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**(2016) 11 AHC CK 0137**  
**In the Allahabad High Court**  
**Case No : Writ-B No. 53926 of 2016**

Jay Prakash Bhatt

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 15-11-2016

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(3)

**Citation :** (2017) 134 RD 14

**Hon'ble Judges :** Manoj Kumar Gupta, J.

**Bench :** Single Bench

**Advocate :** C.S.C, Diwakar Singh and Santosh Kumar Pandey, Advocates, for the Respondents; Sanjeev Kumar, Advocate, for the Petitioner

**Final Decision :** Allowed

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## Judgement

Manoj Kumar Gupta, J. - Heard learned counsel for the petitioner, learned Standing Counsel for the respondents 1 to 4, Sri Rajeev Mishra for respondent no.6 and Sri R. K. Pandey for respondent no. 5.

2. Respondent no.7 got his land exchanged with that of the Gaon Sabha on the basis of an order dated 12.12.2003 passed in reference under Section 48(3) of the U.P. Consolidation of Holdings Act, 1953. As a result thereof, Arazi no. 377 (old no.277) belonging to the seventh respondent came to be recorded as navin parti in the name of Gaon Sabha and in its place surplus land of Gaon Sabha was given to him. The petitioner who claims himself to be the resident of the same village alleges that the seventh respondent illegally occupied the land that he had exchanged with Gaon Sabha. Consequently, proceedings under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 were initiated against him, in which order dated 13.05.2005 was passed for his dispossession and for realisation of fine. Similarly, order for ejectment of respondent no.5 from Arazi no. 377 along with an order for realisation of damages of Rs.25,000/- was passed against him on 19.11.2005. The fifth respondent did not challenge the said order and it attained finality. Despite the said fact, the aforesaid order was

not implemented. The petitioner filed a Public Interest Litigation (PIL) No.20523 of 2016 before this Court alleging collusion between the Tehsil authorities and the fifth respondent in permitting him to occupy the Gaon Sabha land in respect whereof order for eviction had been passed. It seems that in the PIL, the fifth respondent had filed a caveat and consequently, copy of the writ petition was served on him on 2.5.2015. The case of the petitioner is that after coming to know of the filing of the PIL before this Court, the fifth respondent filed an application on the same day before the Tehsildar, Soraon for recall of order passed under Section 122-B of the Act on 19.11.2005. The Tehsildar on the same day stayed the order dated 19.11.2005 without issuing notice to the Gaon Sabha and also without condoning the delay. This Court taking notice of these facts, passed a detailed order dated 27.5.2016 in the PIL and quashed the order dated 2.5.2016 passed by the Tehsildar. The District Magistrate was further directed to examine whether any disciplinary proceedings are required to be initiated against the Tehsildar as regards the manner in which he proceeded to grant the stay.

3. After disposal of the PIL by this Court on 27.5.2016, the fifth respondent filed an application on 1.6.2016 for recall of the order dated 12.12.2003. On the said application, the District Deputy Director of Consolidation (respondent no.2) transmitted the file for decision on merits to the Deputy Director of Consolidation (respondent no.3). No stay was granted against the order dated 12.12.2003. It seems that thereafter another application was filed by the sixth respondent on 8.6.2016 in which also prayer made was for setting aside the order dated 12.12.2003 passed under Section 48(3), accepting the reference. On the said application being filed, the District Deputy Director of Consolidation/District Magistrate Allahabad by order dated 16.06.2016 proceeded to stay the order dated 12.12.2003 and the file was transmitted to the Deputy Director of Consolidation for taking a decision after hearing the parties. The petitioner who had earlier filed a PIL on the subject felt aggrieved by the stay order. He therefore, filed Writ-B No.34343 of 2016 before this Court challenging the order dated 16.6.2016. The writ petition was disposed of by order dated 27.7.2016 with liberty to the petitioner to file application for vacation of the interim order before the Deputy Director of Consolidation to whom record had been transmitted for decision. The Court further directed the Deputy Director of Consolidation to decide such application within three weeks and for period of one month, the operation of the order dated 16.6.2016 was kept in abeyance. The effect of the said order was that the order dated 12.12.2003 accepting the reference remained effective and so also the order passed under Section 122-B of the Act.

4. The petitioner in pursuance of the liberty granted to him by this Court while disposing of the writ petition moved an application dated 3.8.2016 stating that the sixth respondent has no locus to file the recall application. It was further stated that the application filed by the sixth respondent was grossly delayed and had been filed in collusion with the fifth respondent against whom there was an order of eviction. It was supported by affidavit of the petitioner. By the impugned

order dated 26.10.2016, the Deputy Director of Consolidation has rejected the application filed by the petitioner dated 3.8.2016 and has again stayed the order dated 12.12.2003 and has fixed 9.11.2016 for decision on the restoration application filed by the sixth respondent. Aggrieved thereby, the instant writ petition has been filed.

5. It is urged by learned counsel for the petitioner that the impugned order is a non-speaking order as it does not take into consideration the plea raised by the petitioner in the application dated 3.8.2016 disputing the locus of the sixth respondent in moving such an application. It is further submitted that the Deputy Director of Consolidation without considering the issue as to whether the application filed with such delay at the instance of the sixth respondent should have been entertained or not, has proceeded to stay the order dated 12.12.2003, which remained effective for last thirteen years.

6. Sri Rajeev Mishra, learned counsel appearing on behalf of the sixth respondent submitted that the petitioner had no locus to file the stay vacation application. It is urged that the petitioner is pursuing the litigation for extraneous consideration. He tried to refer to various documents to impress upon the Court that the order dated 12.12.2003 accepting the reference was procured by misleading the authorities. Sri R.K. Pandey learned counsel appearing on behalf of the fifth respondent supported the contentions raised by Sri Rajeev Mishra. He submitted that the recall application filed by the fifth respondent is also pending and is yet to be decided. However, both the learned counsel do not dispute that in the impugned order, the Deputy Director of Consolidation has not considered as to whether the fifth and sixth respondents had locus to seek recall of the order dated 12.12.2003 and whether in the facts and circumstances aforesaid, any prima facie case was made out in their favour to warrant grant of an interim order.

7. Learned standing counsel appearing on behalf of respondents 1 to 3 also agree that the impugned order is a non-speaking order and suggests that the matter be remitted to the Deputy Director of Consolidation for passing a fresh order to which Sri Rajeev Mishra and Sri R. K. Pandey learned counsel appearing for respondent nos. 5 and 6 also do not have any objection. It is noticeable that respondent No.7 is not contesting the proceedings anymore and the entire proceedings which are now pending are between the petitioner on one hand and respondent nos. 5 and 6 on the other hand. In such view of the matter, the Court is of the opinion that it would not be necessary to defer the disposal of the instant writ petition for the purpose of issuing notice to the seventh respondent.

8. In view of the discussion made above and the statement made by learned counsel for the respondents, the impugned order dated 26.10.2016 passed by the third respondent is quashed. Writ petition is allowed. The third respondent is directed to decide the application filed by the petitioner dated 3.8.2016 afresh taking into consideration the pleas raised therein, preferably within a period of three weeks from the date of production of a certified copy of this order by any

of the parties.

9. No order as to costs