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**(2008) 09 AHC CK 0004**  
**In the Allahabad High Court**

Pooran Singh

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

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**Date of Decision :** 02-09-2008

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42A

**Citation :** (2008) 4 AWC 3726 : (2008) 105 RD 469

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Rajes Kumar, J.—Heard Sri R.P. Mishra, learned Counsel for the petitioner, learned Standing Counsel appears on behalf of respondent Nos. 1 and 2, Sri V.K. Singh, learned Counsel appears on behalf of respondent No. 3 and Sri Rajesh Kumar, learned Counsel appears on behalf of respondent No. 4.

2. Learned Counsel for the petitioner submitted that since there was error in the preparation of the map an application was moved u/s 42-A of the Act for the correction. Consolidation Officer after considering the claim of the petitioner found that the mistake was apparent on the face of record and in exercise of power u/s 42-A of the Consolidation and Holdings Act, 1953 (hereinafter referred to as "Act") passed the order dated 17.10.2006, annexure-2 to the writ petition. It appears that by order dated 17.10.2006 right of the Hemraj has (been effected and, therefore, he tiled revision u/s 48 of the Act before Deputy Director of Consolidation, who by the impugned order dated 22.10.2007 allowed the revision mainly on the ground that the publication u/s 52 of the Act has been made much earlier, therefore, Consolidation Officer has no power to make such correction and accordingly, set aside the order.

Learned Counsel for the petitioner submitted that in case, if there is mistake apparent on the face of record, even after the publication u/s 52 of the Act, Consolidation Officer has power to rectify such mistake u/s 42-A of the Act and,

therefore, the order of Deputy Director of Consolidation that after the publication Consolidation Officer has no power to rectify the mistake is illegal.

3. Learned Counsel appearing on behalf of respondent No. 4 submitted that Consolidation Officer has passed the order dated 17.10.2006 without giving opportunity of hearing to the respondent Nos. 4 and 5 and since the right of the respondent Nos. 4 and 5 have been effected, therefore, before passing the order opportunity of hearing should be given.

4. Sri V.K. Singh, learned Counsel appearing on behalf of respondent No. 3 and learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2 submitted that there is no prohibition that after the publication u/s 52 of the Act. Consolidation Officer can not exercise the power u/s 42-A of the Act, in case, if there is mistake apparent on the face of record.

5. With the consent of learned Counsel for both the parties, present writ petition is being disposed of at the admission stage itself.

6. Having heard learned Counsel for the parties, I am of the view that the order dated 22.10.2007 is not sustainable.

Section 42-A of the Act reads as follows:

42-A. Correction of clerical or arithmetical errors ? Notwithstanding anything contained in any law for the time being in force, if the Consolidation Officer or the Settlement Officer, Consolidation, is satisfied that a clerical or arithmetical error apparent on the face of the record exists in any document prepared under any provision of this Act, he shall, either on his own motion, or on the application of any person interested, correct the same.

7. Perusal of the aforesaid Section reveals that if there is mistake, such mistake can be rectified, even if there is publication u/s 52 of the Act. There is no prohibition that such power can not be exercised u/s 42-A of the Act after publication u/s 52 of the Act. It is true that if by making rectification, if any ones right is effected, he should also be heard. It appears that before passing order dated 17.10.2006 Consolidation Officer has not given opportunity of hearing to the respondent Nos. 4 and 5.

8. In this view of the matter, both the orders dated 22.10.2007 passed by Deputy Director of Consolidation, Meerut as well as the order dated 17.10.2006 passed by Consolidation Officer, Meerut are not sustainable and liable to be set aside.

9. In the result, writ petition is allowed. The orders dated 22.10.2007 passed by Deputy Director of Consolidation and the order dated 17.10.2006 passed by the Consolidation Officer are set aside and the matter is remanded back to the Consolidation Officer, Meerut to decide the matter afresh after giving opportunity of hearing to the petitioner as well as to the respondent Nos. 4 and 5 and all concerned parties in accordance to the law.

10. Learned Counsel for the petitioner may furnish the certified copy of the order before the Consolidation Officer, Meerut within a period of two weeks and the Consolidation Officer, Meerut is directed to decide the matter afresh within another period of four weeks.

11. Till the fresh order is being passed by the Consolidation Officer, Meerut, status-quo shall be maintained in respect of the land in dispute.