

extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

(Emphasis supplied)

19. In aforesaid circumstances, equitable jurisdiction of this Court is being exercised and possession of petitioners only is protected. Impugned judgment and orders dated 24.09.1992 and 15.07.1981 are interfered and accordingly set aside. However, it is directed that State will conduct a fresh allotment proceedings and will include contesting-respondents, if still they are eligible for allotment under relevant provisions, including others also. Said exercise will be concluded within a period of six months from today, if there is no legal impediment.

20. With aforesaid observations/directions, this writ petition is disposed of.

(2024) 11 ILRA 211
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.11.2024

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 3319 of 2022

Suraj Singh @ Suraj Dev ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Bhupendra Kumar Yadav, Dinesh Rai,
 Manvendra Nath Singh

Counsel for the Respondents:

C.S.C., Shri Krishan Yadav, Vishnu Murti
 Tripathi

(A) Land Law - Consolidation of Holdings - Orders regarding Chak allotment under U.P.C.H. Act under challenge - Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 19 - Conditions for Consolidation Scheme, Section 21(2) - Appeals, Section 48 - Revisional Powers of Deputy Director - Compact area - Source of irrigation - Rectangulation - Chak Objection - Chak Appeal - Chak revision - Tenure holder be allotted Chak as far as possible on his original largest holding considering the source of irrigation of tenure holder copuled with the process of rectangulation of Chak of tenure holder.(Para -11)

Petitioner, holder of Chak Nos. 799 and 800 - challenged allocation of chaks made under consolidation proceedings - objection was partially allowed by Consolidation Officer - subsequent appeal and revision were dismissed - sought allotment on his original holdings (536 and 539) - claiming that current allocation (496 and others) was unfit for cultivation due to its L-shape - which was denied by authorities. (Para 2, 4)

HELD: - Petitioner's allotment of Chak to his source of irrigation was adjusted on plot no. 496. No illegality in allotment of the Chak to the petitioner by Consolidation Officer. Consolidation Officer dismissed an appeal to allocate the Chak to other holdings. Deputy Director of Consolidation also dismissed a revision under

Section 48 of the U.P.C.H. Act. No scope of interference against the impugned orders. (Para -10,12)

Petition dismissed. (E-7)

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri Dinesh Rai, learned counsel for the petitioner, Shri V.K. Singh, learned Senior Counsel assisted by Sri S.K. Yadav as well as Sri V.M. Tripathi, learned counsel for respondent nos. 5, 6 & 7 and Sri Ashutosh Kumar Rai, learned Additional Chief Standing Counsel for the State.

2. Brief facts of the case are that petitioner is Chak Holder of Chak No. 799 & 800. Respondent No. 5 is Chak Holder No. 65. The Assistant Consolidation Officer has proposed single Chak to the petitioner on plot nos. 489M, 496M, 505M. Against the proposal of Assistant Consolidation Officer the Chak Objection was filed by petitioner, which was decided by Consolidation Officer vide order dated 11.02.2020 allotting the Plot No. 496, in which his source of irrigation is situated along with the Plot No. 505. Petitioner was also allotted Plot No. 500, 499 under the order of Consolidation Officer dated 11.02.2020. Against the order of Consolidation Officer petitioner filed Chak Appeal before the Settlement Officer Consolidation claiming that he should be allotted Chak over plot nos. 536 & 539 in place of plot nos. 499 & 500. The aforementioned appeal filed by the petitioners was dismissed vide order dated 23.12.2020. Petitioner challenged the appellate order by way of revision under Section 48 of the U.P.C.H. Act, which was dismissed by Deputy Director of Consolidation vide order dated 15.09.2022.

Hence, this writ-petition for following reliefs:-

"I) Issue a writ, order or direction in the nature of certiorari quashing the order dated 11.02.2020 passed by respondent no. 4 in so far it relates to Chak no. 800, order dated 23.12.2020 passed by respondent no. 3 in Appeal No. 40 of 2020, under section 21(2) of U.P.C.H. Act and order dated 15.9.2022 passed by respondent no. 2 in Revision No. 175/2021530126000033, under section 48(1) of U.P.C.H. Act.

II) Issue a writ order or direction in the nature of mandamus directing the respondents not to give effect to the impugned orders and direct the parties to maintain status quo on spot.

III) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

IV) To award the cost of writ petition."

3. This Court entertained the matter and granted interim order on 01.12.2022. In pursuance of the order dated 01.12.2022 pleadings have been exchanged between the parties.

4. Learned counsel for the petitioner submitted that the Chak Appeal filed by petitioner against the illegal order of Chak allotment passed by Consolidation Officer has been dismissed in arbitrary manner without considering the demand of the petitioner in accordance with law. He further submitted that Settlement Officer Consolidation has not considered the provisions of Section 19 of the U.P.C.H. Act in proper manner and dismissed the appeal in arbitrary manner. He next submitted that the revision filed against the

appellate order has also been dismissed illegally under the impugned order. He further submitted that the shop of the Chak allotted to the petitioner under the impugned order has become 'L' shape, which is not fit for cultivation. He further submitted that in the impugned orders, it is wrongly mentioned that the Chak, which has been allotted to the petitioner by Consolidation Officer is rectangular in shape. He placed the 'Chak Map' of the village in order to demonstrate that the shape of the Chak of the petitioner has become 'L' shape and the same is not fit for cultivation. He submitted that petitioner has claimed the allotment of the Chak on plot nos. 536 and 539, which are the original holdings of the petitioner, as such the relief claimed by petitioner cannot be denied by the Settlement Officer Consolidation. He further submitted that the impugned appellate order and revisional orders are liable to be set aside and the matter be sent back before the appellate Court to decide the appeal afresh in accordance with law.

5. On the other hand, Sri V.K. Singh, learned Senior Counsel appearing for respondent nos. 5 to 7 submitted that petitioner has filed the Chak Objection claiming the allotment of plot in which his source of irrigation is situated and Consolidation Officer has allowed the claim of the petitioner, as such petitioner can not file appeal claiming further relief in the matter. He submitted that petitioner has not impleaded the necessary parties in the instant petition as well as before the Consolidation authorities, as such the writ petition filed by the petitioner cannot be entertained. He next submitted that petitioner's Chak is not effected in any manner by the Chak of respondent nos. 5 to 7. He further submitted that the schedule which is attached along with the order of

Consolidation Officer fully demonstrates that petitioner's Chak/claim is not effected in any manner from the Chak of respondent nos. 5 to 7. He next submitted that it is not necessary that every original holdings be allotted to the tenure holder concerned in the allotment of the Chak proceedings. He submitted that Chak map annexed along with writ petition is not correct, as such no interference is required in the matter and the writ petition is liable to be dismissed.

6. Sri Ashutosh Kumar Rai, learned Additional Chief Standing Counsel for State submitted impugned orders have been passed considering the provision of U.P.C.H. Act, as such no interference is required in the matter.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the facts that Chak Objection filed by the petitioner was allowed, but Chak Appeal filed by the petitioner has been dismissed and the Chak revision filed by petitioners has also been dismissed under the impugned orders.

9. In order to appreciate the controversy involved in the matter, perusal of Section 19 of U.P.C.H. Act will be relevant which is as under:-

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

(a) the rights and liabilities of a tenure-holder, as recorded in the 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 tenure-holder, subject to deductions, if any, made on account of contributions to public purposes under this Act is 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 tenure-holder shall not differ from the area of his original holding or holdings by more than twenty five 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 tenure-holder -

(i) for trees, wells and other improvements, originally held by him and allotted to another tenure-holders, 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 tenure-holder;

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

(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;

(f) every tenure-holder 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 tenure-holder 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 19-A.J"

10. Perusal of the C.H. Form 23 of the petitioner, contesting respondents provision of Section 19 of U.P.C.H. Act as well as the order passed by the Consolidation Officer in the Chak Objection filed by the petitioner fully demonstrate that petitioner has been adjusted on plot no. 496, in which his source of irrigation is situated, as such there is no illegality in allotment of the Chak to the petitioner by Consolidation Officer. Further, filing of Chak appeal by the petitioner claiming the allotment of Chak on his other original holdings cannot be allowed by the Consolidation Authorities. The appeal filed by the petitioner has rightly been dismissed and the revision has also been dismissed by the Deputy Director of Consolidation under Section 48 of the U.P.C.H. Act.

11. Law relating to allotment of Chak under U.P.C.H. Act is well settled that tenure holder be allotted Chak as far as possible on his original largest holding considering the source of irrigation of tenure holder coupled with the process of rectangulation of Chak of tenure holder which has been followed in the instant matter as far as possible.

