

**(2014) 03 AHC CK 0273**  
**In the Allahabad High Court**  
**Case No : Writ-B No. 16442 of 2014**

Vinay Kumar

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

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**Date of Decision :** 14-03-2014

**Acts Referred:**

**Citation :** (2014) 123 RD 290

**Hon'ble Judges :** Ram Surat Ram (Maurya), J

**Bench :** Single Bench

**Advocate :** Anup Swaroop Srivastava, Advocate for the Appellant

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## Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Anup Swaroop Srivastava, Counsel for the petitioner. The writ petition has been filed against the order of the Deputy Director of Consolidation dated 9.12.2003 by which the revision filed by the contesting respondents has been allowed and the order of the Settlement Officer, Consolidation dated 22.7.2011 has been set aside and the order of the Consolidation Officer dated 21.8.1977 has been maintained.

2. Against the order of the Consolidation Officer dated 21.8.1977 passed in title proceeding, an Appeal i.e. Appeal No. 434/82/42/4401 was filed. The appeal was allowed by the Assistant Settlement Officer, Consolidation, Mirzapur Camp, Jaunpur by judgment dated 22.2.1980. Against the aforesaid order Rampati and others, contesting respondents filed an application dated 16.1.1981 for recall of the order along with a delay condonation application. In the affidavit it has been stated that notice of the appeal was not served upon them and only by way of rumours they received information regarding allowing of the appeal and thereafter on enquiry having been made they came to know about the order dated 22.2.1980. The recall application was heard by the Settlement Officer, Consolidation, Jaunpur, who by judgment and order dated 22.7.2011 held that the appeal was decided on merit as such recall application was not maintainable and on this finding the delay condonation application as well recall application have been rejected. The contesting respondents filed a revision i.e. Revision No.

3009 of 2011-12 from the aforesaid order which has been allowed by the impugned order dated 9.12.2013. Hence this writ petition has been filed.

3. The Counsel for the petitioner states that the Deputy Director of Consolidation in the operative portion of the order dated 9.12.2013 has maintained the order of the Consolidation Officer dated 21.8.1977 as such remanding the case for decision by the Settlement Officer, Consolidation is a futile exercise as the Settlement Officer, Consolidation may not be able to pass any fresh order reversing the order of the Consolidation Officer dated 21.8.1977. He further submits that the respondents have notice of the proceeding before the Settlement Officer, Consolidation as such delay condonation application as well as recall application filed by them were not maintainable and it has been rightly rejected by the Settlement Officer, Consolidation.

4. I have considered the arguments of the Counsel for the petitioner and examined the record.

5. The Deputy Director of Consolidation found that the order of the Settlement Officer, Consolidation was an ex parte order. A perusal of the judgment of the Assistant Settlement Officer, Consolidation dated 22.2.1980 shows that in the judgment itself it has been mentioned that no one has appeared on behalf of the respondents. The service of notice has been denied by the respondents and it is apparent that no one appeared on behalf of the respondents. The Deputy Director of Consolidation has also recorded a finding that notice of the appeal was not served upon the respondents. In such circumstances, it has been found that recall application was wrongly rejected by the Settlement Officer, Consolidation.

6. The Deputy Director of Consolidation by impugned order has merely allowed the recall application but inadvertently it has been written in the operative portion of the order that the order of that Consolidation Officer dated 21.8.1977 is maintained. The effect of allowing the restoration application is that the appeal will be restored to its original number and will be decided on merit after hearing the parties. The portion of the impugned order in respect of maintaining the order of the Consolidation Officer dated 21.8.1977, will not come in the way of the Settlement Officer, Consolidation in deciding the appeal on merit.

7. The Counsel for the petitioner submits that in pursuance of the order of Assistant Settlement Officer, Consolidation dated 22.2.1980, the petitioner is in possession over the land in dispute as such till disposal of the appeal possession of the petitioner be protected. Since this Court is disposing of the writ petition finally, it will not be appropriate for this Court to pass any interim order. For grant of interim relief, the petitioner may file an application before the Settlement Officer, Consolidation, who shall pass a suitable order in accordance with law on it after hearing the parties concerned. If the application is filed within ten days from today, it shall be disposed of within two weeks thereafter. With the aforesaid observations the writ petition is disposed of.