

## Parag Lal Behari Vs Deputy Director of Consolidation, Gorakhpur and Others

**Court:** Allahabad High Court

**Date of Decision:** Sept. 27, 1984

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 11

Constitution of India, 1950 â€” Article 141, 226

Uttar Pradesh Consolidation of Holdings Act, 1953 â€” Section 5

**Citation:** AIR 1985 All 34

**Hon'ble Judges:** V.N. Khare, J; N.D. Ojha, J; B.L. Yadav, J

**Bench:** Full Bench

**Advocate:** S.R. Misra, for the Appellant; Swaraj Prakash and Standing Counsel, for the Respondent

**Final Decision:** Allowed

### Judgement

N.D. Ojha, J.

This writ petition was referred to a Full Bench fry a learned Single Judge of this Court for consideration of the question

whether the decision of a Division Bench of this Court in the case of Dalip Singh and Others Vs. The Deputy Director of Consolidation,

Moradabad Camp and Others, required reconsideration in view of the fact that the decision of the Supreme Court in the case of Mathura Prasad

Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, was not brought to the notice of the learned Judges who decided the case of Dalip Singh

(supra) It is thus that this writ petition has come before us.

2. The facts and circumstances on account of which the aforesaid point arose for consideration may now be stated.

3. Smt. Murta, the grandmother of the petitioner, who had been appointed guardian of the petitioner under the Guardians and Wards Act, 1890,

after obtaining the permission of the District Judge executed a sale deed on 27th August, 1963, in respect of certain agricultural plots of which the

petitioner was the tenure-holder in favour of Gomati and Bachchan, respondents 3 and 4. These plots were situated in three villages-Khajuri,

Harpur alias Dubaria and Sisai, Pargana Hasanpur Maghar, Tehsil Bansgaon, district Gorakhpur. Subsequently in the year 1965 Ram Deo,

maternal uncle of the petitioner, was appointed guardian of the petitioner in place of Smt Murta. After obtaining the permission in this behalf from

the District Judge Ram Deo instituted a suit in the year 1965 in the Court of the Munsif for cancellation of the sale deed aforesaid. The suit was

decreed by the Munsif. Against that decree an appeal was preferred by respondents 3 and 4. During the pendency of that appeal the three villages

where the plots sold by Smt. Murta in favour of respondents 3 and 4 were situate were brought under consolidation operations. Three objections

were filed by the petitioner inasmuch as the plots sold were situate in three villages. The appeal filed by respondents 3 and 4 against the decision of

the Munsif was abated along with the suit filed by the petitioner u/s 5 of the U. P. Consolidation of Holdings Act.

4. The objection of the petitioner in regard to the plots of village Sisai appears to have been taken up first and was allowed by the Consolidation

Officer. An appeal was preferred against that order by respondents 3 and 4 which was allowed by the Settlement Officer (Consolidation). He

took the view that till the sale deed was cancelled by the Civil Court the Consolidation Authorities were bound to give effect to it. A revision was

then filed by the petitioner before the Deputy Director of Consolidation but the Deputy Director of Consolidation agreed with the view taken by

the Settlement Officer (Consolidation) and dismissed the revision. These two orders were challenged by the petitioner under Article 226 of the

Constitution before this Court in Civil Misc. Writ Petition No. 427 of 1969. The writ petition was allowed by this Court on 18th March, 1970 and

the two orders mentioned above were quashed. On the finding that the Settlement Officer (Consolidation) was empowered to decide whether the

sale deed in question was binding on the petitioner or not the matter was sent back to the Settlement Officer (Consolidation) for deciding the

appeal on merits. The Settlement Officer (Consolidation) there after decided the question of binding effect of the sale deed on the petitioner on

merits in favour of the petitioner in regard to the entire plots of the three villages which were the subject-matter of the sale deed, by-three separate

orders.

5. Aggrieved by the order of the Settlement Officer (Consolidation) respondents 3 and 4 preferred three revisions before the Deputy Director of

Consolidation. These revisions were allowed by the Deputy Director of Consolidation on 21st June, 1974, mainly relying on the decision of the

Supreme Court in Gorakh Nath Dube Vs. Hari Narain Singh and Others, where it was held that if a sale deed was not void but avoidable the

Consolidation Authorities had no jurisdiction to go into the question as to whether the sale deed was voidable or not and were bound to give effect

to the sale deed till it was cancelled by a competent Court. The view which the Deputy Director of Consolidation took in regard to the nature of

the sale deed was that it was voidable. The petitioner thereafter made" an application before the Deputy Director of Consolidation for setting aside

the order dated 21st June, 1974, on the ground that the said order was an ex parte one. According to him on the date fixed for hearing in the

revisions before the Deputy Director of Consolidation he could not appear on account of his illness with the result that the revisions were decided

in his absence. The Deputy Director of Consolidation, however, dismissed the said application by his order dated 23rd July, 1974. It is these two

orders dated 21st June, 1974, and 23rd July, 1974, passed by the Deputy Director of Consolidation which are sought to be quashed in the

present writ petition.

6. In regard to the order dated 21st June, 1974, counsel for the petitioner submitted that the Deputy Director of Consolidation erroneously took

the view that the question about the validity of the sale deed could not be gone into by the consolidation authorities. It was urged that the order

abating the appeal filed by respondents 3 and 4 against the decree of the Munsif in the suit for cancellation of the sale deed along with the said suit

u/s 5 of the U. P. Consolidation of Holdings Act as well as the order dated 18th March, 1970, passed by this Court in Civil Misc. Writ Petition

No. 427 of 1969 holding that the Consolidation authorities had jurisdiction over the matter operated as res judicata and it was not open to the

Deputy Director of Consolidation to take a contrary view.

7. For the respondents on the other hand, it was urged that in view of the decision of the Supreme Court in the case of Gorakh Nath Dube Vs.

Hari Narain Singh and Others, the Deputy Director of Consolidation was right in taking the view which he did inasmuch as the sale deed in

question was, even on the allegations made by the petitioner, not void but only voidable. Reliance in this connection was also placed by counsel for

respondents 3 and 4 on a Full Bench decision of this Court in Ram Nath v. Smt. Munna 1976 AWC 412 where on the basis of the decision of the

Supreme Court in the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, it was held that a suit for cancellation of a voidable sale deed

relating to an agricultural plot pending in the Civil Court will not abate u/s 5(2) of the U. P. Consolidation of Holdings Act. Reliance was also

placed by counsel for respondents 3 and 4 on the decision of a Division Bench of this Court in Ram Charitter Misir Vs. Suraj Teli and Another,

where it was held that a permission obtained by a certificated guardian by a fraudulent misrepresentation being void is a nullity and a transfer

ostensibly made in pursuance of such permission must be considered to be one made without permission and as such it is not void but voidable u/s

30 of the Guardians and Wards Act. Keeping in view the nature of the allegations made by the petitioner in regard to the manner in which the

permission was obtained by Smt. Murta from the District Judge and the law laid down in the decisions referred to above relied on by counsel for

respondents 3 and 4 there seems to be no doubt that the sale deed in question in the instant case would be voidable and not void and the

consolidation authorities were consequently not entitled to adjudicate upon its validity or otherwise.

8. The question which, however, falls for consideration by us is whether the order of the Civil Court abating the appeal arising out of the suit filed

by the petitioner together with the suit and the order of this Court in Civil Misc. Writ Petition No. 427 of 1969 holding that the Consolidation

Authorities had jurisdiction over the matter would operate as res judicata and preclude respondents 3 and 4 from urging that the consolidation

authorities did not have the jurisdiction over the matter in view of the decision of the Supreme Court in the case of Gorakh Nath Dube Vs. Hari

Narain Singh and Others, .

9. A Division Bench of this Court in the case of Dalip Singh and Others Vs. The Deputy Director of Consolidation, Moradabad Camp and Others,

even after noticing the decision of the Supreme Court in the case of Gorakh Nath Dube supra) has held : -

It has been seen that the suit filed by the respondents covered both the sale deeds. The suit was for cancellation. It was abated u/s 5 of the

Consolidation of Holdings Act. Section 5 aforesaid applies when a Court finds that in view of Section 49 of the Act, a regular suit is not

maintainable because the points for adjudication can be adjudicated upon by the Consolidation Authorities. The necessary effect of this order of

abatement was that subject-matter of the suit namely, the validity of the two sale deeds, could be adjudicated upon by the Consolidation

Authorities. It is well settled That a decree or order which has become final, operates as res judicata even though it may proceed upon an

erroneous decision of a question of law. In view of the doctrine of res judicata, none of the parties could object to the Consolidation Authorities

going into the validity of the two sale deeds. They were entitled to adjudicate upon their validity.

10. Counsel for respondents 3 and 4, however, urged; that the decision of this Court in the case of Dalip Singh (supra) did not lay down the law

correctly. It was pointed out that the decision of the Supreme Court in the case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B.

Jeejeebhoy, was not brought to the notice of the learned Judges who decided the case of Dalip Singh (supra) where it was held that a question

relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous

interpretation of the statute the Court holds that it has no jurisdiction the question would not, in our judgment, operate as res judicata. Similarly by

an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata

between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise, because if those decisions are

considered as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in

derogation of the rule declared by the Legislature.

11. It is because of this submission made by counsel for respondents 3 and 4 that this writ petition, as already pointed out above, was referred for

decision to a Full Bench.

12. Having heard counsel for the parties and given our anxious consideration we are of opinion that in view of the law laid down by the Supreme

Court in the case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, the order of the Civil Court abating u/s 5 of the U.

P. Consolidation of Holdings Act the appeal arising out of the suit filed by the petitioner together with the said suit would not operate as res

judicata but the decision of this Court in Writ Petition No. 427 of 1969 would operate as res judicata and respondents 3 and 4 on account of that

decision are precluded from asserting that the consolidation authorities did not have jurisdiction over the matter.

13. We now proceed to give our reasons for this conclusion.

14. Even on a plain reading of the decision of the Supreme Court in the case of Mathura Prasad (supra) it is apparent that what has been

emphasised in that case is that no Court by its erroneous decision on a pure question of law in regard to its jurisdiction can either refuse to exercise

the jurisdiction which according to the rule declared by the legislature vests in it nor can it assume jurisdiction which does not vest in it. In such a

case what is of significance is that the Court does not decide a question of law simpliciter but a question of law on the decision of which depends

its jurisdiction to take cognizance of the suit or proceedings. The erroneous decision on such a question of law by such a Court has been held not

to operate as res judicata because the Court by its own erroneous decision is either abdicating jurisdiction or clutching it contrary to the rule

declared by the legislature in this behalf. In the instant case the decision of the Civil Court referred to above would fall in this category and would,

therefore, not operate as res judicata.

15. The decision of this Court in Civil Misc. Writ Petition No. 427 of 1969, however, stands on a different footing. This Court had admittedly

exclusive jurisdiction and was competent to entertain the aforesaid writ petition under Article 226 of the Constitution. A pure question of law was to

whether the matter in dispute between the parties was cognisable by the Civil Court or the Consolidation Authorities came up for consideration

before this Court in the aforesaid writ petition. Upon the decision of this pure question of law one way or the other did not depend the jurisdiction

of this Court to entertain the writ petition aforesaid. It was open to respondents 3 and 4 to challenge the correctness of the decision of this Court in

the aforesaid writ petition in an appeal before the Supreme Court. They, however, chose not to do so and allowed the said decision to become

final. On the other hand, what they did was that in the revisions filed against the orders of the Settlement Officer (Consolidation) they asserted

before the Deputy Director of Consolidation and apparently in the teeth of the decision of this Court in the aforesaid writ petition that the matter

was not cognisable by the Consolidation Authorities and their assertion was accepted by the Deputy Director of Consolidation. The question

which arises for consideration in this writ petition by the same Court which decided Civil Misc. Writ Petition No. 427 of 1969 and between the

same parties at a subsequent stage of the same litigation is whether in the circumstances mentioned above it was open to respondents 3 and 4 to

make the aforesaid assertion and to the Deputy Director of Consolidation to accept it. On a conspectus of the authorities hereinafter mentioned our

answer to this question is in the negative.

16. While dealing with the nature and scope of the jurisdiction of the High Court under Article 226 of the Constitution a Full Bench of this Court in

Udai Bhan Singh and Others Vs. The Board of Revenue, U.P., Allahabad and Others, :-

An order passed by the High Court under Article 226 of the Constitution, as held by the Supreme Court in State of Uttar Pradesh Vs. Dr. Vijay

Anand Maharaj, and Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, is one in exercise of its extraordinary original civil

jurisdiction. When a writ petition is filed challenging a decision in a suit or proceedings declaring or adjudicating rights or interest in any land, this

Court calls for the record of the suit or proceeding and if it is found to be without jurisdiction or if there is an error of law apparent on the face of

the record, the judgment or order is quashed. This Court after quashing the order cannot substitute its own order or decree for the order or decree

impugned but must send back to the Court or authority concerned for deciding the case in accordance with law declared by it. The executable

order with regard to the rights of the parties in dispute in such a case is not the order of this Court passed in the Writ Petition but the decision

ultimately given by the Court or authority of which the order was in challenge. If, on the other hand, the petition for a writ is dismissed again, it is

the order of the Court or authority concerned which was impugned that decides the rights of the parties in dispute. It was held by the Supreme

Court in *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, that :

A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the original controversy. The controversy in the High

Court, in proceedings arising under Article 226 ordinarily is whether a decision of or a proceeding before, a Court or Tribunal or Authority, should

be allowed to stand or should be quashed, for want of jurisdiction or on account of errors of law apparent on the face of the record.

It is thus clear that a decision in a writ petition is not a decision about the merits of the rights of the parties in issue in the proceedings giving rise to

it. It has further to be noted that a proceeding under Article 226 of the Constitution is not a continuation of the suit or proceeding giving rise to it

and there exists a clear distinction between an appeal or revision and a writ petition directed against orders passed therein. It was held by the

Supreme Court in *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*, that (para 12);

Under Article 226 of the Constitution it may in this connection be pointed out that the High Court does not hear an appeal or a revision, that

Court is moved to interfere after bringing before itself the record of a case decided by or pending before a Court, a Tribunal or an authority, within

its jurisdiction. A decision in the exercise of this extraordinary jurisdiction which finally disposes of the proceedings is a final order, in an original

proceeding. An appeal or a revision on the other hand is generally considered to be a continuation of the original suit or proceeding.

17. In *Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others*, it was held by the Supreme Court that a decision in a writ petition

operates as *res judicata* in a subsequent writ petition raising the same controversy or question.

18. In *Daryao and Others Vs. The State of U.P. and Others*, it was observed by the Supreme Court that the argument that *res judicata* is a

technical rule and as such is irrelevant in dealing with petitions under Article 32 cannot be accepted. The rule of *res judicata* as indicated in Section

11 of the Civil P. C. has no doubt some technical aspects, for instance the rule of constructive *res judicata* may be said to be technical; but the

basis on which the said rules rest is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach

to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest, that individuals should not be vexed

twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as

irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

The binding character of judgments pronounced by courts of competent "jurisdiction is itself an essential part of the rule of law, and rule of law

obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. On general considerations of public policy

there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article

32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a Court

of competent jurisdiction, there has been a contest between the parties before the Court, a fair opportunity has been given to both of them to prove

their case, and at the end the Court has pronounced its judgment or decision. Such a decision pronounced by a Court of competent jurisdiction is

binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution.

19-20. In Phool Chand Sharma and Others Vs. Chandra Shanker Pathak and Others, a revision was dismissed by the Board of Revenue U. P.

The party aggrieved by that decision applied for review and on its dismissal took the matter to this Court by a writ petition. This Court dismissed

the writ petition on merits. No appeal was filed by the aggrieved party against this order before the Supreme Court and it became final. The said

party, however, subsequently filed an appeal by special leave before the Supreme Court against the prior order of the Board of Revenue. It was

held that the appeal was barred by the principle the principle of res judicial.

21. In State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, it was held by the Supreme Court that a wrong decision by a Court

having jurisdiction is as much binding between the parties as a right one and maybe superseded only by appeals to higher tribunals or other

procedure like review which the law provides.

22. It is significant to note that this was also a case where an order passed by the High Court under Article 226 of the Constitution having a

bearing on the jurisdiction of a subordinate tribunal, namely, the Special Judge under West Bengal Criminal Law Amendment (Special Courts) Act,

1949, was held to operate as res judicata in subsequent proceedings. In our opinion this decision is much nearer to the facts of the instant case and

as such the relevant facts of this ease may be stated in brief.

23. Against Hemant Kumar and two others, who were respondents 1 to 3 before the Supreme Court in the aforesaid case, a charge sheet was



filed by the police before the Chief Presidency Magistrate who had jurisdiction to entertain the complaint and proceed with the inquiry and the trial.

He took cognizance of the offence and thus became seized of the proceedings. It was at that stage that the government issued the notification u/s 4

of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, allotting the case to the Special Judge at Alipur and directed a trial by

him. In pursuance of this notification the Chief Presidency Magistrate by his order dated 16th February, 1951, sent the records of the case to the

Special Judge. Before the Special Judge took any step in proceedings with the case Hemant Kumar made an application before the High Court

under Article 226 of the Constitution impugning the constitutional validity of Section 4(1) of the aforesaid Act on the ground that it was violative of

Article 14 of the Constitution and that for this reason the Special Judge had no jurisdiction to hear the case and that the case had to be disposed of

by regular criminal courts. This petition was heard by a Full Bench of the High Court and by judgment dated 4th April, 1952, (reported in J.K.

Gupta and Others Vs. The State, the writ petition was allowed and Section 4(1) of the aforesaid Act was struck down as unconstitutional. The

learned Judges held that the special judge had no jurisdiction to try the case and they directed that the accused be held as under trial prisoners

pending retrial according to law.

24. The correctness of the law laid down by the High Court in regard to the jurisdiction of the special judge on the ground that Section 4 of the

aforesaid Act was unconstitutional came up for consideration before the Supreme Court in Kedar Nath Bajoria Vs. The State of West Bengal, .

The law laid down by the High Court in the case of State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, was disapproved by the

Supreme Court.

25. Against an order passed in subsequent proceedings against Hemant Kumar wherein the question raised was whether the Special Judge had

jurisdiction to take cognizance of the case or not the matter was taken up to the Supreme Court in appeal by the State of West Bengal and four

grounds were principally urged by counsel for the appellant. The second ground urged was :

(2). The order of the High Court dated April 4, 1952 quashing the proceedings before the Special Judge on the ground that Section 4 was

unconstitutional as violative of Section 14 of the Constitution was wrong since the law as there laid down has been disapproved by this Court in

its decision in Kedar Nath Bajoria Vs. The State of West Bengal, .

26. In regard to this contention the Supreme Court held : --

Before proceeding with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental

misconception, as it seeks to equate an incorrect decision with, a decision rendered without jurisdiction. A wrong decision by a court having

jurisdiction is as much binding between the parties as a right one and maybe superseded only by appeals to higher tribunals or other procedure like

review which the law provides. The learned Judges of the High Court who rendered the decision on 4-4-1952 had ample jurisdiction to decide the

ease and the fact that their decision was on the merits erroneous as seen from the later judgment of this Court, does not render it any the less final

and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 4-4-1952

bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not.

27. It may be noticed that just as the view taken by this Court in Civil Misc. Writ Petition No. 427 of 1969 was disapproved by the Supreme

Court in the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, the decision of the Calcutta High Court dated 4th April, 1952, in the

writ petition filed before it in the case of State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, had also been disapproved by the

Supreme Court in the case of Kedar Nath (supra) and the decision of this Court as also of the Calcutta High Court which were disapproved by

the Supreme Court as mentioned above had a material bearing on the jurisdiction of a subordinate tribunal.

28. Firstly, there is apparently no inconsistency in this decision of the Supreme Court and its decision in the case of Mathura Prasad Bajoo Jaiswal

and Others Vs. Dossibai N.B. Jeejeebhoy, . If the distinction pointed out above is kept in mind, namely, that in the case of Mathura Prasad (supra)

the Supreme Court was dealing with an erroneous decision on a question of jurisdiction given by a Court which by its said decision was either

refusing to exercise jurisdiction vested in it or assuming jurisdiction not vested in it. It was not dealing with a decision of the High Court under

Article 226 of the Constitution regarding jurisdiction of a subordinate court or tribunal.

29. Secondly, even if some inconsistency may be there this Court is, on the facts of the instant case, bound to follow the decision of the Supreme

Court in the case of State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, the same having been rendered by a Bench of four

Hon"ble Judges in preference to the decision in the case of Mathura Prasad (supra) the same having been rendered by a Bench of three Hon"ble

Judges. This is so in view of the decision of the Supreme Court in the case of The State of U.P. Vs. Ram Chandra Trivedi, where it was held (at p.

2556) :

It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches

of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as

observed by this Court in *Union of India v. K.S. Subramanian* (Civil Appeal No. 212 of 1975 decided on July 30, 1976) : (reported in AIR 197

SC 2433) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to

those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself.

30. In *Mattulal Vs. Radhe Lal*, it was held by the Supreme Court that where there are contradictory decisions of the Supreme Court the decision

of the larger Bench has to be followed even if that decision was rendered earlier in point of time than the decision of the smaller Bench.

31. On the facts of the instant case the law laid down by the Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi* and

Another, to the following effect is also clearly applicable (para 8):--

The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial Court or a higher

Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the

same proceedings.

32. This Court having held in Civil Misc. Writ Petition No. 427 of 1969 that the consolidation authorities had jurisdiction over the matter will not

allow any of the parties to re-agitate the matter again. The matter could not for the same reason be re-agitated even before the Deputy Director of

Consolidation. In this connection it may be reiterated that the order passed by this Court in Civil Misc. Writ Petition No. 427 of 1969 was not an

interlocutory order but was a final order passed by a competent court against which an appeal could be filed in the Supreme Court but was not

filed and the order became final.

33. *Thakore Sobhag Singh Vs. Thakur Jai Singh and Others*, was a case where the High Court of Rajasthan after quashing the decision of the

Board of Revenue in a writ petition filed before it directed the Board of Revenue to decide the case in accordance with law. It was held by the

Supreme Court that the decision of the High Court operated as *res judicata* and could not be reopened before the Board of Revenue or in appeal

against its order.

34. *Munshi Muqbool Raza Vs. Hasan Raza*, was a case where Muzbool Raza appellant had filed a suit in the court of Munsif against the

respondent for possession over certain agricultural plots. The suit was resisted by the respondent but was decreed by the Munsif. That judgment

was confirmed in appeal by the District Judge. The respondent filed a second appeal before this Court. While the second appeal was pending the

appellant was directed to take recourse to consolidation authorities in regard to his alleged rights. He exhausted those remedies wherein the

ultimate decision was against him. He challenged the decision in those proceedings by filing a writ petition in this Court but the writ petition failed.

The second appeal filed by the respondent against the decree passed in favour of the appellant in the suit filed by him was allowed by this Court.

Against this decree the appellant filed an appeal by Special Leave in the Supreme Court which was dismissed. It was held by the Supreme Court

(para 7) : --

The other difficulty in the way of the appellant is that he was directed by the High Court to take recourse to Consolidation Authorities in regard to

his alleged rights, while the second appeal was pending in the High Court, he exhausted those remedies, challenged the ultimate decision by filing a

writ petition in the High Court and even that writ petition failed. He cannot, then, re-agitate the same questions once over again in the second

appeal. These questions stand finally concluded by the decision recorded in, the writ petition.

35. The matter can be looked into from another angle also. In *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of*

*Customs, Calcutta*, it was held that an administrative Tribunal cannot ignore the law declared by the highest Court in the Suite. Taking into

consideration the provisions of Articles 215, 226 and 227 of the Constitution of India, it would be anomalous to suggest that a Tribunal over which

the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do

so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court making the law declared

by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals

subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise,

there would be confusion in the administration of law and respect for law would irretrievably suffer.

36. Counsel for respondents 3 and 4 brought to our notice certain decisions of the Supreme Court where it was held that the doctrine of

"constructive res judicata is inapplicable to illegal detention and does not bar a writ of habeas corpus on fresh grounds, that a subsequent writ

petition on a different" cause of action was not barred and that dismissal of a writ petition in limine without a speaking order will not bar a

subsequent writ petition. It was further brought to our notice with reference to the meaning of the term proceeding as contained in Section 141

C.P.C. and certain decided cases that a writ petition under Article 226 of the Constitution was not a proceeding under the CPC and as such

Section 11, IPC in terms will not apply to a writ petition. The principles of law laid down in the cases cited by counsel for respondents 3 and 4 in

this behalf are well settled but apparently they have no relevance so far as the facts of the instant case are concerned and consequently we do not

consider it necessary to refer to those cases in detail.

37. Counsel for respondents 3 and 4 also brought to our notice the decision of a learned single Judge of this Court in Anant Ram Gupta v. Asstt.

Director 1979 Rev. Dec 40 : (AIR 1979 NOC 125 ). In that case one of the questions involved was about the import of the expression

"possession" used in Clause (a) of Section 18(1) of the U. P. Zamindari Abolition and Land Reforms Act. An earlier writ petition filed by the

petitioners in 1968 was allowed by this Court in 1969 and an order passed by the Deputy Director of Consolidation in the revision was quashed

and the case was remanded to him for deciding the revision afresh. The Deputy Director of Consolidation decided the revision on 4th December,

1970, and this order was challenged in Writ Petition No. 1948 of 1971. The writ petition remained pending for about seven years and was

decided on 23rd August, 1978. During the pendency of the writ petition the Supreme Court in Kailash Rai Vs. Jai Jai Ram and Others, interpreted

the expression "possession aforesaid. It was held in the case of Anant Ram Gupta (supra) that it is open to this Court to take into consideration the

law declared by the Supreme Court about the import of the expression "possession", even if the remand order had taken a contrary view. The writ

petition was, however, dismissed on the ground that the finding recorded by the Deputy Director of Consolidation that there had been separation

among the brothers was a finding of fact and in view of that finding the interpretation of the aforesaid expression ""possession"" by the Supreme

Court could not help the petitioners. In our view this decision is distinguishable on the facts of the instant case to which the law declared by the

Supreme Court in the various cases referred to above particularly in the cases of Phool Chand Sharma and Others Vs. Chandra Shanker Pathak

and Others, , State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, , Thakore Sobhag Singh Vs. Thakur Jai Singh and Others, and

Munshi Muqbool Raza Vs. Hasan Raza, is squarely applicable.

38. In view of the foregoing discussion the impugned order dated 21st June, 1974, passed by the Deputy Director of Consolidation cannot be

sustained and deserves to be quashed.

39. It was urged by counsel for respondents 3 and 4 that in the said order the Deputy Director of Consolidation had also recorded a finding on

merits that the sale deed in question was binding on the petitioner. It is true that even after holding that the consolidation authorities had no

jurisdiction over the matter the Deputy Director of Consolidation has made an observation that the sale deed in question was binding on the

petitioner but that observation is on the face of it just a casual one given in a cursory manner without considering the case of the parties on the basis

of the pleas raised by them and evidence produced in support thereof. Indeed what the Deputy Director of Consolidation has in substance said is

that since the impugned sale deed had been executed by Smt. Murta after obtaining the permission of the District Judge and since in view of the

decision of the Supreme Court in the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, the consolidation authorities had no

jurisdiction to cancel the said sale deed it was binding on the petitioner. Further, the aforesaid observation has even otherwise no legal sanction. As

seen above the Deputy Director of Consolidation specifically held in the aforesaid order that he had no jurisdiction over the matter. After having

recorded this finding he should not have made this casual and cursory observation. We are clearly of the opinion that the rights of the parties

cannot be said to have been decided by the said observation.

40. In AIR 1940 222 (Privy Council) it was held by the Privy Council that a court which declines jurisdiction cannot bind the parties by its reasons

for declining jurisdiction.

41. Once the order dated 21st June, 1974, itself is quashed the later order passed by the Deputy Director of Consolidation on 23rd July, 1974,

refusing to recall the order dated 21st June, 1974, cannot stand and has to be quashed as a consequential measure so that the rights of the parties

are determined by the Deputy Director of Consolidation on merits on the basis of the evidence produced by the parties.

42. In the result the writ petition succeeds and is allowed and the impugned orders dated 21st June, 1974 and 23rd July, 1974, passed by the

Deputy Director of Consolidation, Gorakhpur, respondent No. 1, are quashed and he is directed to decide the three revisions filed by respondents

3 and 4 afresh in accordance with law in the light of the observations made above. In the circumstances of the case, however, the parties shall bear

their own costs.

V.N. Khare, J.

I agree.

B.L. Yadav, J.

I also agree.