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**(2014) 07 AHC CK 0213**  
**In the Allahabad High Court**  
**Case No : Consolidation No. 409 of 2014**

Gaya Prasad

APPELLANT

Vs

Dy. Director of Consolidation

RESPONDENT

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**Date of Decision :** 03-07-2014

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42A, 48(1), 48(3), 9A

**Citation :** (2014) 124 RD 517

**Hon'ble Judges :** Ram Surat Ram (Maurya), J

**Bench :** Single Bench

**Advocate :** Anurag Shukla and Naveen Awasthi, Advocate for the Appellant;  
Alok Kumar Srivastava, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Anurag Shukla for the petitioners and Sri Alok Kumar Srivastava for the contesting respondents. The writ petition has been filed against the order of the Deputy Director of Consolidation dated 23.4.2014, by which instead of accepting the reference submitted by the subordinate authorities he has remitted the reference to Settlement Officer, Consolidation with the direction to decide the appeal within a period of two months.

2. Against the basic consolidation record the petitioners filed an objection u/s 9A of U.P. Consolidation of Holdings Act, 1953, hereinafter referred to as "the Act", which was allowed by an ex parte order of the Consolidation Officer dated 4.8.2007. The contesting respondents filed Appeal No. 1320 of 2008 against the aforesaid order, which is pending before the Settlement Officer, Consolidation. However, in the appeal there had been no interim order, therefore, the Consolidation Officer has prepared a reference dated 26.2.2014 for giving effect to the order dated 4.8.2007 in the consolidation record. Accordingly, a report has been submitted, which has been forwarded by the Settlement Officer, Consolidation by order dated 12.3.2014 to the Deputy Director of Consolidation. When the reference was forwarded by the Settlement Officer, Consolidation, then

the contesting respondents filed an application before the Deputy Director of Consolidation on 24.3.2014 stating therein that till the disposal of the Appeal No. 1320 reference proceeding be stayed. Thereafter the matter was heard by the Deputy Director of Consolidation, who by the impugned order dated 23.4.2014 found that the reference has been prepared on the basis of an ex parte order of the Consolidation Officer against which the appeal has been filed, which is pending before the Settlement Officer, Consolidation on 20.8.2008 and the case is being adjourned since then regularly. In view of the fact of the case, the Deputy Director of Consolidation found it appropriate that the appeal be decided expeditiously and the Settlement Officer Consolidation was directed to decide the appeal filed within a period of two months giving maximum three adjournments to the parties in the meantime and the reference was remitted back to the Settlement Officer, Consolidation to act after the decision in the appeal. Hence this writ petition has been filed.

3. The Counsel for the petitioners submits that in view of the provision u/s 42A of the Act, which has an overriding effect, the Consolidation Officer has not committed any illegality in making a reference and sending it u/s 48(3) of the Act to Deputy Director of Consolidation as there was no stay order from the Appellate Court and there being no stay order, order dated 4.8.2007 was required to be given effect in the consolidation record. The reference has been rightly forwarded by the Settlement Officer, Consolidation. There was nothing before the Deputy Director of Consolidation to show that the hearing in the appeal was being delayed due to overt act of the petitioners even then the reference was not accepted by the Deputy Director of Consolidation observing that the hearing in appeal is being delayed. He submits that section 48(3) of the Act, in case reference has been submitted then the Deputy Director of Consolidation can either accept it or reject it and he has no jurisdiction to remit or remand it to subordinate authorities. Accordingly, the order of the Deputy Director of Consolidation remanding the matter to the Settlement Officer, Consolidation is illegal and there is no justification, which requires remand of the matter. He further submits that without there being any stay application for staying the operation of the order of the Consolidation Officer, he has virtually stayed the operation of the order of the Consolidation Officer by not accepting the reference. He further submits that the observation has been made in respect of the merit of the appeal although the Deputy Director of Consolidation was neither hearing the appeal nor deciding it and the observation was not called for on the merit of the case.

4. I have considered the arguments of the parties and examined the record.

5. It is not denied that the appeal against ex parte order of the Consolidation Officer dated 4.8.2007 is pending before the Settlement Officer, Consolidation since 2008. In the circumstances the observation has been made by the Deputy Director of Consolidation that hearing of the appeal is being adjourned for about six years. The observation is not uncalled for because pendency of the appeal for

six years has not been denied by any of the parties.

6. So far as the jurisdiction of the Deputy Director of Consolidation u/s 48(1) of the Act is concerned, the Deputy Director of Consolidation has power of revision which can be exercised suo motu in respect of any case decided or proceeding taken by the subordinate authorities. In this case the proceeding of reference was taken by the subordinate authority, therefore revisional jurisdiction exercised by the Deputy Director of Consolidation was well within his jurisdiction and he has rightly exercised his jurisdiction. Once the proceeding is within the jurisdiction of any authority, he is free to pass any order accepting it, rejecting it, dismissing it, remanding it or remitting it and it cannot be said that only order of acceptance and dismissal can be passed and the order of remand cannot be passed.

7. So far as the argument of the Counsel for the petitioners that various findings have been recorded on merit which will prejudice the Settlement Officer, Consolidation while deciding the appeal is concerned, since the arguments were raised before the Deputy Director of Consolidation, therefore, the observation as well as finding has come in the impugned order. However, this finding itself will not operate as res judicata and it is made clear that while deciding the appeal the Settlement Officer, Consolidation may neither take notice of the various findings recorded by the Deputy Director of Consolidation nor shall be prejudiced by it in any manner.

8. By the impugned order, the Deputy Director of Consolidation has merely not accepted the reference on the ground that the appeal is pending before the Settlement Officer, Consolidation against it and the Settlement Officer should decide the appeal instead of forwarding the reference for implementing the order which is under consideration in appeal. Therefore, no material prejudice has been caused to any of the parties. With the aforesaid observation the writ petition is disposed of.