

**(2004) 09 AHC CK 0189**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 6959 of 2004**

Baccha

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

**Date of Decision :** 14-09-2004

**Acts Referred:**

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 11, 41, 48, 48(1)

Uttar Pradesh Land Revenue Act, 1901 — Section 11, 201

**Citation :** (2005) 1 AWC 707

**Hon'ble Judges :** Ashok Bhushan, J

**Bench :** Single Bench

**Advocate :** Rahul Sahai, for the Appellant; R.N. Ojha and O.P. Ojha and S.C., for the Respondent

**Final Decision :** Disposed Of

## **Judgement**

Ashok Bhushan, J.—Heard Shri Rahul Sahai, counsel for the petitioner and Shri R.N. Ojha appearing for contesting respondent.

2. By this writ petition, the petitioner has prayed for quashing the order dated 31.12.2003, passed by Deputy Director of Consolidation. By amendment application prayer for quashing orders dated 10.11.1995 and 30.6.1999 has also been added.

3. Brief facts giving rise to the writ petition are Consolidation proceedings started in the village Midha under U. P. Consolidation of Holdings Act, 1953, (hereinafter referred to as the Act). Dispute relates to Khata No. 80. An objection was filed by the contesting respondent u/s 9A (2) of the Act claiming themselves to be co-tenure holder of the Khata and also stating that late Sita Ram who was co-tenure holder has executed a Will dated 15.11.1977, in favour of the objector. It was stated that Sita Ram died on 1.3.1979 hence, the name of Sita Ram be deleted and name of objectors/ contesting respondents be recorded. The petitioner's case before the Consolidation Officer was that late Sita Rani executed a Will in

favour of the petitioner on 16.3.1979. Evidence started before the Consolidation Officer. The evidence of the petitioner who was respondent in the objection was closed on 6.9.1994. On an application filed by the petitioner he was permitted to cross-examine the witness on 1.6.2.1995. The case was taken on 25.8.1995 on which date the Court noted that witness of petitioner is not present, hence the evidence of the respondent petitioner is closed and case be fixed on 8.9.1995. The petitioner moved an application on 25.8.1995 praying for recall of the order dated 25.8.1995. Another application was moved by the petitioner on 25.8.1995 praying that record of Post Office Suryapuram District Balia be summoned in which late Sita Ram has put his thumb impression which may be got compared with the signature of Sita Ram in the Will. The Consolidation Officer vide his order dated 10.11.1995 rejected both the applications of the petitioner. The Consolidation Officer observed in the order that repeated opportunity is not required to be given to Bachha since he is interested in delaying the proceeding. Both the applications were rejected. Against the order of Consolidation Officer dated 10.11.1995 petitioner filed an appeal u/s 11 of the Act before Settlement Officer, Consolidation. The Settlement Officer, Consolidation vide his order dated 30.6.1999 rejected the appeal. The Settlement Officer, Consolidation observed that appeal has been filed only against an interlocutory order hence it does not lie. Petitioner filed a revision u/s 48 before the Deputy Director of Consolidation against the order of Settlement Officer, Consolidation and the Consolidation Officer. The revision filed by the petitioner has been rejected by the Deputy Director of Consolidation on 31.12.2003 against which order this writ petition has been filed.

4. Shri Rahul Sahai, counsel for the petitioner raised following submissions in support of the writ petition :

(1) The view of the Settlement Officer, Consolidation and Deputy Director of Consolidation that appeal u/s 11 was not maintainable against the order of the Consolidation Officer dated 10.11.1995 is erroneous. He placed reliance on the judgment of learned singh Judge of this Court in Mst. Isharaji and Anr. v. Commissioner, Varanasi Division, Varanasi 1968 RD 123.

(2) The petitioner further contended that Consolidation Officer committed error in rejecting the application of the petitioner for summoning the documents from Post Office. Petitioner was denied the opportunity.

(3) The Deputy Director of Consolidation has also mechanically dismissed the revision without considering the submissions of the petitioner on merits. The order of Consolidation Officer denied the right of the petitioner to lead evidence which required interference by Deputy Director of Consolidation u/s 48.

5. Shri R. N. Ojha learned counsel appearing for the respondent refuted the submission of the counsel for the petitioner and contended that the Settlement Officer Consolidation has rightly rejected the appeal of the petitioner as not maintainable. He contended that appeal u/s 11 of the Act will lie only against a

final order passed u/s 9A. He placed reliance on the Judgment of this Court in Mano Devi and Others Vs. Chander Singh and Others,

6. I have considered the submissions of both the parties and perused the record. The first question which arises in the present writ petition is as to whether against the order of Consolidation Officer dated 10.11.1995 appeal was maintainable u/s 11 of the Act or not. For considering the above question, the provisions of Act had to be looked into. Section 9 (2) of the Act provides that any person to whom a notice under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under Sub-section (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records. Section 9A deals with disposal of cases relating to claims to land and partition of joint holdings. Section 9A of the Act is extracted below :

"9A. Disposal of cases relating to claims to land and partition of joint holdings.--  
(i) The Assistant Consolidation Officer shall--

(i) where objections in respect of claims to land or partition of joint holdings- are filed, after hearing the parties concerned ; and

(ii) where no objections are filed, making such enquiry as he may deem necessary,

settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of conciliation :"

Provided that where the Assistant Consolidation Officer, after making such enquiry as he may deem necessary, is satisfied that a case of succession is undisputed, he shall dispose of the case on the basis of such enquiry.)

(2) All cases which are not disposed of by the Assistant Consolidation Officer under Sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvement, for calculating compensation therefore, and its appointment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under Sub-section (1) and the Consolidation Officer, while acting under Sub-section (2), shall be deemed to be a court of competent jurisdiction, any thing to the contrary contained in any other law for the time being in force notwithstanding."

7. Section 11 of the Act as amended by Act No. VIII of 1963 provides for appeal. Section 11 of the Act is quoted below :

"11. Appeals.--(1) Any party to the proceedings "under Section 9A aggrieved by

an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall, after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any court of law.

(2) The Settlement Officer, Consolidation hearing an appeal under Sub-section (1) shall be deemed to be a court of competent jurisdiction, any thing to the contrary contained in any for the time being in force notwithstanding."

8. Section 9A contemplates settlement of disputes by the Assistant Consolidation Officer on the basis of the conciliation and also in the case of undisputed succession. The section further provides that all cases which are not disposed of by the Assistant Consolidation Officer are to be forwarded by Assistant Consolidation Officer to the Consolidation Officer who shall dispose of the same. The order contemplated u/s 9A are thus orders passed by Assistant Consolidation Officer and Consolidation Officer. Section 11 of the Act gives right of appeal both against an order of the Assistant Consolidation Officer and that of the Consolidation Officer passed u/s 9A. Section 11 used the word an order of the Assistant Consolidation Officer or the Consolidation Officer under that section. Thus the appeal has been provided for order passed by Assistant Consolidation Officer and Consolidation Officer u/s 9A. The order contemplated u/s 9A are orders by the Assistant Consolidation Officer settling the dispute on the basis of conciliation or an order in the case of undisputed succession and further the order of Consolidation Officer disposing the disputed cases. Section 48 of the Act provides for revision and reference. Section 48 (1) which gives revisional jurisdiction to the Deputy Director of Consolidation is quoted as below :

"48. Revision and reference.--(1) The Deputy Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings ; or as to the correctness, legality or propriety of any order [other than interlocutory order] passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit."

9. Perusal of Section 48 (1) makes it clear that the section uses word any case and any order. The language of Section 48 thus is very wide and revisional power has been given to the Director of Consolidation against any case decided or proceeding taken or correctness of any order.

10. The difference in language of Section 11 and Section 48 itself makes it clear that where as revisional Jurisdiction has been conferred to the Deputy Director of Consolidation with regard to any case or any order where as the appellate power u/s 11 has been given to the Settlement Officer, Consolidation against an order of the Assistant Consolidation Officer or Consolidation Officer u/s 9A. From the

scheme of the provisions of the Act, it is clear that the appeal contemplated u/s 11 is appeal against an order of the Assistant Consolidation Officer settling the dispute or an order of Consolidation Officer disposing of the objections/dispute. The scheme contemplates appeal against an order which has effect of disposing of the objection by Consolidation Officer or settling a dispute by Assistant Consolidation Officer. Section 11 thus does not contemplate an appeal against an interlocutory order passed during pendency of proceeding before Assistant Consolidation Officer or an objection before Consolidation Officer.

11. The judgment of Mst. Isharaji's case of this Court relied by counsel for the petitioner was a case in which petitioner's objection before the Consolidation Officer was dismissed for default of appellants. Objection was raised since the objection was dismissed in default no appeal will lie in view of provisions of Section 201 of the U. P. Land Revenue Act. This Court laid down that the appeal against the order of Consolidation Officer dismissing the objection in default shall lie u/s 11 and Section 201 of the U. P. Land Revenue Act shall not be attracted. Following was laid down in paragraph 5 :

"5. Section 41 of the Consolidation of Holdings Act opens with the phrase "Unless otherwise expressly provided by or under this Act." So far as the applicability of Section 201 is concerned if any other provision of the Consolidation of Holdings Act provides for an appeal against an order passed ex parte or by default then Section 202 will not apply. Its applicability would be excluded by the opening part of Section 41. Section 11 of the Consolidation of Holdings Act is general. It provides an appeal against all kinds of orders of the Consolidation Officer passed u/s 10 of the Act. Section 10 relates to the disposal of disputed cases. Under it the Consolidation Officer has to hear the parties and record evidence tendered and decide the objections. A decision of the objections results in an order which has been made appealable u/s 11 without, any distinction. Disposal of an objection ex parte or by default would also be an order u/s 10 and would hence be appealable u/s 11 governing such an order, the result would be that there is a provision providing for an appeal against such an order. The provisions of Section 41 read with Section 201 of the Land Revenue Act will hence not be attracted. The Assistant Director of Consolidation was, therefore, in error in holding that Section 11 was subject to Section 41 of the Act. The appeal before the Settlement Officer was maintainable and was validly decided."

12. In the judgment of Smt. Isharaji's case this Court has observed that there is no categorization of the kinds of order which alone is appealable u/s 11. The word categorization used in the judgment was in reference to an obligation which was dismissed in default, the Court meant that whether the objection was dismissed in default or disposed of on merit same was an order u/s 10 and the appeal will lie.

13. The learned single Judge of this Court again has occasion to consider Sections 9 and 11 in case in Ram Rup v. Assistant Director of Consolidation 1991 RD 222 (HC). The Court was considering the question as to whether appeal lay

against an order deciding an application u/s 5 of the Limitation Act filed along with the objection. This Court held in the said judgment that it will depend on the nature of the order, in case only application u/s 5 of the Limitation Act has been decided and no order has been passed on objection no appeal shall lie. Whereas if objection has also been decided along with application u/s 5, appeal would lie. Following was held in paragraph 7 of the judgment :

"7. In view of the aforesaid decision and on the basis of the nature of the order u/s 5 of the Limitation Act it was manifest that where only the application u/s 5 has been rejected or only the application u/s 5 of the Limitation Act has been decided on no order has been passed on the objection, against such an order no appeal would lie, whereas if the objection has also been rejected then certainly the appeal would lie against the order rejecting the objection along with the application u/s 5 of the Limitation Act."

14. A Division Bench of this Court in *Samharoo v. State of U. P.* 1967 ALJ 463 considered the question as to whether an order allowing an application u/s 5 of the Limitation Act is an order u/s 9 or Section 10 of U. P. Consolidation of Holdings Act or not. The Court held that an order u/s 5 of the Limitation Act is only for the purpose of invoking jurisdiction u/s 9 or 10 and order passed therein cannot be seen to be an order u/s 9 or Section 10.

15. This Court again considered the same issue in *Mano Devi and Others Vs. Chander Singh and Others*, The Consolidation Officer passed an order setting aside ex parte order dated 15.6.1988. The Court considered the earlier cases and took the view that when the order attaches finality to the proceeding, the appeal shall lie and when the order does not attach finality to the proceeding the appeal shall not lie. Following was laid down in paragraphs 4 and 5 of the judgment :

"4. Learned counsel for the petitioner placed reliance upon the case *Sham Raj v. Jyotish Prasad* 1982 RD 25, wherein it has been held that the Settlement Officer, Consolidation has the jurisdiction to look into the validity of the compromise filed before the Assistant Settlement Officer, Consolidation. In this case an order was passed on the basis of a compromise. It was not a case where an appeal was filed against an interim order. In *Isharaji v. Commissioner, Varanasi Division, Varanasi and Ors.* 1968 ALJ 205, it was held that where an objection was dismissed for default of appearance, an appeal was maintainable against such an order before the Settlement Officer (Consolidation) u/s 11 of the Act. In *Sahab Singh and Ors. v. Rameshwar and Ors.*, 1971 AWR 755 the Court held that an appeal was maintainable u/s 11 of the Act before the Settlement Officer (Consolidation) against an order dismissing an application u/s 5 of the Limitation Act for condonation of delay in submitting objection u/s 9A of the Act. Similarly in *Pheku v. Joint Director of Consolidation, Varanasi and Ors.* 1981 ALJ 1233 it was held that appeal lies against an order dismissing an objection for default u/s 9A of the Act. In *State of V. P. and Ors. v. Smt. Vimla Sambharwar and Ors.* 1983 ALJ 317, where, the Consolidation Officer had dismissed the application for restoration of objection filed u/s 9A (2) of the Act, it was held that the appeal lies

u/s 11 of the Act before the Settlement Officer, Consolidation. These are the cases where the objections were disposed of in default or the restoration applications were dismissed with the result that no proceedings remained pending after disposal of the application. The order attached finality of the proceedings. This position will not be applicable where an application for condonation of delay is allowed or an application to set aside ex parte order is passed. The proceedings before the Consolidation Officer shall revive after delay is condoned in filing objection or ex parte order is set aside.

5. In *Sita Ram Singh and Ors. v. State of U. P. and Ors.* 1970 ALJ 1324 it was held that no appeal lies against the order of the Consolidation Officer condoning the delay in filing the objection. Similar view was expressed in *Gaon Sabha Rakshaha Ghazipur v. Deputy Director of Consolidation and Ors.* 1980 AWC 547 and *Ram Roop v. Assistant Director of Consolidation and Ors.* 1991 AII CJ 517. The reason of all these decisions are that in case an ex parte order is set aside or delay is condoned in filing an objection, the case shall be decided on merits by the Consolidation Officer and the final decision of Consolidation Officer would be appealable u/s 11 of the Act. Respondent No. 1 rightly held that the appeal filed by the petitioner against the decision of the Consolidation Officer setting aside ex parte order was not appealable."

16. In view of the abovesaid discussion it is clear that against the order of the Consolidation Officer dated 11.11.1995, rejecting the application filed by the petitioner in a proceeding u/s 9A, no appeal lay and Settlement Officer, Consolidation rightly took the view that appeal was not maintainable.

17. Now coming to the second and third submissions of the counsel for the petitioner, it is clear that opportunity was given to the petitioner to lead evidence earlier and evidence of the petitioner was closed on 6.1.1994. Subsequent to 6.1.1994 on application filed by the petitioner, he was granted permission to cross-examine, the Consolidation Officer has observed in the order that repeated opportunity had already been given to the petitioner, hence the application of the petitioner for summoning application from the Post Office was rejected. The Consolidation Officer further observed that the petitioner is delaying the disposal of the case. The Deputy Director of Consolidation has considered all aspect of the matter and has noted all the facts of the case and has observed that it is not fit case to interfere with the order of Settlement Officer, Consolidation. The Deputy Director of Consolidation has also upheld the order of Settlement Officer, Consolidation who rejected the appeal as not maintainable. The Deputy Director of Consolidation also noted the observations of the Consolidation Officer that several opportunity of evidence has been given to petitioner, hence petitioner is not entitled for further opportunity because he wants to keep the matter pending.

18. In the facts of the present case, refusal to interfere by the Deputy Director of Consolidation cannot be said to be unjustified. The copy of the part of the order sheet has been filed by the petitioner, only beginning from 6.1.1994. On 6.1.1994, the evidence of the petitioner was closed. Obviously, he must have

been given opportunity prior to that date even subsequent to 6.1.1994 he was given opportunity to cross-examine. No error was committed by Consolidation Officer in rejecting the applications of the petitioner. It is not a fit case for exercising jurisdiction by this Court under Article 226 of the Constitution of India. The objection admittedly is still pending before Consolidation Officer and has not yet been finally decided which is pending since more than two decades. It is however, observed that objection u/s 9A (2) pending before Consolidation Officer shall be expeditiously disposed of preferably within a period of six months from the date of production of a certified copy of this order.

19. Subject to observations as made above, the writ petition is dismissed with costs.