

## Raj Kumar and Another Vs Deputy Director of Consolidation and Others

**Court:** Allahabad High Court

**Date of Decision:** Aug. 5, 2003

**Acts Referred:** Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 9A(2)

**Citation:** (2003) 6 AWC 4610 : (2004) 97 RD 641

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

**Bench:** Single Bench

**Advocate:** H.N. Singh and Ravi Ranjan, for the Appellant; Sankatha Rai and S.C., for the Respondent

**Final Decision:** Allowed

### Judgement

S.K. Singh, J.

These are two connected writ petitions which arises out of the same dispute and against common orders as passed by the

Deputy Director of Consolidation, Azamgarh/Respondent No. 1. For the purpose of convenience, Writ Petition No. 34147 of 1993 is being taken

up as leading case.

2. The facts in brief, can be summarised for the purposes of disposal of these two writ petitions. The father of Respondent No. 3 (Ashok Kumar)

namely Raj Narain filed objection u/s 9A (2) of U.P. C. H. Act claiming himself to be co-tenant with Yogendra Narain (Respondent No. 4). The

Consolidation Officer rejected his objection but on appeal, Raj Narain was declared to be co-tenant by the Settlement Officer, Consolidation vide

order dated 31.1.1972 which was confirmed in the revision by the Deputy Director of Consolidation on 17.11.1972. Against the aforesaid

judgments, the Respondent No. 4 Yogendra Narain filed writ petition before this Court which was numbered as Writ Petition No. 1466 of 1973.

It appears that some compromise was filed between the Petitioner and the Respondents in that petition on the basis of which, it was prayed that

the writ petition be decided in terms of compromise. There were various clauses in the compromise. In the affidavit filed in support of the

compromise, it was stated that the writ petition be allowed and the order of the Consolidation Officer be restored, the objection of Respondents

be dismissed. Clause 2 (1) as mentioned in the affidavit referred above is to be quoted herewith:

That the writ petition be allowed and the order of the Consolidation Officer be restored. The objection of the Respondent be dismissed.

3. This Court after hearing learned Counsel for the parties on 22.8.1978 passed an order that the writ petition cannot be decided in terms of

compromise and therefore, the writ petition was directed to be listed for final hearing. It appears that thereafter, just after one week, the matter

was listed on 31.8.1978 and writ petition was dismissed by making observation that the compromise has been arrived at between the parties. The

aforesaid two orders of this Court dated 22.8.1978 and 31.8.1978 will also be useful to be quoted:

This is a compromise application. The petition cannot be decided in terms of compromise application in view of the recent decision of this Court.

The petition itself be listed for final hearing at an early date along with this application.

Sd/- S.D.A., J.

22.8.1978.

The parties have entered into a compromise. The compromise has been received back after due verification of the court below. In view of the

compromise arrived at between the parties, the writ petition is dismissed.

Sd/- G. N., J.

31.8.1978.

4. After the final order of this Court dated 31.8.1978, the Respondent No. 4 kept mum and he never approached the concerned authority for

getting the orders of this Court implemented and for expunction of the name of Raj Narain. It appears that Raj Narain in due course of time died

upon which, the Respondent No. 3 being son was ordered to be mutated on 15.9.1991 who in its turn sold the land which he succeeded by means

of registered sale deed dated 13.7.1972 in favour of Petitioners of Writ Petition No. 34147 of 1993 for a sale consideration of Rs. 47,599. It is

thereafter, the Respondent No. 4 appears to have filed application on 27.8.1992 before the Consolidation Authorities for implementation of the

order of this Court dated 31.8.1978. The Consolidator by his report dated 6.11.1993 referred the application to Respondent No. 4 for dismissal

upon which the Consolidation Officer on 6.9.1993 referred the matter to the Deputy Director of Consolidation for passing appropriate orders. The

Deputy Director of Consolidation by his order dated 28.9.1993 directed the matter to be placed before the Consolidation Officer for implementing

the order of this Court and the compromise. Against the order dated 28.9.1993, Petitioners of Writ Petition No. 34147 have filed this petition in

which an order of status quo regarding possession was granted by this Court on 11.10.1993. It appears that on the basis of the order of this Court

dated 11.10.1993, parties approached the Deputy Director of Consolidation for staying the proceedings, but the Deputy Director of Consolidation

by passing order dated 2.11.1993 observed that this Court has not stayed the proceedings and therefore, he directed that amaldaramad of his

order dated 28.9.1993 is to take place. Against these two orders, i.e., 2.11.1993 and 28.9.1993, other Writ Petition No. 34460 of 1993 has

been filed by Ashok Kumar and others in which on 29.11.1993 further proceedings pursuant to the order dated 2.11.1993 and 28.9.1993 was

stayed.

5. In view of the aforesaid, in both writ petitions, order of the Deputy Director of Consolidation dated 28.9.1993 and in Writ Petition No. 34460

of 1993, order dated 2.11.1993 has been prayed to be quashed.

6. Learned Counsel for the Petitioners submits that this Court in its order dated 31.8.1978 has never directed the consolidation authority to pass a

specific order in terms of compromise rather, the writ petition was dismissed and therefore, the proceedings for implementation of the compromise

which is said to have been arrived at between the parties of Writ Petition No. 1566 of 1973 is clearly unjustified. It is then argued that the efforts

on the part of Respondent No. 4 is clearly mala fide inasmuch as the order of this Court is dated 31.8.1978 but for the last about 14 years, no

steps whatsoever were taken by the Respondent No. 4 for getting the name of Raj Narain expunged in the light of the alleged compromise for the

simple reason that the same was not a genuine affair as Raj Narain had already succeeded from the Court of Settlement Officer, Consolidation and

the Deputy Director of Consolidation. It is further submitted that on the death of Raj Narain, no objection was raised by Respondent No. 4 and

the name of Respondent No. 3 who happens to be the son of deceased was mutated by the order dated 15.9.1991 who on its turn sold the land

to the Petitioners by registered sale deed dated 13.7.1992 after taking adequate consideration and it is now thereafter, present move of

Respondent No. 4 has come into existence. On all these premises, it is argued that the order of Respondent No. 1 is liable to be quashed.

7. In response to the aforesaid submission, learned Counsel for the Respondents submits that before this Court, the compromise having been

arrived at, between the parties to the Writ Petition No. 1556 of 1972, this Court dismissed the writ petition by making clear observation that in

view of the compromise arrived at, this petition is dismissed and therefore, it is submitted that the order of this Court has been rightly directed to be

implemented. Learned Counsel laid heavy emphasis on the observation as made by this Court in the order dated 31.8.1978 on the words ""in view

of the compromise arrived at"" . It is argued that in view of the compromise, Raj Narain ceased to have any right in the land and therefore, the

transfer of the same to the Petitioners cannot confer any right on them.

8. In view of the aforesaid arguments as advanced from both sides, material as brought on record have been examined. There appears to be no

dispute about the fact that by order of Settlement Officer, Consolidation, Raj Narain was declared to be co-tenant with Respondent No. 4 which

was confirmed by the Deputy Director of Consolidation and thus, the two Courts have given a concurrent finding about the co-tenancy right of Raj

Narain. Before this Court neither at the time of filing of compromise in Writ Petition No. 1556 of 1972 nor even at this time, there is any positive

material to examine that what was the situation or consideration for filing that compromise by which, it was prayed that the order of the

Consolidation Officer be restored and objection of Raj Narain be dismissed, which clearly means that Raj Narain was to be deprived of the rights

which he got from two courts. Although, at this stage, this is not for this Court to go into that aspect that in what circumstances that compromise

was filed and what is its worth but at the same time, this Court never passed orders in terms of compromise nor gave any direction to the court

below to pass order in terms of compromise nor any liberty as given to the parties to approach the consolidation authorities to get the orders

passed on the basis of the compromise and thus in absence of passing of the order of this Court in any of the manners as referred above, this Court

cannot take the view that the intention of this Court while dismissing the writ petition was that on the basis of compromise, order is to be passed by

the consolidation authorities. If this would have been the intention of this Court, then any kind of observation in this respect would have been made

giving hint or an authority to the consolidation court to take appropriate steps and at the same time, it would have been for either of the parties also

to have made a request for giving such direction to the consolidation authorities so that they may get their powers revived for passing appropriate

orders, in the light of the orders of this Court and thus unless, there is any direction or even observation of this Court as noted above, the

consolidation authorities cannot themselves suo motu derive the power to pass any fresh order making change in the entries as nothing was pending

before them. Otherwise also once this Court declined to pass any order in terms of compromise on 22.8.1978 unless that order was

recalled/modified, if another order has been passed on 31.8.1978, by making an observation that the parties have entered into compromise and in

view thereof, the order is being passed, if in the operative portion, it is clearly mentioned that the writ petition is dismissed, it cannot mean that this

Court has passed orders in terms of compromise as both orders will run contrary to each other.

9. In view of the aforesaid, this Court is of the view that unless this Court while dismissing the writ petition has quashed the orders of the courts

below and has given a direction for passing orders in terms of compromise or even without quashing orders, it has made any observation for taking

appropriate steps in the light of compromise filed before this Court or even liberty has been given to the parties to approach the consolidation

courts for redressal of their claim in the light of the compromise, the consolidation authorities cannot on their own do anything against the final

decision passed by them as they did not have any jurisdiction for making any change. It is for the party before this Court who is to receive

advantage on the compromise to take care of making prayer at the time of passing orders by this Court that any kind of direction/observation may

be made so that effect of the compromise may be got carried out by invoking the authority of the consolidation authorities. Thus, in the case in

hand, as no such situation emerges from the order of this Court dated 31.8.1978, claim of Respondent No. 4 cannot be accepted. There is

another reason for not accepting the claim of Respondent No. 4, which on the facts of the present case is quite obvious. The compromise on the

basis of which, it is claimed that this Court has passed orders for giving effect to the compromise, if it is accepted then there appears to be no reason

for not taking any steps for getting the name of Raj Narain expunged for such long time. His name continued throughout and on his death the name

of Respondent No. 3 was mutated without any objection by the Respondent No. 4 who in its turn sold the land to the Petitioner and thus after

about 14 years, the Court finds absolutely no justification for moving application by Respondent No. 4. By passage of long time, much water has

flown and as father of Respondent No. 3 has been accepted to be co-tenant by two consolidation courts and as this Court has never passed

orders in terms of compromise, i.e., for restoring the order of the Consolidation Officer and rejection of the objection of Raj Narain, this Court is

not satisfied that on the facts this can be a case for extending any discretion in favour of Respondent No. 4 and permitting the order of the Deputy

Director of Consolidation dated 28.9.1993 and 2.11.1993 to be maintained.

10. Accordingly, this petition succeeds and is allowed. The impugned orders dated 28.9.1993 and 2.11.1993 passed by the Deputy Director of

Consolidation are hereby quashed. Connected Writ Petition No. 34460 of 1993, thus also stands disposed of.