

**(2015) 11 AHC CK 0078**  
**In the Allahabad High Court**  
**Case No : Writ - B No. 51460 of 2015**

Pramod Kumar Banka and Others

APPELLANT

Vs

Deputy Director of Consolidation, Kushinagar and Others

RESPONDENT

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**Date of Decision :** 20-11-2015

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 11-A, 20, 48(3), 9

**Citation :** (2016) 130 RD 5

**Hon'ble Judges :** Anjani Kumar Mishra, J.

**Bench :** Single Bench

**Advocate :** R.C. Singh, for the Appellant; Hemant Kr. Dubey and V.K. Singh, for the Respondent

**Final Decision :** Allowed

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## Judgement

Anjani Kumar Mishra, J.—Heard Shri R.C. Singh, learned counsel for the petitioner, Shri V.K. Singh for the respondents 3, 4 and 5 and learned Standing Counsel for the State-respondents.

2. With the consent of the parties, the matter has been heard and is being finally decided at the admission stage itself, as counter and rejoinder affidavits have already been exchanged and it has further been submitted that the dispute in the writ petition is primarily between the petitioners and the respondents 3, 4 and 5. Respondent No. 2 is son of Ram Dhani but he has no concern in the matter inasmuch as his father Ram Dhani had executed a sale-deed of the plot in question in favour of the respondents.

3. The writ petition is directed against an order dated 19.08.2015 passed by the Deputy Director of Consolidation in a reference under Section 48(3) of the U.P. Consolidation of Holdings Act. This reference was prepared to correct the errors detected in the revenue records while preparing the final record. The reference was prepared and forwarded because plot Nos. 2019, 2018 and 2017 was proposed in the chak of chak holder No. 753 but were situated outside the chak.

The other mistake was that there was a double entry as regards plot No. 2018 in chak No. 155. The reference further stated that correction of these errors would effect chak holder Nos. 753, 152, 1330/5, 722 bachat and chak road.

4. The dispute in the writ petition is with regard to plot No. 2018 which was the original holding of chak holder No. 1552 Ram Dhani. The total area of this plot is stated to be 0.82 while an area of 0.08 was reserved for road and the remaining .74 was included in the consolidation operations.

5. The reference forwarded on 12.01.1993 was accepted on 28.08.1993. The petitioners as also the respondents filed separate restoration applications. Both restoration applications were allowed and a fresh reference was ordered to be prepared and forwarded. This subsequent reference was again accepted on 07.06.2011.

6. The contention of the learned counsel for the petitioners is that on that very same date, namely 07.06.2011, Ram Dhani executed two sale-deeds of 19 decimals each, of this plot No. 2018, in favour of the respondents. Thereafter transferee filed an application for recall of the order dated 07.06.2011 whereby the reference had been accepted. This application for restoration was allowed vide order dated 11.04.2012. The order accepting the reference was recalled and the reference was restored to its original number.

7. The order impugned dated 19.08.2015 has thereafter being passed after hearing the learned counsel for the parties whereby the Deputy Director of Consolidation has directed that an area, 100 links wide, of plot No. 2018 abutting the road be declared chak out. The matter has thereafter been remanded back to the Consolidation Officer for preparing a fresh reference.

8. This direction appears to have been issued by the Deputy Director of Consolidation relying upon a notification issued by the State Government on 26.05.1981 wherein it has provided that land abutting the road side should be declared as chak out and excluded from consolidation operations.

9. The primary contention of the learned counsel for the petitioner is that this direction declaring portion of plot No. 2018, as chak out, is wholly without jurisdiction. The reference had been prepared to correct certain errors in the revenue records. This reference could have been accepted or rejected but plot No. 2018 which was included in consolidation operations could not have been excluded there from and declared chak out, especially when the original tenure holder namely Ram Dhani never preferred any objection in this regard at the appropriate stage under Section 9 of the Act. This relief prayed for and granted is barred by Section 11. The impugned order is, therefore, liable to be set aside on this ground alone.

10. Shri V.K. Singh, learned counsel for the respondents has submitted that the reference was prepared and forwarded for correcting certain errors. The order accepting the reference has been recalled and guidelines have been issued for

preparing a fresh reference. He has further relied upon a decision of this Court in Ram Prasad vs. DDC Allahabad, 2006 (100) RD 434 wherein it has been held that it is duty of the Consolidation authorities to exclude land having commercial value, situated on the main road from the consolidation operations. He has also relied upon the judgment in the case of Jagdish Prasad vs. DDC, Siddharth Nagar, 1997 (88) RD 649 which is the same effect. The next judgment relied upon is in the case of Lal Man vs. DDC, Gorakhpur, 1987 RD 119 wherein it has been held that powers under Section 48(3) of the U.P. Consolidation of Holding Act are not circumscribed by any condition or limitation. It reflects the intention of legislature that the Deputy Director of Consolidation be able to meet any unexpected contingency, or in other words, in order to get some mistake corrected, or for giving effect to any order, on the spot. The reference has to be made by the subordinate authority after hearing the parties. The authority cited provides that a reference is prepared to give effect in the papers or on the spot to any order which has become final. It may also be exercised to meet any unexpected contingency in order to get some mistake corrected.

11. In the case at hand the reference was not prepared for declaring any part of the plot 2018 as chak out. No such order had been passed by the Consolidation Officer. The reference had been prepared only for correcting certain errors that had crept into the revenue records. It is nobodies case that any objection had been filed by Ram Dhani, the original tenure holder of the plot No. 2018 for declaring some area of this plot, chak out.

12. In such view of the matter, this Court has no hesitation in holding that the Deputy Director of Consolidation while hearing a reference under Section 48(3) of the Act could not have issued directions for excluding an area of plot No. 2018 from consolidation operations and for declaring it chak out.

13. Insofar as the original holder of plot is concerned, it was always open for him to file an objection under Section 9 of the Act for such relief. No such relief was claimed by Ram Dhani the original tenure of the plot. Further Section 11-A of the Act incorporates the concept of constructive res judicata and provides that an objection which could have been raised under Section 9, is not raised, the same would be barred at subsequent stages of consolidation operations. The respondents in the writ petition are transferes of Ram Dhani and therefore, cannot acquire any right, better than that of their transferor.

14. I, therefore, find substance in the contention of the learned counsel for the petitioner that the impugned order insofar as it declares an area 100 links wide, of plot No. 2018 to be chak out, is wholly without jurisdiction.

15. The Deputy Direction of Consolidation was merely required to ensure correction of errors detected during the preparation of the final records and it was not open for him to modify or allot the chaks of the parties in a reference. As the regards the judgment in the cases of Ram Prasad and Jagdish Prasad (supra), it would suffice to state that in both these judgments, the court was

dealing with disputes arising out of an objection under Section 20 of the Act. Those two cases arose out of proceedings for allotment of chaks. Since, in the instant case the power has been exercised in a reference, the judgments cited have no application in the instant case.

16. The judgment in the case of Lalman (supra) in fact is against the respondent and in fact supports the view taken in the earlier part of this judgment, that the power under Section 48(3) is to be exercised for correcting errors or mistakes or for implementing final orders on the spot or in the revenue records.

17. The submissions made by the learned counsel for the respondents are, therefore, without substance.

18. Accordingly and in view of the above, the writ petition is allowed, the impugned order dated 19.08.2015 is quashed and the matter is remanded back to the Deputy Director of Consolidation, respondent No. 1 to pass fresh orders on the reference after hearing the parties.

19. It is further clarified that the Deputy Director of Consolidation, respondent No. 1, does not have jurisdiction to exclude certain land of plot No. 2018 from consolidation operations while hearing and deciding a reference under Section 48(3) as has been done by means of the impugned order.