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**(2003) 04 AHC CK 0126**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 35968 of 2002**

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|---------------------------------------------|----|------------|
| Smt. Premo Devi and Others                  | Vs | APPELLANT  |
| Joint Director of Consolidation and Another |    | RESPONDENT |

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**Date of Decision :** 04-04-2003

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48, 9A(2)

**Citation :** (2003) 3 AWC 1780 : (2003) 94 RD 573

**Hon'ble Judges :** S.K. Singh, J

**Bench :** Single Bench

**Advocate :** Shreeprakash Singh, for the Appellant; Madhu Tandon and S.C., for the Respondent

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## Judgement

S.K. Singh, J.—By means of the present writ petition, petitioners have prayed for issuance of the writ in the nature of certiorari quashing the judgment and order passed by Jt. Director of Consolidation, Mujaffarnagar/respondent No. 1, dated 14.8.2002 (Annexure-15 to the writ petition).

2. For the purposes of deciding this petition, the fact in briefs can be summarised thus :

"Basic year record happens to be in the name of Sumer, who has two sons, viz., Sukhbir and Rahtu. Assistant Consolidation Officer passed orders on 22.2.1981, 16.6.1981 and 22.5.1982 after recording statement of Smt. Premo Devi who happens to be wife of Sukhbir, Rahtu Singh, the brother, Gram Pradhan and members of the Consolidation Committee by which he directed for recording name of Rahtu, the son of Sumer and Vijai Pal, the grandson of Sumer on the premises that Sumer had died and Sukhbir had disappeared and have no trace. It is said that in the year 1983, Sukhbir filed some objection u/s 9A (2) of U. P. C. H. Act with a prayer that he is alive and his name may be recorded in place of his minor son Vijai Pal. It is claimed that on 30.12.1983 respondent No. 2 filed an application for withdrawal/ dismissal of objection which was duly identified by Sri Brij Bhushan Lal Sharma, advocate upon which on the same day, his

application was allowed and objection u/s 9A (2) was dismissed. Thereafter in C. H. Form No. 45, name of Vijai Pal continued. On unfortunate death of Vijai Pal in the year 1986, name of petitioner No, 1, i.e., mother of Vijai Pal and the wife of respondent No. 2 was directed to be mutated who in its turn by two registered sale deeds, dated 21.8.1995 and 23.8.1995 transferred the right to the petitioner Nos. 2 to 4 who happens to be son of Rahtu brother of Sukhbir in whose favour mutation was effected by order dated 5.12.1995. Respondent No. 2 appears to have filed seven appeals on 1.8.1995, i.e., after about 14 years of the order of Assistant Consolidation Officer which was passed in the year 1981. It was stated in the appeal that respondent No. 2 appellant is alive and orders against his interest were obtained by playing fraud. Objections were filed on behalf of the petitioner to the maintainability of the appeal and also to the application for condonation of delay. Settlement Officer, Consolidation by its order dated 15.4.1999 (Annexure-11 to the writ petition) dismissed the appeal on the ground that appellant has not been able to satisfy on the question of delay and thus appeals being barred by time have been dismissed. Against the judgment of the Settlement Officer, Consolidation respondent No. 2 filed revision which has been decided by the Joint Director of Consolidation by its judgment dated 14.8.2002 which has been challenged in this petition.

3. Learned counsel for the petitioner submits that respondent No. 2 disappeared for so many years along with one Smt. Krishna Devi wife of Tirkha and he remained untraceable for more than 9 years and, therefore, on the belief of his civil death, name of the legal heir was rightly ordered to be mutated. It is further argued that on own showing of the respondent No. 2, he surfaced in the year 1983 and filed objection u/s 9A (2) of U.P.C.H. Act but thereafter he himself got it withdrawn and, therefore, filing of the appeal in the year 1995 after about 14 years have no justification in respect to claim of the respondent No. 2 and that was rightly rejected by the Settlement Officer, Consolidation as barred by time but the Joint Director of Consolidation in illegal manner has allowed the revision on the merits and has directed entry to be made in favour of respondent No. 2, it is argued that the exercise by the respondent No. 1 by deciding the matter on merits is totally without jurisdiction as he has no jurisdiction to decide the revision on merits in absence of any pleadings, evidence and trial in the matter before the lower authority. It is further submitted that withdrawal of the objection by the respondent No. 2 in the year 1983 was on the basis of family arrangement which cannot be permitted to be challenged after such a long time and therefore, Settlement Officer, Consolidation has rightly dismissed the objection of the respondent No. 2. In support of the submission that if the appeal has been dismissed on the ground of limitation the revision cannot be allowed on merits reliance has been placed on decision given in case of Tirath v. Joint Director of Consolidation, 1985 RD 276.

4. In response to the submission of the learned counsel for the petitioner, learned counsel who appears for the respondent No. 2 submits that the order was obtained from the Assistant Consolidation Officer by playing fraud and,

therefore. Deputy Director of Consolidation has rightly held that in the situation, there is no question of any delay and thus the delay has been rightly condoned. On the merits it is pointed out that the plea of civil death has been taken by the petitioner only after filing of the appeal by the respondent. It is further submitted that at the time of passing of the order by the Assistant Consolidation Officer detailed enquiry should have been carried out in respect to the alleged plea of civil death as brother of the respondent No. 2 has colluded with his wife to get the order from the Assistant Consolidation Officer. Lastly, it is submitted that Joint Director of Consolidation has been conferred with wide powers in view of the amendment as has been made in Section 48 of the U.P.C.H. Act vide U. P. Ordinance No. 12/2002 and thus Joint Director of Consolidation having power to re-appreciate in oral or documentary evidence, exercise by him on the merits while accepting the claim of respondent No. 2 cannot be said to be illegal or without jurisdiction in any manner. On the question of presumption about death, interfering in the matter, and if delay has been condoned by the subordinate authority what is the proper course and about wide scope of interference by the Joint Director of Consolidation reference has been given to the decisions given in *Ram Swarup v. Roshan*, 1964 ALJ 465 ; *Vikram Singh Jr. High School v. District Magistrate (Finance and Revenue)* and Ors. 1992 (2) AWC 665 : 1991 Supp RD 450 ; *N. Balakrishnan v. K. Krishnamithrthy*. 1999 (1) AWC 15 : 1998 RD 607 ; *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, ; *N. Prem Ananthi Vs. Tahsildar, Coimbatore and Others*, ; *Sheo Nand and Others Vs. The Deputy Director of Consolidation Allahabad and Others*, ; *Muzeeb v. Dy Director of Consolidation, Azamgarh* and Ors. 1996 RD 66 ; *Pallav Sheth Vs. Custodian and Others*, and *Parahu and Ors. v. Dy. Director of Consolidation* and Ors. 1964 RD 140.

5. In view of the submissions as has come from both sides, pleadings as has been exchanged and material as has been brought on record have been examined.

6. On examination of the matter, the question which needs attention of this Court is that whether on the fact and circumstances and otherwise also when the appeal has been dismissed by the Settlement Officer, Consolidation only on the ground of limitation without going into the merits of the claim of appellant whether Joint Director of Consolidation was justified in allowing the revision on the merits accepting rights/claim of the revisionist by directing his name to be recorded in the revenue papers. In view of the answer of the question so posed here in negative, examination of the matter on the merits about rights of the parties as has been finally held by the Joint Director of Consolidation will not be needed.

7. The fact and materials as are available on record makes it clear that there is some order of the Assistant Consolidation Officer as passed in the year 1981 on the basis of which amal daramad in the record has come in favour of Vijai Pal and Rahtu and thereafter on the death of Vijai Pal, name of petitioner No. 1 in

the year 1986. There also appears to be objection by the respondent No. 2 u/s 9A (2) of the U.P.C.H. Act in respect to which a withdrawal application was filed on 30.12.1983 by the respondent No. 2 himself which was allowed on that very date. Respondent No. 2 appears to have filed appeal in the year 1995, i.e., after about 14 years of the order of Assistant Consolidation Officer which was passed in the year 1981 on the ground that he is alive and order obtained against his interest were obtained by playing fraud and in collusive manner. A perusal of the judgment of the Settlement Officer, Consolidation makes it clear that he has dismissed the appeal filed by the respondent No. 2 solely on the ground that he has not been able to satisfactorily explain the delay which has been interfered by the Joint Director of Consolidation and after condonation of delay, respondent No. 2 has been directed to be recorded as bhumidhar over the land.

8. So far question of condonation of delay is concerned, it is not to be repeated again and again that courts are to take lenient view, keeping in mind the finality to be attached about rights of the parties. There cannot be any doubt that Joint Director of Consolidation being superior authority has every power to examine the explanation offered by the respondent No. 2 and to accept the same for the purpose of condonation of delay. On examination of the matter in the light of the submissions as made on behalf of the respondent No. 2, there appears to be serious disputed question of fact which needs trial which appears to have not been properly examined and addressed either by the Settlement Officer, Consolidation or even by the Joint Director of Consolidation. Admittedly land was recorded in the name of Sumer and after him Sukhbir respondent No. 2, in the event his claim/explanation is accepted will be legal heir and, therefore, argument that whether Assistant Consolidation Officer has power to pass the order and whether the detailed enquiry was carried out at the time of passing of the order by the Assistant Consolidation Officer in respect to civil death of the respondent No. 2 and whether his wife and Rahtu, brother of respondent No. 2 has colluded and whether in the year 1983, he filed objection u/s 9A (2) of the U.P.C.H, Act and has withdrawn the same are to be examined in detail. In fact, acceptance of the claim/ contention of the respondent No. 2 in respect to his absence and approaching the Court after so many years and there being sufficient explanation for his long absence will have a bearing on the merits of his claim either way and, therefore, a detail probe and examination appears to be required which on the fact, none of the authorities, i.e., Settlement Officer, Consolidation and Joint Director of Consolidation appear to have done. Although Joint Director of Consolidation appears to have been conferred with wide powers to deal with the matter on the merit but at the same time, by no stretch of imagination, it could be held that the Joint Director of Consolidation can decide the rights of a party without there being pleadings from both sides, evidence in support of their respective cases and trial in the matter. As it is clear from the judgment pf the Settlement Officer, Consolidation and Joint Director of Consolidation and otherwise also, it appears to be admitted position that no evidence whatsoever has been adduced by either of the parties before the

Settlement Officer, Consolidation and even before the Joint Director of Consolidation in support of their respective claim on the merits and, therefore, Joint Director of Consolidation cannot be said to be justified in deciding the matter on merits in favour of respondent No. 2 as has been held by this Court in the case of Tirath (supra). Otherwise also in the event Joint Director of Consolidation has found justification for condonation of delay then, the only course open for him was to remit the matter to the Settlement Officer, Consolidation to afford opportunity to the parties to address him on the merits of their respective claims and thereafter in its turn for the Settlement Officer, Consolidation if it is needed to remit the matter to the Consolidation Officer for taking evidence and then decide the claim of the parties on the merits. Joint Director of Consolidation appears to have exceeded in its jurisdiction while he has directed for recording name of respondent No. 2 as bhumidhar although parties have not adduced any evidence in respect to their respective claims and there has been no trial either way. Although condonation of delay by the Joint Director of Consolidation in filing the appeal is normally not be interfered but here in the present case as acceptance/rejection of the claim of the respondent No. 2 is totally dependent on acceptance/ rejection of the explanation in respect to his long absence, it appears to be in the ends of justice that detailed enquiry and probe in the matter may be directed at the level of Settlement Officer, Consolidation. On one hand, there is situation that the order was passed by the Assistant Consolidation Officer way back in the year 1981, some objection u/s 9A (2) of U.P.C.H. Act is said to have been filed by the respondent No. 2 which is said to be withdrawn in the year 1983 and then appeals have been filed in the year 1995, and on the other hand, it is said that Assistant Consolidation Officer while passing order had no power to pass the same and no detailed enquiry at that time in respect to the civil death of the respondent No. 2 has taken place and the order was obtained in collusion with the wife of the respondent No. 2 and, therefore, in the event respondent No. 2 establishes that he is alive and there is justification for his absence in not taking objection for so many years, it will have a bearing on the controversy in issue. Keeping in mind nature of claim of the parties and also that the claim of either of the parties will be barred by the provisions of Section 49 of the U.P.C.H. Act on attaining finality of the matter in consolidation forum that the judgment of the Joint Director of Consolidation may be maintained partially. In view of the aforesaid so far setting aside of the judgment of the Settlement Officer, Consolidation is concerned, that is to be maintained but at the same time direction in the judgment of Joint Director of Consolidation for recording of the name of the respondent No. 2, is to be quashed. Accordingly, in modification/to the Judgment of the Joint Director of Consolidation, this Court directs that the appeal as filed by the respondent No. 2 before the Settlement Officer, Consolidation will stand revive and that will be again heard. The Settlement Officer, Consolidation shall first examine the question of condonation of delay in filing the appeal in some more detail keeping in mind various aspects of the matter as are involved and as has been observed in this judgment and it is after recording a clear finding either way, the matter

will be dealt on the merits in respect to the respective claims. As Joint Director of Consolidation has not interfered with the order of the Assistant Settlement Officer dated 4.6.1981 in respect to Khata Nos. 327 and 503 as passed in Case No. 2740, and therefore, no direction is being given in respect thereof.

9. In view of the aforesaid discussion, this writ petition succeeds and is allowed in part and the judgment of the Joint Director of Consolidation, Muzaffarnagar, dated 14.8.2002 (Annexure-15 to the writ petition) is hereby quashed and the matter is remitted back to the Settlement Officer, Consolidation/ Assistant Settlement Officer Consolidation, Muzaffarnagar, for deciding the appeals afresh in the light of the directions as contained in this judgment.