

**(2015) 01 AHC CK 0035**

**In the Allahabad High Court**

**Case No : Civil Misc. Writ Petition No. 6098 of 2002**

Ram Nath and Others

APPELLANT

Vs

Additional Commissioner (Admn.), Varanasi and Others

RESPONDENT

**Date of Decision : 28-01-2015**

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20, 4, 4(2), 5, 5(2)  
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

**Citation :** (2015) 2 ADJ 9 : (2015) 2 AWC 1306 : (2015) 127 RD 122

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

**Bench :** Single Bench

**Advocate :** Abhai Kumar Singh, A.K. Singh and S.N. Singh, for the Appellant;  
Anuj Kumar, M.N. Singh, R.P. Ram, S.N. Pandey, V.K. Pandey and V.K. Singh,  
Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Ashwani Kumar Mishra, J.—The present writ petition is directed against order dated 30.10.2001, passed by the Assistant Collector, Ist Class, Sadar, Varanasi, allowing the restoration application and thereby recalling compromise decree dated 9.8.1982 and restoring proceedings to its original number, as well as revisional order dated 15.12.2001, whereby the proceedings of revision pending before the Additional Commissioner (Administration), Varanasi Region, Varanasi, has been held to have abated by virtue of Section 5(2) of the U.P. Consolidation of Holdings Act. The brief facts giving rise to the controversy involved are that a declaratory suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act was instituted on 28.9.1976 by Rupayan, Basantu, Somaru, Raja sons of Pargas and Babu Nandan son of Jhular, claiming co-tenancy right with the defendants Kantu son of Dingari, Sitaram, Mita Ram, Radhey Shyam sons of Laltoo, Vishwanath son of Dubari, Mewa son of Bhagelu. In the said suit, notices were issued and defendant Nos. 1 to 4 and 6 filed written statement on 28.12.1978 and defendant No. 5 filed his written statement on 7.2.1979. After the issues were framed on 27.3.1979, an amendment was moved by the

defendants, which was also allowed and additional issues were also framed. Oral and documentary evidence, in respect of the claim, was adduced by the plaintiffs. It is alleged that with the intervention of some respectable members of the village a compromise was entered into between the parties on 29.7.1982, which was attested by their counsels and was also verified by the Court concerned. Acting on the basis of said compromise, the suit was decreed on 9.8.1982. An application, thereafter, was moved by Kantu son of Dingari, one of the defendants, for correction of Parwana Amaldaramad, which was rejected for want of prosecution on 20.1.1987. It is alleged that pursuant to the compromise decree passed, revenue records were corrected and the decree was given effect to. A notification thereafter was issued on 16.9.1991 under Section 4(2) of the U.P.C.H. Act and C.H. Form 5 was issued on 22.9.1993, whereafter village was notified under Section 20 of the C.H. Act on 1.8.1995. A restoration application was moved by defendants Mita Ram and Sitaram against the judgment and decree dated 9.8.1982 on 19.8.1995.

2. The defendants had sought restoration with the allegation that thumb impression of defendant Sitaram on compromise date 9.8.1982 was forged and signatures of some impostor was affixed and that the parties had no knowledge of the compromise decree. It was also stated that the defendants had no right to enter into compromise, as the land in dispute had already been declared surplus in ceiling proceedings. The Court concerned proceeded to allow the restoration application vide its order dated 30.10.2001.

3. It has been asserted by the petitioners before this Court that in respect of one of the plots No. 656, acquisition was made and compensation was received by the petitioners, without any objection by the contesting opposite parties. The petitioners further contend that they filed objection and also written arguments, none of which have been taken into consideration and by a cryptic order the restoration application filed after 13 years has been allowed, and revision preferred against it has also been rejected as having abated. Thus aggrieved, the present writ petition has been filed.

4. Learned counsel for the petitioners submit that decree, on the basis of compromise, had been passed on 9.8.1982 and was given effect to in the revenue records. There is no plausible explanation for the Court concerned to have allowed the restoration and recall the decree after 13 years. It has further been stated that at best a suit for cancellation of compromise decree could have been filed and the restoration application itself was not maintainable. It is further submitted that only two of the defendants filed restoration application, and therefore, the entire decree passed against other defendants could not have been recalled. It has further been stated that the grounds urged, in respect of the objection, had not been taken into consideration vitiating the order impugned. It is also submitted that the revision of the petitioners has been erroneously held to have abated and it is contended that in view of the law laid down by this Court in *Ram Naval v. Board of Revenue, U.P., at Allahabad, 2006*

(100) RD 818, the proceedings for restoration were required to have been decided on its own merits, and could not abate.

5. Learned counsel for the respondents, on the other hand, relies upon a judgment in *Smt. Dhanpati (Dead) through Legal Representatives v. Board of Revenue and others*, 2003 (94) RD 690, to contend that the revision has rightly been held to have abated. It has been stated that the restoration application was allowed, which was under challenge in revision, and therefore, the proceedings of the suit itself had revived, which as a consequence of Section 5(2) of the U.P.C.H. Act was liable to have been abated.

6. I have heard learned counsel for the parties and have perused the record.

7. Having heard learned counsel for the parties, this Court finds that a compromise had been arrived at between the parties, which had resulted in passing of compromise decree dated 9.8.1982. On the date when the consolidation proceedings had intervened, the compromise decree had become final and no proceedings were pending before the revenue Court, which could have abated under Section 5(2) of the U.P.C.H. Act. The restoration application was filed after the consolidation proceedings had intervened and were pending. The question, as to whether the restoration application for recall of the compromise decree would be maintainable or not after the consolidation proceedings had intervened, was the subject-matter of consideration by this Court in *Ram Naval* (supra). This Court after relying upon previous decisions in *Sheo Pujan Singh and another v. Smt. Bhagesara Kunwari and others*, 1985 RD 163 and *Ram Chant Singh v. Deputy Director of Consolidation, Azamgarh and others*, 1992 RD 100, was pleased to hold that the restoration application and revision arising therefrom do not abate under Section 5(2) of the U.P.C.H. Act. It has further been observed that Section 5(2) of the Act provides for abatement of proceedings, relating to correction of records and of cases in which declaration of rights over the land is involved and as the application for restoration or to set aside an ex parte decree does not by itself involve a declaration of rights of the parties over the land, as such, the restoration or application to set aside the decree would not abate. It has also been held that an application for setting aside the compromise decree also does not involve declaration of right over the land, and therefore, it would not abate. Para 3 and 4 of the judgment in *Ram Naval* (supra) are reproduced:

"3. The only controversy involved in the present case is whether the Board of Revenue was right in taking the view that the proceedings had abated. The restoration application was filed by respondent No. 6, which was allowed by the Trial Court. The law upon the point that a restoration application does not abate on the issuance of a notification under Consolidation of Holdings Act is settled, but doubt has been raised upon the question whether a pending appeal or revision arising out of an order allowing restoration would abate. In *Sheo Pujan Singh and another v. Smt. Bhagesara Kunwari and others*, it has been held that restoration application and revision arising therefrom do not abate under Section

5(2) of the U.P. Consolidation of Holdings Act. Section 5(2) of the Act provides for abatement of proceedings relating to correction of the records and of cases in which declaration of rights over land is involved. An application for restoration or to set aside an ex parte decree does not by itself involve a declaration of rights of the parties over land as what is to be decided in these proceedings is whether sufficient cause for absence has been shown and therefore such an application does not abate under Section 5(2)(a) of the Act. An application for setting aside a compromise decree too does not involve declaration of rights over land.

4. The question which however has arisen in this case is if an ex parte decree or a compromise decree is set aside and the suit is restored but a revision against the order of restoration is pending whether the suit and the revision against the restoration order would abate on account of notification under Section 4 being issued or on account of pendency of consolidation pro. The language of Section 5 of the Act is clear that unless there is an order of abatement passed the suit does not automatically abate. Upon this point Counsel for the petitioner has cited the case of *Ram Charit Singh v. Dy. Director of Consolidation, Azamgarh and others*, in which it has been laid down that there is no automatic abatement and it is only when an order of abatement is passed that the suit or proceedings abate. This proposition is not disputed by Counsel for the respondents. It is nobody's case that any order for abatement of the suit had been passed. The result therefore is that the suit had not abated in this case. An appeal or revision against the order of restoration or of setting aside a compromise decree is a continuation of the restoration proceedings. It is well-settled that an order, which is challenged in appeal puts the order impugned into jeopardy. If subsequently the appeal/revision is allowed the consequences of the order set aside would, unless there are indications otherwise in the statute, be set at naught either automatically or on an application filed by the party in whose favour the appellate order is passed and the parties would be restituted to their original position. The intention of the legislature is clear. Firstly Section 5(2) does not provide for abatement of the restoration application or of an appeal or revision arising out of a restoration application which means that the appeal or revision whether against an order rejecting or allowing a restoration application would have to be decided on merits. This is also clear from the fact that it is only when an order of abatement is passed that the suit abates. There being no automatic abatement, it cannot be said that there was any automatic revival of the suit in consequence of the order of restoration. The order of restoration having been put into jeopardy in the revision, it cannot be said that the revision would become infructuous in the absence of anything to the contrary in Section 5(2). The view that I take is also in line with the decision in *Sheo Poojan Singh's case* (supra) cited by the petitioner's Counsel."

8. Learned counsel for the respondents has relied upon the judgment in *Smt. Dhanpati* (supra), which has also been considered in *Ram Naval* (supra). It has been observed in *Smt. Dhanpati* (supra) that where a compromise decree was set aside, against which a revision was filed, in which operation of the order was

stayed and also the further proceedings in the suit, in that context, this Court was pleased to observe that after the consolidation proceedings commenced, the proceedings of the suit would not revive by virtue of Section 5(2) of the Act. In the facts of the present case, the proceedings of the suit had not been stayed or pending on the date of commencement of consolidation proceedings, and therefore, the judgment of this Court in Smt. Dhanpati (supra) has no applicability in the facts of the present case.

9. In view of the aforesaid discussions, this Court finds that the order of the revisional Court, dismissing the revision as having abated, without adjudicating the restoration application itself on merits, cannot be sustained and is liable to be set aside.

10. This Court further finds that upon the application for restoration, the petitioners had filed their objection and had disputed the averments contained therein. The trial Court has not dealt with the respective issues pressed for adjudication of the restoration matter, and merely by noticing averments disclosed in the restoration application, it has proceeded to recall the compromise decree. Since this Court finds that the dispute between the parties has been lingering since long, and the order allowing the restoration application is wholly cryptic and does not deal with issues pressed before it, it would be appropriate to quash the order dated 30.10.2001, allowing the restoration application also, with a direction upon the Court concerned to deal with the specific objections raised by the petitioners against the restoration application and to consider and pass appropriate orders upon the restoration matter afresh, in accordance with law. It is clarified that the proceedings upon the restoration application would not abate on account of consolidation proceedings having intervened and the restoration application or any proceedings arising out of it will have to be adjudicated on the basis of materials placed on record for adjudication of such matter.

11. In view of the aforesaid discussions, this Court finds that the order dated 30.10.2001, passed by the Assistant (Collector, Ist Class, Sadar, Varanasi, as well as order dated 15.12.2001 passed by the Additional Commissioner (Administration), Varanasi Region, Varanasi, cannot be sustained and are hereby quashed. The matter is remitted back to the Court of Assistant Collector, Sadar, Varanasi, for consideration of restoration application afresh, filed for recall of compromise decree dated 9.8.1982 and to decide the same, in accordance with law, on the basis of materials placed for consideration before it. Since the proceedings have remained pending for a long period, it would be appropriate to direct the Court concerned to conclude the proceedings, at the earliest, without granting unnecessary adjournments to either of the parties, by fixing short dates. Accordingly, the writ petition stands allowed. No order is passed as to costs.