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Date: 26/10/2025

## Nar Singh Vs Deputy Director of Consolidation, Gorakhpur and others

C.M.W.P. No. 9761 of 1997

Court: Allahabad High Court

Date of Decision: Jan. 18, 2000

**Acts Referred:** 

Uttar Pradesh Consolidation of Holdings Act, 1953 â€" Section 11(1), 11(2), 48, 9A

Citation: (2000) 1 AWC 791: (2000) 91 RD 199

Hon'ble Judges: Shitla Prasad Srivastava, J

Bench: Single Bench

Advocate: S.S. Tripathi, for the Appellant;

Final Decision: Dismissed

## **Judgement**

Shitla Prasad Srlvastava, J.

Heard Sri S. 5. Tripathi learned counsel for the petitioner.

2. By means of this wrtt petition, the petitioner has sought the relief for quashing of the impugned orders dated 25.2.1997 and 19.6.1995 passed

by the respondent Nos. 1 and 2 respectively (Annexures-4 and 2 to the writ petition). The revision which was filed by the petitioner before the

Deputy Director of Consolidation was against the order passed by the Settlement Officer, Consolidation exercising powers of the appellate

authority. The appellant court in the appeal filed u/s 11 of the U. P. Consolidation of Land Holdings Act granted Interim order, which was

challenged by the petitioner in revision u/s 48 of the Act.

3. Learned counsel for the petitioner urged that there is no doubt that the order passed by the appellate authority s interlocutory order but

nevertheless the order passed by the appellate authority is not under the provisions of the U. P. Consolidation of Land Holdings Act and there is

no specific provision in the U. P. Consolidation of Land Holdings Act for grant of stay order nor the provisions of the CPC are applicable,

therefore, the appellate authority had no jurisdiction to pass the stay order. In support of his argument, Sri Tripatht placed before the Court a

decision reported in 1993 RD 30. in which the Court has held that slay order can be granted and he argued that this decision is applicable only in

those cases where there are special facts and circumstances but no special facts and circumstances exist in the present case. His further submission

is that if the authority who has no jurisdiction to pass the stay order has passed the order it shall be deemed that the said order has been passed

mechanically, and not by applying mind, therefore, the order liable to be quashed.

4. After hearing the learned counsel for the petitioner. I am of the view that the contention raised by the petitioner is not correct. From the perusal

of the provisions of Section 48. it is clear that no order of interlocutory in nature can be challenged u/s 48 of the Act. Section 48 of the U. P.

Consolidation of Land Holdings Act, which is quoted below:

(1) Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the

purpose of satisfying himself as to the regularity of the proceedings : or as to the correctness, legality or propriety of any order (other than an

interlocutory order) passed by such authority in the case of proceedings, may, after allowing the parties concerned an opportunity of being heard,

make such order in the case or proceedings as he thinks fit:

- (1) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under subsection 13).
- (2) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the

record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

Explanation 1.--For the purpose of this section, Settlement Officer Consolidation, Consolidation Officers. Assistant Consolidation Officer,

Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation 2.--For the purposes of this section the expression interlocutory order in relation to a case or proceeding, means such order deciding

any matter arising in such case or proceedings or collateral thereto as does not have the effect to finally disposing of such case or proceedings.

From the perusal of this Section, it is crystal clear that the Director of Consolidation cannot entertain revision against the Interlocutory order u/s 43

of the U. P. Consolidation of Land Holdings Act. Section 11 (2) of the U. P. Consolidation of Land Holdings Act shows that Settlement Officer.

Consolidation hearing an appeal under sub-section (1) shall be deemed to be a Court of competent Jurisdiction. Section 11 of the

Consolidation of Land Holdings Act is also quoted below:

Section 11.

Appeals.--(1) Any party to the proceedings u/s 9A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer

under that section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation who shall after affording

opportunity of being heard to the parties concerned give his decision thereon, which except as otherwise provided by or under this Act, shall be

final and not be questioned in any Court of law.

(2) The Settlement Officer, Consolidation hearing an appeal under sub-section (1) shall be deemed to be a Court of competent jurisdiction,

anything to the contrary contained in any law for the time being in force notwithstanding.

5. Thus, if the aforesaid two provisions are read together, it is apparent that the Settlement Officer, Consolidation was acting as a Court and had

full jurisdiction to grant or refuse the stay, which is inherent power of the Court and if an order was passed against the party, it was interlocutory

order during the pendency of the appeal and no revision u/s 48 of the U. P. Consolidation of Land Holdings Act was maintainable, therefore, the

present writ petition filed against the order rejecting the revision against the interlocutory order, has no force and is accordingly dismissed.