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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

NANKAU — Appellant

Vs.

DEPUTY DIRECTOR OF CONSOLIDATION, UNNAO AND OTHERS —
Respondent

(Before : Shri Narayan Shukla, J)

Writ Petition (Cons.) No. 4095 of 1983

Decided on : 08-02-2010

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 48

A. Consolidation of Holdings — Appeal — Condonation of Delay — Challenge to an order passed on the merits of an appeal must be heard on its merits, especially when the initial order for condoning delay was not challenged. (Para 4)

B. Consolidation of Holdings — Judicial Review — Scope of Revisionary Authority — A revisional authority should confine its decision to the grounds challenged in the revision application. If only the merits of the appeal are challenged, the revisionary authority should decide on the merits rather than revisiting an unchallenged order on condonation of delay. (Para 4)

C. Consolidation of Holdings — Due Process — Remand for Hearing on Merits — When a Deputy Director of Consolidation erroneously sets aside an order on merits by focusing on the point of limitation that was not challenged, the matter should be remitted for a hearing on the merits of the appeal. (Para 4)

D. Consolidation of Holdings — Timely Disposal of Cases — Expeditious Resolution — In matters that are old, the concerned authority is requested to

decide the revision expeditiously, ideally within three months. (Para 5)

E. Consolidation of Holdings — Interim Orders — Status Quo — Until the disposal of the appeal, the parties shall maintain the status quo. (Para 5)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr.K.S.Rastogi, learned counsel for the petitioner, learned Standing Counsel and Mr.L.M.Khare, learned counsel for the opposite parties 4 and 5.

2. The petitioner is aggrieved with the order dated 13th of May, 1983, passed by the Deputy Director of Consolidation, Unnao, whereby the orders passed by the Settlement Officer Consolidation on 28th of August, 1981 on the application for condonation of delay as well as the order dated 26th of September, 1981 passed on merit has been set aside.

3. The learned counsel for the petitioner submits that it is not disputed that the appeal was filed with the delay alongwith the application for condonation of delay. The application was well considered and was allowed by means of order dated 28th of August, 1981. The opposite parties did not challenge it. They faced the proceeding on merit and ultimately the Settlement Officer Consolidation finally allowed the appeal by means of order dated 26th of September, 1981. Upon perusal of the memo of appeal it reveals that without challenging the order passed on the application for condonation of delay the opposite parties filed the revision challenging the order dated 26th of September, 1981 whereby the appeal was allowed, whereas order impugned reveals that the Deputy Director of Consolidation has proceeded to decide the revision on the question of limitation as the same was also involved and he confined his finding only on the point of limitation, but he has set aside both the orders passed on the application as well as on the merit of the appeal.

4. The facts which have been set out by the petitioner, as above, are not disputed. Upon perusal of record I also find those facts as true and I am of the view that once the question of limitation was not under adjudication before the Deputy Director of Consolidation and the order passed in appeal on merit was challenged, the Deputy Director of Consolidation should have proceeded to decide the revision on its merit, but instead of making any observation on merit, he has set aside the order passed on the application for limitation and on the merit also, therefore, I am of the view that the order passed by the Deputy Director of Consolidation suffers from error. The revision filed by the opposite parties requires the adjudication on merit, therefore, I hereby quash the order impugned dated 13th of May, 1983 and remit the matter to the Deputy Director of Consolidation, Unnao to hear the revision No.2 of 198182 on merit after providing opportunity of hearing to the parties concerned.

5. Since the matter is old one the Deputy Director of Consolidation concerned is requested to decide the revision expeditiously after providing opportunity of hearing of the parties, say within 3 months, if possible. Till the disposal of the appeal the parties shall maintain

status quo.

6. In the result the writ petition is allowed.