

**(1985) 03 AHC CK 0037**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 5344 of 1980

Tirath

APPELLANT

Vs

The Joint Director of Consolidation and Others

RESPONDENT

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**Date of Decision :** 20-03-1985

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 48(1)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 48(1)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 48(1)

**Citation :** (1985) AWC 347 : (1985) RD 276

**Hon'ble Judges :** V.N. Khare, J;A. Banerji, J

**Bench :** Division Bench

**Advocate :** S.D. Pathak, for the Appellant; Madhur Prakash, for the Respondent

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## **Judgement**

A. Banerji, J.—This writ petition has come up before us on a reference by a learned Single Judge to consider the question "whether the revisional authority u/s 48 of the U.P. Consolidation of Holdings Act can allow revision petition without indicating whether the appeal filed by the Applicant in revision having been dismissed on the ground of limitation was illegally, incorrectly and improperly decided or the Appellant had sufficient cause for condonation of delay in preferring the appeal.

2. The learned Single Judge referred to the decisions in the case of Basalat v. Deputy Director of Consolidation 1983 ALJ 30 ; Ram Apt v. Deputy Director of Consolidation 1980 ALJ 1160 and Hori Lal v. Deputy Director of Consolidation 1982 ALJ 223 whets the view taken was that the revisiounal authority is entitled to allow too revision petition even where the appeal filed by the Applicant in revision was barred by time. The Learned Single Judge was of the view that if the revisional authority does not address itself to the question whether the appeal was incorrectly, illegally or improperly dismissed on the ground of limitation or whether the Appellant was entitled to condonation of delay in preferring the appeal, it has no jurisdiction to allow the revision petition, at the instance of an

aggrieved party". In order to consider the question it would be necessary to notice the relevant facts briefly.

3. Chak No. 143 was proposed for Respondent No. 2, Chinkoo. Chinkoo, Respondent No. 2 had, however, filed an objection but subsequently in a statement on 31-3-1974 he had prayed that his chak may not be disturbed and his objection may be dismissed. Consolidation officer by an order the same day dismissed the objection as not pressed. The plots which were allotted to the Petitioner were User in nature and a brick-kiln used to be run on a part of the same. The Petitioner made substantial investment in order to develop the 5 plots allotted to him to make the soil productive. These plots had become productive subsequently and started yielding good products. It appears that. Chinkoo became aware of the changed situation and filed an appeal on 11-6-1974. This appeal was undoubtedly filed beyond time and was not accompanied by any explanation for the delay nor was a prayer made for condonation of delay. No affidavit had been filed as well. The Settlement Officer (Consolidation) by his order dated 29-6-74 dismissed the appeal. Thereupon Chinkoo had filed a revision before the Respondent No. 1, Joint Director of Consolidation. The latter allowed the revision and interfered with the allotment of chaks. The Joint Director did not pass any order holding that the delay in filing the appeal was liable to be condoned nor had passed any order treating the appeal to be maintainable. The Petitioner had thereupon filed the present writ petition. Apart from stating the above facts, the Petitioner had also raised the point that the land allotted to the Petitioner was of a very poor quality and the Petitioner had improved its soil condition to make it productive and while interfering with the allotment the Joint Director had failed to take into consideration this aspect of the matter and had not even awarded any compensation for the improved quality of the land. Some plots were taken out of the chak of the Petitioner without assigning any reason. There was a difference of about 35 per cent in the area originally held by the Petitioner and that was now being allotted to him by the Joint Director. It was also urged that Respondent No. 2 having made a statement that the original allotment be maintained and his objection be dismissed, as not pressed, was not entitled to raise any plea of being dissatisfied with the proposed allotment of chaks and as such his appeal was not maintainable before the Settlement Officer (Consolidation). The Petitioner has, therefore, prayed for the quashing of the order dated 21-2-1980 passed by the Respondent No. 1.

4. In the counter affidavit on behalf of Chincoo, Respondent No. 2 it was stated that the chaks proposed in favour of the Respondent were not permissible and the statement made by him could not be treated in the nature of a compromise. In any event if it was against law, it was void. Secondly, the improvement made during the consolidation proceedings could not be taken Into consideration. Thirdly, the revision can be filed ignoring the appellate order and the Joint Director in his inherent jurisdiction can rectify the chak.

5. A rejoinder affidavit was filed refuting the contents of the counter affidavit. It

was further stated that a local inspection was made by the Joint Director of Consolidation but the parties were not heard after the local inspection. The record does not indicate the existence of any memorandum of inspection nor any note on record regarding the existence of anything on the spot.

6. We have heard learned Counsel for the parties on the question referred to before us. Mr. S.D. Pathak, learned Counsel for the Petitioner urged that once a party had filed an appeal and the appeal was dismissed as time-barred and not maintainable the revisional authority u/s 48 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) had no jurisdiction to interfere on the merits without first setting aside the appellate order. The revisional court had to set aside appellate order first and send back the case to it for a fresh decision on the merits in accordance with law. It could not interfere on the merits so long as there was an order dismissing the appeal as not maintainable by the appellate authority. He further urged that the question of exercise of the suo motu powers did not arise in this case when a party had filed a revision. The exercise of suo motu powers could arise where a party had not availed of a remedy under the law and the matter had been brought before the revisional authority or had been noticed by the revisional authority after it had sent for the record of its own. In other words, where a party avails of the remedy provided under the law it is not a case where the exercise of suo motu powers can be made. Learned Counsel further urged that the Respondent No. 2 having got his objections to the proposed allotment dismissed as not pressed, it was no longer open to him to file an appeal or press the same or file a revision and press the same.

7. Learned Counsel for the Respondent, Sri Madhur Prakash laid emphasis that the authority exercising power u/s 48 of the Act has very wide powers including exercising suo motu powers. Even if a point is not raised, it is open to the revisional authority to look into the record and if there is a defect it can be corrected by him. He further urged that even if the appeal filed by the Respondent No. 2 had been dismissed as barred by time, the revision filed before the Respondent No. 1 was maintainable and the latter could interfere with the orders of both the Consolidation Officer as well as the Settlement Officer (Consolidation). He further urged that the appeal and the revision were both maintainable. In support of his contention he cited the following decisions:

Three decisions of Hon. K.N. Misra, J. in the cases of *Lore Lal v. Deputy Director of Consolidation* 1982 ALJ 223, *Ram Ajor v. Deputy Director of Consolidation* 1982 ALJ 1160, *Basalat v. Deputy Director of Consolidation* 1983 ALJ 37, *Kalian v. Deputy Director of Consolidation* 1971 RD 491 ; decided by Hon'ble Lokur, J. and the Full Bench decision in the case of *Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and Others*, .

8. The impugned order dated 21-2-1980 is passed by Respondent No. 1. The opening sentence of the revisional order shows that the revision had been filed u/s 48 of the Act against the order of the Settlement Officer (Consolidation) dated 29-6-1974. There is no reference in this that the revision had been filed against

the order of the Consolidation Officer dated 31-3-1974 as well.

9. A perusal of the order passed by the Settlement Officer (Consolidation) dated 29-6-1974 shows that the appeal was dismissed on the ground of having been filed belatedly there being no explanation for delay in filing the appeal nor any ground had been made out for condoning the delay. The further ground mentioned was that the Appellant at the stage of the matter before the Consolidation Officer had given his consent to the proposed chak and as such he had no justification for filing any appeal and as such the appeal was not maintainable. The Respondent No. 1 does not refer to either of these grounds in his order. He does not even refer to the belated filing of the appeal or its being dismissed as not maintainable, in the impugned order. It appears as if he treated the decision of the Settlement Officer (Consolidation) in appeal to be in order. No reasons have been given or indicated in the impugned order for treating the revision as if it was against the order passed by the Consolidation Officer dated 31-3-1974. It is well settled that even where the Tribunal acts quasi-judicially it has to give reasons for disagreeing with the order of the subordinate Tribunals or authorities. Unless the order passed by the subordinate authorities or Tribunals are specifically set aside the revisional authority would not be entitled to give a different conclusion on the merit". In the present case the order passed by the Consolidation Officer is not based on an adjudication of the lis. The proposed chak was accepted by the Respondent No. 2. As a matter of fact, the Respondent No. 1 who had earlier filed an objection to the proposed chak, had withdrawn his objection and had pressed for the dismissal of the objections with the statement that he was satisfied with the proposed chaks. The question would be whether such a party could be allowed to take a contrary stand before the revisional authority? Even if the party raises such a plea it is obligatory on him to challenge the initial order and give reasons as to why the order is not sustainable in law. We would not like to express any opinion on this question in this order for in our opinion this matter needs to be kept apart for decision in further proceedings.

10. The admitted position is this that the appeal before the Settlement Officer (Consolidation) was dismissed as not maintainable being barred by time. The revision before the Respondent No. 1 was not barred by time. It had been filed within time. The question was whether the Respondent No. 1 could in exercise of his powers u/s 48(1) of the Act set aside that order without adverting to the findings and reasons given by the Appellate Authority?

11. Reference may be made to the conclusions in the case of Ramakant v. Deputy Director of Consolidation (supra):

After the record has been called for by the Deputy Director of Consolidation u/s 48 of the U.P. Consolidation of Holdings Act, he should examine the record to decide whether it was a fit case for exercise of the revisional jurisdiction suo motu. Such opinion shall have to be formed even where the application in revision moved by a party is defective having been made beyond the prescribed period of limitation or all the necessary parties have not been impleaded.

The Full Bench in the above case emphasised that even if the revision was barred by time, the revisional authority having called the record could exercise its suo motu powers to rectify the error. This is obviously the correct view in law. There can be no exception to it. The revision filed before the revisional authority was beyond time. The revisional authority could also, having called for the record, exercise its suo motu powers and rectify the error, if any. The Full Bench decision does not indicate that the revisional power is to be exercised even where the matter is not decided on the merits by the Appellate Authority and where the appeal had been dismissed on the ground of being barred by time. It will be significant to notice what the Full Bench said in paragraph 16 of the Reports. After having referred to the case of D.N. Roy v. State of Bihar AIR 1971 SC 1045 observed:

In our opinion, the observations made above can be applied to proceedings u/s 48 of the Act only when the Deputy Director of Consolidation rejects an application in revision at the initial stage on the ground that either it was barred by time or suffered from such other defect which rendered it liable to be rejected and yet chooses to exercise his suo motu powers. The observations will not apply where he does not reject the application in revision at the initial stage but issues notice on it and calls for the record of the subordinate authority but on the date of final hearing it transpires that the application in revision suffers from any such defect as pointed out above.

12. It is, therefore, clear that the observations of the Full Bench were in respect of a case which was admittedly barred by time before the revisional authority but instead of dismissing the revision on that ground the revisional authority chose to issue notice thereof and called for the record of the subordinate authority it could suo motu exercise its revisional jurisdiction notwithstanding the fact that the revision was barred by time. The position in the present case is entirely different. Here the revision filed by the Respondent No. 2 was not barred by time. The question of exercising suo motu powers did not arise. When there is a provision for a remedy under the law and that remedy is sought for by the party within time, the revisional authority has to decide the matter in accordance with law. It will mean examining the record of the case in so far as the order of the Appellate Authority is concerned and see whether it needs interference, but no more. The first part of the order of the Appellate Authority was clear-it disposes of the appeal as not maintainable, being barred by time. The second part of the order which was an additional ground was that the appeal was not maintainable as the Appellant himself had given up his objections before the Consolidation Officer. In this view of the matter, the revisional authority was called upon to examine the record of the case as it pertained to the appeal before the Appellate Authority. The principal reason given by the Appellate Authority for dismissing the appeal was that it was barred by time. The revisional authority had to see whether that order was justified in law or not. It had to examine whether any application had been made for condonation of delay, whether any adequate reason had been given for the same or not and whether the order dismissing the

appeal as barred by time was justified in the circumstances of the case and we would observe here that in a revision u/s 48(1) of the Act where there is no defect in the revision itself to merit its rejection in limine, the revisional authority is to confine itself to the decision in appeal and the grounds given for the decision in that order. We are further of the opinion that it was not open to the revisional authority to go into the question of merits while exercising powers u/s 48(1) of the Act in the above circumstances. In our opinion, the Full Bench decision in the case of Ramakant (supra) is of no assistance to the Respondent in the circumstances of the case.

13. In the case of Kalian v. Deputy Director of Consolidation (supra), a learned Single Judge held:

The Deputy Director of Consolidation acting u/s 48 of the Act could suo motu consider the propriety of the orders of the subordinate authority and he was not bound by the fact that the appeal to the Settlement Officer (Consolidation) was time barred. Even then, he had jurisdiction to interfere with the orders of the two lower authorities.

In the above case too it was argued that the Settlement Officer (Consolidation) had rejected the appeal on the ground that it was barred by time and the question had not even been alluded by the Deputy Director of Consolidation in his order. No reasons have been given for taking the above view by the Single Judge.

14. In the case of Hori Lal v. Deputy Director of Consolidation (supra), Hon. K.N. Misra, J. referred to the Full Bench decision in Ramakant and referred:

...The Deputy Director of Consolidation, if he finds that on the facts and circumstances, the orders passed by the Assistant Consolidation Officer or by the Consolidation Officer, suffers from a manifest error of law or jurisdiction and the same were palpably wrong or fraudulent and have resulted in grave Injustice to the party, can very well interfere with such orders. In exercise of revisional powers u/s 48(1) of the Act, even if no appeal was filed or where an appeal was filed by the revisionist, the same was rejected as time-barred.

15. In support of the above view, "reference was made to the case of Chandra Shekhar v. Director of Consolidation AIR 1972 All. 176 where it was held that "revision can lie to the revising authority against the order of the Settlement Officer (Consolidation), who does not allow an appeal by setting aside an unlawful order based on a compromise between the parties by the Assistant Consolidation Officer". The learned Judge reiterated this view of his in two subsequent decisions Ram Ajor v. D.D.C. (supra) and Basalat v. D.D.C. (supra).

16. In the case of Ram Ajor v. D.D.C. (supra) a learned Single Judge held that a revision against the order of the Consolidation officer was competent notwithstanding the fact that no appeal had been preferred against that order or even where the appeal filed by the revisionist earlier was time-barred and was

rejected as such was of no consequence. The case before us is distinguishable from the case of Ram Ajor on the ground that the revision had been preferred only against the order of the Settlement Officer (Consolidation) and not against the order of the Consolidation Officer. The above cases, in our opinion, are distinguishable on facts and law. We are, therefore, unable to subscribe to the view that the revisional authority was competent to interfere with the order not only of the Settlement Officer (Consolidation) and that of the Consolidation Officer notwithstanding the fact that the revisionist had not filed any revision against the order of the Consolidation Officer or that it set aside the order of the Appellate Authority dismissing the appeal as time-barred.

17. We venture to think that the proper course for the Revisional Authority would have been to interfere with the order of the Appellate Authority-set aside the order of the dismissal of the appeal (as time-barred) and in directing the Appellate Authority to decide the appeal on the merits, instead of doing so himself. The Appellate Authority, after hearing the parties, could very well pass appropriate orders in accordance with law. In case the order passed by the Consolidation Officer called for any interference it would be open to the Appellate Authority to do so. In case the appeal was rejected on the merits the Revisional Authority could examine the record to see if it should exercise its powers u/s 48(1) of the Act.

18. For the reasons indicated above we are of the view that the question referred to us must be answered in the negative. Our answer to the question referred is in the negative.

19. Let the papers of the case be laid before the learned Single Judge for further orders. Question answered.