 के अनुपालन में प्रस्तुत सन्दर्भ में उसके मूल नम्बर गाटा संख्या-927 मि० आदि पर चक प्रदिष्ट किया जाना उचित है। इस प्रदिष्टीकरण से प्रभावित चकदार संख्या-662 अ को उनके मूल चक से लगे हुए बचत भूमि गाटा संख्या-990 मि० आदि पर व शेष चक गाटा संख्या-928/1 मि० आदि पर प्रदिष्ट हो जाता है, जिससे उभयपक्ष अपने मूल नम्बर पर चक प्रदिष्ट हो जाते हैं। तदनुसार आदेश हुआ कि:-

आदेश

उप संचालक चकबन्दी का पूर्व पारित आदेश दिनांक 28.03.2023 निरस्त हो। नवीन संशोधन तालिका, जिस पर सदिनांक मेरे हस्ताक्षर हैं, जिससे चकदार संख्या-662 अ, 662 व बचत प्रभावित होते हैं, अनुमोदित की जाती है। पत्रावली बाद आवश्यक कार्यवाही संचित अभिलेखागार हो।"

(xxiv) Undoubtedly, the D.D.C. has no power to review its order on merits.

(xxv) However, it is also a settled principle of law that the High Court in exercise of power under Article 226/ 227 of the Constitution of India, should not interfere in the order if by the same, substantial justice has been done, even if the order of the authority is without jurisdiction or against the law. Reference can be made to the judgment passed in the case of **Sita Ram Alias Baba vs. Dy. Director of Consolidation, Varanasi, 2000 (18) LCD 527.**

(xxvi) It is apparent from impugned order dated 10.08.2023 that the D.D.C. concerned has decided the issue in favour of respondent No.2/Navisan Begum which is according to law as the chak has been provided to respondent no.2/Navisan Begum after taking note of her original holding, i.e., Gata No.927. Thus, the D.D.C. concerned has

done substantial justice.

6. For the aforesaid reasons, this writ petition fails and is accordingly **dismissed**.

7. No order as to costs.

Order Date :- 15.2.2024
Manoj K.