

**Kameshwar, Vs. the Deputy Director of Consolidation/Additional District Magistrate (F and R) and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/468649](http://sooperkanoon.com/468649)

**Court :** Allahabad

**Decided On :** Mar-07-2008

**Reported in :** 2008(2)AWC2005

**Judge :** Ashok Bhushan, J.

**Appellant :** Kameshwar,; Satya Deo,; Shyam Deo And; Indra Deo Ss/O Late Madan Gopal

**Respondent :** The Deputy Director of Consolidation/Additional District Magistrate (F and R) and ors.

**Advocate for Pet/Ap. :** Sri. A.P. Tiwari

**Disposition :** Petition dismissed

**Judgement :**

**Ashok Bhushan, J.**

1. Heard Sri A.P. Tiwari, learned Counsel for the petitioners and Sri R.C. Singh, learned Counsel appearing for the contesting respondents.

By this writ petition, the petitioners have prayed for quashing the order dated 26th December, 2007 passed by the Deputy Director of Consolidation in Revision No.

5/390/468/537/81, Revision No. 6/642/791 of 2005 and the order dated 11th February, 1981 passed by the Settlement Officer of Consolidation as well as the order dated 10th April, 2006 passed by the Consolidation Officer.

2. Brief facts necessary for deciding the writ petition are; the petitioners were allotted Chak No. 571 in chak allotment proceedings under the U.P. Consolidation of Holdings Act, 1953. The Assistant Consolidation Officer proposed three chaks to the petitioners father, Madan Gopal. An objection was filed by petitioners' father under Section 20 of U.P. Consolidation of Holdings Act, 1953 objecting allotment of Chak on Plot No. 1163 etc. The Consolidation Officer decided the objection affecting certain changes in the chak of the petitioners and other tenure holders. An appeal was filed by the petitioners before the Settlement Officer of Consolidation. The respondents and other tenure holders also filed appeals. The Settlement Officer of Consolidation made spot inspection and after hearing all the parties decided the appeal by order dated 11th February, 1981. The Settlement Officer of Consolidation recorded in the order that petitioners' father was agreeable that his chak at Plot No. 1267 be totally removed and the valuation be added in his chak at Plot No. 1170. Against the order passed by Settlement Officer of Consolidation a revision was filed by petitioners' father challenging the order passed by Settlement Officer of Consolidation in different appeals. The Deputy Director of Consolidation initially by order dated 15th April, 2002 allowed the revision, which order, however, was subsequently recalled. An order was passed on 12th July 1996 rejecting the impleadment application of one Yasin and thereafter dismissing the revision. Against the said orders a writ petition being Writ Petition No. 26420 of 1996 was filed by the petitioners, which writ petition was disposed of directing the Deputy Director of Consolidation to dispose of the revision finally within a period of three months. An objection regarding maintainability of the revision was raised by the respondents, which was decided by order dated 28th February, 2002 holding the revision maintainable. Subsequently on an application moved for recall of the order by Manokamna and others the order dated 28th February, 2002 was recalled on 12th May, 2006. The petitioners filed a writ petition challenging the aforesaid order. This Court by order dated 10th July, 2006 passed in Writ Petition No. 30957 of 2006 disposed of the writ petition directing the Deputy Director of Consolidation to decide the revision

after hearing the concerned parties on merits. The respondents moved an application for modification of the above order of this Court, which application was disposed of permitting the respondents to raise all the questions of law and facts before the Deputy Director of Consolidation including the question of maintainability. Subsequently, the Deputy Director of Consolidation by the impugned order dated 26th December, 2007 has rejected the revision. In the writ petition order dated 26th December, 2007 has been prayed to be quashed. Another set of orders, which have sought to be quashed in the writ petition are the order dated 10th April, 2006 passed by the Consolidation Officer under Rule 109 of U.P. Consolidation of Holdings Rules, 1954 and the order of Deputy Director of Consolidation dated 26th December, 2007 dismissing the revision filed by the petitioners against the order dated 10th April, 2006.

3. Learned Counsel for the petitioners challenging the orders, contended that the order of the Settlement Officer of Consolidation dated 11th February, 1981 was an order by which petitioners' chak, which was in good quality fertile land, was removed and the chak had been given to the petitioners in low water logging land of less valuation. Learned Counsel for the petitioners contends that petitioners' father did not enter into any compromise before the Settlement Officer of Consolidation agreeing to take chak in Tal area. He contends that Deputy Director of Consolidation having once held that revision was maintainable by order dated 28th February, 2002, it was not open for the Deputy Director of Consolidation to hold that revision was not maintainable.

Sri R.C. Singh, learned Counsel appearing for the contesting respondents, refuting the submission of counsel for the petitioners, contends that the order of Settlement Officer of Consolidation was passed on consent given by petitioners' father and it was not open for the petitioners' father to file a revision or challenge the amendment made by the Settlement Officer of Consolidation. He contends that in the revision filed against the order dated 11th February, 1981 even the consent was not challenged. Learned Counsel submits that petitioners' father having once given consent for modification of his chak, it was not open for him to challenge the said consent. Reliance has been place on the judgment of this Court reported in 1999 (90) R.D. 212 Som Datta v. The Deputy Director of Consolidation,

Saharanpur and the judgment of the Apex Court reported in : 1982 CriLJ1581 State of Maharashtra v. Ramdas Shrinivas Nayak and Ors. and : [2003]3SCR292 Roop Kumar v. Mohan Thedani.

4. I have considered the submissions raised by learned Counsel for the parties and perused the record.

The order of Settlement Officer of Consolidation dated 11th February, 1981 has been filed as Annexure-1 to the writ petition. A perusal of the said order indicates that Settlement Officer of Consolidation specifically recorded in the order that Madan Gopal, father of the petitioners, was agreeable that his chak on Plot No. 1267 be removed and the valuation be added in his chak at Plot No. 1170. The amendment chart, which is part of the order of Settlement Officer of Consolidation, has been brought on the record as Annexure SA-3 to the supplementary affidavit, which chart indicates that chak on Plot No. 1267 has been removed and the valuation has been given at Plot No. 1170 and others. The ground of revision filed by the petitioners against the order of Settlement Officer of Consolidation has been brought on the record as Annexure SA-4 to the supplementary affidavit. Although the petitioners took as many as ten grounds challenging the order of Settlement Officer of Consolidation but in none of the grounds it was even claimed that no such consent was given by the revisionist before the Settlement Officer of Consolidation for affecting his chaks. It is useful to note that in the earlier writ petition, which was filed by the petitioners being Writ Petition No. 26420 of 1996 the submission raised by the respondents that the order of Settlement Officer of Consolidation being based on sent the revising authority cannot interfere was specifically noted, which was to the following effect:

Learned Counsel for the respondent has, however, urged that in view of the observations made in the judgment passed by Assistant Settlement Officer (Consolidation), which is the subject matter of the revision it is apparent that the alterations made by the Assistant Settlement Officer (Consolidation) in the chak of the revisionists were made with the consent of the revisionists and in this view of the matter there was no scope for any interference by the revising authority specially when the correctness of the observations noticing the consent of the

revisionist had not been challenged.

5. Although in this writ petition as well as in the supplementary affidavit, the petitioners have come up with the case that no such consent was given by the father of the petitioners before the Settlement Officer of Consolidation. An observation recorded in an order of consolidation authorities of the proceedings as transpired before the Court has to be accepted as true. In chak allotment proceedings the equities of the parties and their convenience are to be looked into while deciding chak objections, appeals and revisions. When in a chak appeal filed before the Settlement Officer of Consolidation the parties come up with some prayer with their consent for amendment of their chaks, no exception can be taken to the procedure adopted by Settlement Officer of Consolidation. It is categorically recorded in the order of Settlement Officer of Consolidation that Madan Gopal was agreeable that his chak at Plot No. 1267 be removed and the said valuation be added at Plot No. 1170. The amendment chart, which is part of the order of Settlement Officer of Consolidation dated 11th February, 1981 also indicates that chak of Madan Gopal being Chak No. 571 was accordingly changed. The judgment relied by counsel for the respondents in Som Datta's case (*supra*) fully supports the submission of learned Counsel for the respondents. In the above case the adjustment of chak was made in the appeal on the agreement of the parties. A revision was filed challenging the said order, which was allowed on the ground that there was no written compromise before the Settlement Officer of Consolidation. This Court set-aside the order of Deputy Director of Consolidation and laid down following in paragraph 4:

4. It is well settled that statement of fact appearing in the judgment of a Court below as to what happened before Court below cannot be challenged in appeal or revision and the statement of fact incorporated in judgment is to be taken to be correct unless both parties to litigation agree that it was not so (see *State of Bihar v. Mahabir Lal*). Same principle of law will apply to statement of fact incorporated in judgment of Consolidation Authority. Referring to the remedy available to such a person, the Apex Court held, 'if the record of a Court is to be assailed a review in that Court and not SLP or appeal in the Supreme Court is the remedy.' There cannot be any any different view for seeking remedy in this respect for the party

before any Court or tribunal subordinate to this Court in this respect. Consolidation Authorities discharging functions similar to Courts, adjudicating disputes, have to proceed accordingly and, therefore, it was not open to contesting opposite party to challenge the concession made in appeal before the Deputy Director of Consolidation in revision. The opposite-parties could approach the Assistant Settlement Officer Consolidation and point out that no concession for making adjustment was made by him. As the contesting opposite-party did not take recourse to such remedy before Assistant Settlement Officer Consolidation, the setting aside of such an order passed in appeal by exercising revisional power by Deputy Director of Consolidation is bad in law. The Deputy Director, Consolidation exceeded his revisional power conferred on him under Section 48 of the Act in doing so.

5.1 The Apex Court in the case of State of Maharashtra v. Ramdas Shrinivas Nayak also laid down the same principle. Following was laid down in paragraph 4 of the said judgment:

4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there was who appeared for Sri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars us Judicial decorum restrain us. Matters of judicial records are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. 'Judgements cannot be treated as mere counters in the game of litigation'. (Per Lord Atkinson in Somasundaran v. Subramaniam AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of

the Court, are conclusive of the facts so stated and no one can contradict such statement by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati* AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there....

5.2 To the same effect there is a judgment of the Apex Court in *Roop Kumar's* case (supra). The submission of the petitioners on which much emphasis has been laid is that petitioners entire good quality land was taken away by Settlement Officer of Consolidation and they were given land of less valuation by the Settlement Officer of Consolidation. From the amendment chart it does appear that plots of petitioners, which were taken away were the plots of valuation 11 anna and 12 anna and the plots which were given were of less valuation, i.e., 5 anna, 9 anna, 10 anna and 11 anna but it is also apparent that area which was taken away from the petitioner was 2.95 hectare whereas the petitioners were given an area of 5.71 hectare in place of the plots, which were taken away. The less valuation plot having been given, the petitioners' area has been increased but it is relevant to note that variation is not of more than 25% in the original area of the petitioners as compared to the area, which was allotted in pursuance of the order of Settlement Officer of Consolidation. Thus the increase of the area by Settlement Officer of Consolidation of the petitioners and allotment of the less valuation plot does not violate the provisions of Section 19 of U.P. Consolidation of Holdings Act, 1953 more so when the petitioners consented that their chak on Plot No. 1267 be removed and the valuation be added on Plot No. 1170. The petitioners' father was aware of the consequence because valuation of the plot was already fixed on the record. When the chaks were modified by consent, the petitioners' submission that their good quality land was taken away and they were given less valuation land cannot be heard.

5.3 The last submission of the petitioners' counsel is that once the Deputy Director of Consolidation has held that revision was maintainable, it was not open for him to dismiss the revision. Under Section 48 of U.P. Consolidation of Holdings Act, 1953, the Deputy Director of Consolidation has very wide power. When an order was passed by Settlement Officer of Consolidation on 11th February, 1981, the revision filed by the petitioners against the said order was clearly maintainable. The maintainability of the revision is clearly different from the grounds to interfere in the revision. Every order passed by the subordinate consolidation authorities be that of Settlement Officer of Consolidation can be challenged before the Deputy Director of Consolidation under Section 48 but as to whether in the said revision grounds have been made out to interfere with the order is clearly a different thing. The revision filed by the petitioners' father was maintainable but the Deputy Director of Consolidation was entitled to consider the merits of the revision and decide as to whether the order is to be interfered with or not. The Deputy Director of Consolidation dismissed the revision observing that the order of Settlement Officer of Consolidation dated 11th February, 1981 was passed on the basis of consent given before him. It was also noticed by the Deputy Director of Consolidation that revisionist has not even challenge giving his consent. The Deputy Director of Consolidation further observed that even if consent was to be challenged, the same ought to have been done in the same Court, i.e., before the Settlement Officer of Consolidation, which having not done, the revision is to be dismissed. The Deputy Director of Consolidation in substance has taken the view that revision is liable to be dismissed due to above reason. Mere use of words by Deputy Director of Consolidation that revision is not maintainable is of no consequence. The substance of the order is that revision is to be dismissed. The Deputy Director of Consolidation has, thus, rightly come to the conclusion that revision against the order dated 11th February, 1981 is to be dismissed.

6. In so far as the challenge to the order of Consolidation Officer dated 10th April, 2006 and the order of Deputy Director of Consolidation dated 26th December, 2007 passed under Rule 109 of UP. Zamindari Abolition and Land Reforms Rules, 1952 are concerned, in view of the above mentioned observation that the order of Settlement Officer of Consolidation dated 11th February, 1981 was correct and the revision having been dismissed, the orders passed by Consolidation Officer dated

10th April, 2006 and the order dated 26th December, 2007 being consequential cannot be interfered with. In view of the foregoing discussions, no error has been pointed out in the impugned orders, which may warrant interference under Article 226 of the Constitution of India. The writ petition is dismissed.

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