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**(2017) 02 AHC CK 0081**  
**In the Allahabad High Court**  
**Case No : Writ B. No. 7388 of 2017**

Ramjiyawan

APPELLANT

Vs

Deputy Director of Consolidation, Varanasi

RESPONDENT

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**Date of Decision :** 16-02-2017

**Acts Referred:**

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11-A

**Citation :** (2017) 135 RD 174

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

**Bench :** Single Bench

**Advocate :** Raghvendra Prakash and R.P. Shastri, Advocates, for the Petitioner;  
C.S.C. and Krishna Kant Singh, Advocate, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

Anjani Kumar Mishra, J.&mdash;Heard Shri R.P. Shastri for the petitioner and Shri Rajiv Mishra for the respondents.

2. The writ petition has been filed seeking a writ of certiorari for quashing the order dated 03.01.2017 passed by the Deputy Director of Consolidation and the order dated 12.12.2012 passed by the Consolidation Officer in a case under Section 42- A of the U.P. Consolidation of Holdings Act.

3. Facts of the case briefly stated are that Bhullan, predecessor-in-interest of respondents 3 to 6 filed an objection under Section 20 of the Act, which was dismissed by the Consolidation Officer on 01.12.1986. The order of the Consolidation Officer was affirmed in appeal vide order dated 12.02.1987.

4. Bhullan, the objector died in the year 1995 and his heirs were mutated over the land recorded in his name.

5. The heirs of Bhullan filed an application under Section 42-A of the Act for correction of some clerical errors. It was alleged that the area of plot No. 3556 recorded in CH Form 45 was less than what the applicants were entitled to. The

area was recorded in CH Form 45 as .52 decimal when in fact it should have been recorded as .62.

6. This application was allowed by the Consolidation Officer vide order dated 12.12.2012 on the ground that some area had been excluded twice on account of double entry. The consequential valuation, to which the applicants were held entitled, was allotted to them over land recorded as Navin Parti.

7. Although the application for correction has been allowed. The applicants preferred a revision against the same.

8. They also preferred a revision against the appellate order, which affirmed the order of the Consolidation Officer, whereby the objection filed by their predecessor-in-interest, Bhullan had been dismissed by the Settlement Officer Consolidation on 12.02.1987.

9. Both the aforesaid revisions were connected and have been decided by a common order. The chak allotted to the revisionist was modified effecting the chak of the petitioner, the opposite party in the revision.

10. As a consequence of the impugned order, the additional valuation, which had been provided to the opposite parties on Navin Parti on account of their application under Section 42-A being allowed, has been allotted to the petitioner by disturbing his chak.

11. The contention of learned counsel for the petitioner is that there was no justification for condoning the delay of 25 years in filing the revision, directed against the order dated 12.02.1987.

12. It is also contended that the objection filed by Bhullan was rejected both by the Consolidation Officer and the Settlement Officer Consolidation and these orders were not challenged by Bhullan during his life time. The petitioners were mutated upon the death of Bhullan in the year 1995. Bhullan had acquired to the orders, not having challenged them during his life time. It was not open for the respondents to have filed the revision 17 years after succeeding to the chak of Bhullan. The parties were in possession over the chak allotted to them and, therefore, the respondents were well aware of the orders that have been passed and there was no justification for having filed the revision after such a long.

13. It is also contended that the notification closing the consolidation operations was issued on 31.03.2011. Even the application for correction was filed after the close of consolidation operations and, therefore, the same was not maintainable.

14. It is next contended that even if the application under Section 42-A was liable to be allowed, as was actually done, the additional valuation to which the applicants were held to be entitled had been allotted to them on Navin Parti. Therefore, they had no reason to be aggrieved as the shortfall in their area had been made good. The revision against the order of 1987 was in fact filed so as to get this addition land given over Navin Parti plot, allotted in the chak of the

petitioner and to displace him, malafide. It is also contended that the revision against the order of 1987 was highly belated but was not accompanied by any application under Section 5 of the Limitation Act.

15. Counsel appearing for the respondents has submitted that the allotment of chak of Bhullan was illegal. His objection was wrongly and illegally dismissed by the Consolidation Officer and the Settlement Officer Consolidation. The manifest illegality has been corrected by the impugned order. The respondents have been allotted a chak near their private source of irrigation and over a plot where their house exist and has been in existence for the last more than 50 years. The impugned order, therefore, is in accordance with law and the same calls for no interference.

16. I have considered the submissions made by learned counsel for the parties and have perused the impugned orders.

17. From the facts noticed above, it emerges that the contesting respondents filed two separate revisions. One revision was directed against the order passed by the Consolidation Officer on their application under Section 42-A. This application had been allowed and the shortfall in the area of the respondent-applicants had been made good from land, recorded as Navin Parti.

18. I therefore do not find any justification for the respondents to have challenged this order in revision. Their claim having been allowed by the Consolidation Officer, there existed no justifiable reason for challenging it. However, it appears that having obtained this order, they filed another revision against the order of 1987, rejecting the appeal of their predecessor-in-interest, which arose from allotment proceedings and, thereafter, the additional area that had been provided to them by the order passed on the correction application under Section 42- A was got allotted to the petitioner by disturbing his chak.

19. The revision against the order of the application under Section 42-A was filed on the reasoning that the additional land to which the respondents were held entitled had not been given to them. This ground is absolutely incorrect and false. The additional 0.10 decimal of land to which they were held to be entitled was allotted to them over Navin Parti, plots as is clear from the correction table appended to the order. Not only is the ground on which the revision was preferred, is found to be baseless, in my considered opinion, the challenge was clearly malafide.

20. The second revision appears to have been filed only to take benefit of the order passed on the application under Section 42- A and to get the chaks modified because any modification in chaks was beyond the scope of the application under Section 42-A.

21. I also do not find any justification for condoning the inordinate delay of 25 years in filing this revision. The Deputy Director of Consolidation, in the impugned order, has not said even a word as to why this inordinate delay was

liable to be condoned. He has only noticed the submission made on behalf of revisionist that the delay be condoned and without adverting to this aspect the delay has been condoned in the operative portion of the order. This approach of the Deputy Director of Consolidation is unacceptable.

22. The chak objection filed by Bhullan, the predecessor-in-interest of the respondents had been dismissed in 1987. He is stated to have been succeeded by the respondents who were mutated after his death in 1995. This shows that for at least 7 long years, the predecessor-in-interest of the respondents did not challenge the appellate order dismissing his appeal during his life time. Even thereafter, his heirs do not find it necessary to challenge the order and they challenged it at a highly belated stage, almost 17 years after they were mutated over the land of Bhullan.

23. Once possession over chaks had been delivered and the parties were settled in possession, there was no justification for entertaining the revision or for condoning the delay therein. The Deputy Director of Consolidation has illegally allowed the revision filed by the respondents, which in any case were malafide.

24. One revision as already held herein above, clearly did not lie and had been filed on a baseless and incorrect ground. The other revision was belated by 26 years and had been filed only to take undue benefit of an order passed on an application under Section 42-A.

25. The contention of learned counsel for the respondent that this modification by the Deputy Director of Consolidation was necessitated because an area, over which the house of the respondents was in existence for over 50 years was wrongly included in the chak of the petitioner, cannot be accepted. In case the house had been in existence on the start of consolidation operations this land would have been declared chak out. Even if the same was not declared chak out, the respondents would have filed an objection for getting it so declared. No such objection was raised at the appropriate stage and could not have been raised or considered in a chak allotment proceedings for the first time in view of the bar created by Section 11-A of the Act.

26. In view of the aforesaid discussion, I do not find any justification for the impugned order, which modifies the chaks of the parties.

27. The impugned order dated 03.01.2017 therefore, is not liable to be sustained and deserves to be set aside. This is also because the Deputy Director of Consolidation has wrongly observed that the resultant valuation to which the revisionist, opposite parties were entitled, in view of the order under Section 42-A, had not been provided to them, is factually incorrect as observed herein above. This manifest error in reasoning is an additional ground for setting aside the order.

28. In so far as challenged to the order passed by the Consolidation Officer on 12.12.2012 on an application of the respondents under Section 42-A is

concerned, the same is not liable to be entertained because this order was never challenged by the petitioner before the Deputy Director of Consolidation or the Settlement Officer Consolidation.

29. Under the circumstances, the writ petition is allowed in part. The impugned revisional order dated 03.01.2017 alone is quashed.

There shall however, be no order as to costs.