

Court No. - 11**Case :-** WRIT - B No. - 390 of 2023**Petitioner :-** Smt. Rama Devi And Another**Respondent :-** Deputy Director Of Consolidation, Hardoi And Others**Counsel for Petitioner :-** Anurag Shukla**Counsel for Respondent :-** C.S.C., Anurag Narain Srivastava, Dilip Kumar Pandey, Rahul Srivastava, Sudhanshu Tripathi**Hon'ble Saurabh Lavania, J.**

1. Heard Sri Anurag Shukla, Advocate, counsel for petitioner, Sri Anurag Narayan Srivastava, Advocate, counsel for the Respondent No. 5 and Sri Hemant Kumar Pandey, Learned standing counsel.

2. In view of the order proposed to be passed by this Court, notice to other private-respondents is dispensed with.

3. The present petition has been filed for the following main reliefs:-

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned order of Dy. Director of Consolidation dated 06-04-23, impugned order of Settlement Officer of Consolidation order dt. 27-09-2022 as well as without jurisdiction orders passed by the consolidation officer dt. 22-07-22 and 10-08-22, contained as **Annexure no. 1, 2, 3 and 4** to this Writ Petition, with all consequential effects.

(ii) to issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to interfere in the peaceful possession, use and occupation of purchased share of Khata no. 422"

4. The brief facts of the case, as appears from record, are as under:-

(i) The Gata No. 519 area 0.5110 Hectare Gata No. 517 area 0.0381 Hectare, Gata No. 257 area 0.0220 Hectare and Gata No. 519 area 0.0800 Hectare were purchased by petitioner no.1/ Smt. Rama Devi and respondent no. 5/ Smt. Sarita Devi through registered sale deed dated 09.03.2022. Boundaries indicated in this sale deed are as under:-

East-	Land Sushil
West-	Kharanja (road)
North-	Kharanja (road)
South-	Land Ahibaran and Others

- (ii) The sale deed dated 09.03.2022 was executed after conclusion of proceedings under Section 10 and 20, respectively, of U.P. Consolidation of Holdings Act, 1953 (in short 'Act of 1953'),
- (iii) Undisputedly the proceedings under Section 10 and 20. of the Act of 1953, were concluded on 31.08.2020 and 05.03.2021, respectively.
- (iv) After becoming the owner of the land in dispute i.e. Gata No. 519, an application was moved under Section 9A(2) of the Act of 1953, which was registered as Case No. 402/21-22 (Sarita Devi Versus Rama Devi and Others).
- (v) Vide order dated 22.07.2022 the respondent no. 3/Consolidation Officer Bilgram, District Hardoi in short (C.O.), after considering the fact that the name of Laxmi Devi wife of Munna Lal (vendor of sale deed dated 09.03.2023) was recorded in the revenue records in regard to Gata No. 517/0.0381 Hectare, Gata No. 519/0.5100 Hectare, Gata No. 257/0.0220 Hectare (total area 0.611 Hectare) and that of sale deed dated 09.03.2022 , as also the report dated 02.06.2022 of Assistant Consolidation Officer, directed to indicate the name of Respondent No. 1/Smt. Sarita Devi and Petitioner No. 1/Smt. Rama Devi in Form 23 of Chak No. 422 according to their share indicated in the sale deed dated 09.03.2022.
- (vi) Through sale deed dated 09.03.2022, the petitioner no.1/Smt. Rama Devi and respondent no. 5/Smt. Sarita Devi became the owner of (आठ आना) 1/2 share each of the total area of land purchased.
- (vii) It appears that after the order dated 22.07.2022, the petitioner no. 1/Smt. Rama Devi and respondent no.5/Smt. Sarita Devi preferred application(s) under Section 21(1) of the Act of 1953, which were registered as Case No. 224 (Sarita Devi Versus Gaon Sabha and Others) and Case No. 228 (Smt. Rama Devi Versus State).
- (viii) The respondent no. 5/Smt. Sarita Devi in her application stated that Chak be provided adjacent to Kharanja (road) after taking boring into account.

(ix) The petitioner No.1/Smt. Rama Devi in her application also claimed that Chak be provided adjacent to Kharanja (road).

(x) The respondent no.3/C.O. vide order dated 10.08.2022 decided both the cases i.e. Case No. 224 (Sarita Devi Versus Gaon Sabha and Others) and Case No. 228 (Smt. Rama Devi Versus State).

(xi) Vide order dated 10.08.2022, the Chak was provided to respondent no.5/Smt. Sarita Devi adjacent to Kharanja (road) situated at Northern side of the land purchased through sale deed dated 09.03.2022. This Chak was provided after taking note of the fact that the boring of respondent no.5/Smt. Sarita Devi is situated at Gata No. 519.

(xii) A chak adjacent to Kharanja (road) situated at Southern side was also provided to the petitioner no.1/Smt. Rama Devi.

(xiii) The order dated 10.08.2022 on reproduction reads as under:-

"मैंने पत्रावली चक भूचित्र एवं अभिलेखों का अवलोकन किया तथा उपस्थित पक्षों को सुना।

पत्रावली एवं अभिलेखों से स्पष्ट है कि जो० च० अ० 23 भाग के चक संख्या 422 लक्ष्मीदेवी पत्नी स्व० मुन्नूलाल नि० ग्राम हैवतपुर के नाम अंकित है। स० च० अ० वाद संख्या 18/29-04-22 धारा 12 में आदेश हुआ है कि चक संख्या 422 की गाटा संख्या 519/रकबा 0/381 हे०, 519/0.511 कुल 2 कि० रकबा 0.5491 हे० व गाटा संख्या 257/0.220 हे० व गाटा संख्या 519 मि० रकबा 0.0800 हे० से विक्रेता लक्ष्मी देवी पत्नी मून्नूलाल के स्थान पर क्रेती श्रीमती सरिता देवी पत्नी निर्भय कुमार नि० हैवतपुर व श्रीमती रामदेवी पत्नी स्व० रामकिशोर नि० ग्राम का नाम दर्ज किया गया है च० अ० वाद संख्या 209/30-06-22 द्वारा गाटा संख्या 519 मि०/0.0800 हे० की मालियत 90 पैसा निर्धारित की गई तथा च० अ० वाद संख्या 402/22-07-22 धारा 9 क (2) द्वारा चक संख्या 422 का विभाजन अचक भूमि छोड़कर सरिता देवी, रामदेवी प्रत्येक 1/2 भाग दर्ज है जो० च० अ० 23 भाग 1 के चक संख्या 422 मूल गाटा संख्या 519 मि० आदि पर मूल्यांकन 49.42 का चक प्रदिष्ट किया गया है आपत्ति करती सरिता देवी ने व रामदेवी ने भूमि बैनामा से क्रय किया है तथा बैनामा के आधार पर सरिता देवी को चक उत्तर तरफ रास्ता से मिलाकर बोरिंग लेते हुये तथा रामदेवी को दक्षिण तरफ रास्ते से लगा हुआ चक की मांग उचित है आपत्तियां स्वीकार किये जाने योग्य है अतः आदेश हुआ कि :-

आदेश

ग्राम हैवतपुर परगना व तहसील बिलग्राम जिला हरदोई के चकदार संख्या 422 श्रीमती सरिता देवी व श्रीमती रामदेवी की चक आपत्तियों को स्वीकार किया जाता है संलग्न संशोधन तालिका जिस पर मेरे सदिनांक हस्ताक्षर है आदेश का अंग होगी इस संशोधन से चक संख्या 422, 422अ, 422व, नाली तथा बच संशोधित होते हैं संशोधित उद्धरण जारी हो स्थल पर सीमांकन हो। यही आदेश रामदेवी बनाम सरकार पर लागू होगा।

पत्रावली बाद अमलदरामद दाखिल दफ्तार हो।"

(xiv) The order dated 10.08.2022 was challenged by petitioner no.1/Smt. Rama Devi before the respondent no.2/S.O.C., by means of an appeal

bearing Appeal No. 431 of 2022 Computerized Case No. 202254103300001406 (Rama Devi Versus Gaon Sabha) under Section 21 (2) of the Act of 1953. The respondent no.2/S.O.C., decided the appeal vide order dated 27.09.2022. The relevant portion of order dated 27.09.2022 reads as under:-

"ग्राम के अभिलेख व चक-भूचित्र का अवलोकन एवं परीक्षण किया गया। अभिलेखों के अवलोकन से स्पष्ट है कि चकबन्दी अधिकारी वाद संख्या 402/22-07-2022 अन्तर्गत धारा-9 क (2) में चक संख्या 422 का विभाजन सरिता देवी 1/2 व रामदेवी 1/2 भाग दर्ज किये जाने का आदेश पारित किया गया। अपीलान्ट चकदार संख्या 422ब श्रीमती रामदेवी पत्नी स्व० रामकिशोर के नाम मूल गा०सं० 519 में 1/2 अंश मू० 29.34 पैसा अंकित है। बाद कटौती अपीलान्ट को अवर न्यायालय द्वारा मूल गा०सं० 519 मि० आदि को लेकर मू० 28.17 पैसा का सिंगल चक प्रस्तावित किया गया है। गा०सं० 519 के सम्बन्ध में चकबन्दीकर्ता का स्पॉट मेमो पत्रावली में संलग्न है, जिसमें उल्लेख किया है कि गा०सं० 519/0.6110 हे० हरदोई से बिलग्राम जाने वाली सड़क मार्ग से ग्राम के अन्दर पश्चिम की ओर जाने वाले परिक्रमा मार्ग पर दक्षिण ओर स्थित है। गाटा संख्या 519/0.6110 हे० समतल, दो फसला, अच्छी पैदावार व सिंचित है। गा०सं० 519 में एक सम बोरिंग मय विद्युत कनेक्शन के हैं, जो जोत चकबन्दी आकार पत्र-2क में खातेदार के नाम अंकित है। स्पॉट-मेमो में गा०सं० 519 में उत्तर पूरब कोने के पास एक समर सेबिल मय विद्युत कनेक्शन होने का उल्लेख किया गया है। अपीलकर्ता की मुख्य मांग उसका चक भूखण्ड संख्या 517, 519, 257 मूल को लेकर तरफ पश्चिम दोनों खडण्जे पर बनाये जाने की है। उक्त भूखण्ड हरदोई-बिलग्राम हाइवे पर तरफ पश्चिम लिंक रोड खडण्जा पर पड़ता है। उक्त खडण्जा पूरब-पश्चिम लम्बाई की दिशा में है। अभिलेखों के अवलोकन से स्पष्ट है कि गा०सं० 257 चकबन्दी पृथक गाटा है व गा०सं० 519 हाइवे पर न होकर हाइवे से पश्चिम ओर को जाने वाले परिक्रमा मार्ग पर दक्षिण की ओर स्थित है। उक्त गाटा हाइवे से लगभग 65 मीटर दूरी पर स्थित है। अपीलकर्ता का चक गा०सं० 513 चकमार्ग (खडण्जा) से लगा हुआ प्रदिष्ट है। गा०सं० 519 में उत्तर पूरब कोने के पास एक समर सेबिल स्थित है। पत्रावली में उपलब्ध साक्ष्यों से स्पष्ट है कि वर्तमान में समर सेबिल का विद्युत कनेक्शन श्रीमती सरिता के नाम है एवं उनके द्वारा विद्युत बिल का भुगतान भी किया जा रहा है। अवर न्यायालय द्वारा समर सेबिल लेते हुए सरिता को चक प्रदिष्ट किया गया है। यह भी स्पष्ट है कि चकबन्दी अधिकारी द्वारा चक संख्या 422 का विभाजन सरिता देवी 1/2 व रामदेवी 1/2 भाग दर्ज किये जाने का अदेश वाद संख्या 402 अंतर्गत धारा-9क(2) ता०फै० दिनांक 22.07.2022 को पारित किया गया इसके पश्चात् श्रीमती रामदेवी निवासी ग्राम बलेन्दा ने अपने 1/2 भाग में से 1/2 भाग यानी कुल का 1/4 भाग का बैनामा दिनांक 30.07.2022 को पवन पुत्र रामस्वरूप निवासी हैबतपुर को कर दिया था, जिसमें उन्होंने स्वयं लिखा है कि कोई पेड, कुंआ, बोरिंग नहीं है। ऐसी स्थिति में अपीलकर्ता की मांग के अनुसार संशोधन किया जाना उचित नहीं प्रतीत होता है। तदनुसार प्रस्तुत अपील निरस्त किये जाने योग्य है।"

(xv) Being aggrieved, the petitioner no.1/Smt. Rama Devi preferred a revision under Section 48(1) of the Act of 1953, which was registered as Case No. 1512 of 2022, Computerized Case No. 202254103300001512 (Rama Devi Versus Sarita Devi and Others). The revisional authority i.e respondent no.1/D.D.C. dismissed the revision vide order dated 06.04.2023. The relevant portion of order dated 06.04.2023 reads as under:-

"मैंने उभय-पक्षों के विद्वान अधिवक्ता द्वारा दिये गये तर्कों को सुना। निगरानीकर्ता ने तर्क दिया है कि मुन्नु के स्थान पर लक्ष्मीदेवी पत्नी मुन्नुलाल के नाम से दर्ज हुई तथा दिनांक 09.03.2022 को लक्ष्मी देवी ने प्रस्तावित चक को सरिता देवी पत्नी निर्मल व श्रीमती रामदेवी पत्नी रामकिशोर को विक्रय कर दिया, जिसका दाखिला खारिज भी हो चुका है एवं चकबन्दी अधिकारी ने धारा-9 क(2) के अन्तर्गत प्रत्येक का विभाजन 1/2 अंश कर दिया। भूमि का विक्रय प्रस्तावित अंश से किया गया था तथा रामदेवी पत्नी रामकिशोर से 1/4 अंश का कय पवन कुमार पुत्र रामस्वरूप ने किया, जिसका भी दाखिल खारिज हो गया है। रामदेवी ने पुनः जीशान अहमद को 1/4 अंश बेच दिया। गा0सं0 519 में समर बोरिंग है, जिसमें पैसा रामदेवी व सरिता दोनो ने मिलकर लगाया है, किन्तु पवन व रामदेवी का चक पीछे बना दिया गया है, चक को सड़क से जोड़ा जाये। उत्तरवादी ने तर्क दिया है कि रामदेवी ने प्रथम बैनामा दिनांक 30.07.2022 को किया था, जिसमें पेड व बोरिंग का उल्लेख नहीं है, उसके बाद रामदेवी ने पुनः बैनामा जीशान अहमद को कर दिया और इस बैनामें में खेत की चौहददी में पूरब खेत अहिबरन, पश्चिम सम्पर्क मार्ग, उत्तर खेत सरिता देवी और दक्षिण खेत अनुरुद्ध अंकित है। इस प्रकार स्पष्ट है कि रामदेवी की भूमि सड़क खडण्जा पर नहीं थी, जो बैनामा किया है बैनामेंदारों वहीं काबिज हैं। कनेक्शन सरिता देवी के नाम है। इस प्रकार चकबन्दी अधिकारी/बन्दोबस्त अधिकारी चकबन्दी के आदेश सहित है।

मैंने ग्राम के अभिलेख व चकभूचित्र का अवलोकन किया गया। रामदेवी ने अपनी भूमि का विक्रय जीशान अहमद के हक में कर दिया है। निगरानीकर्ता रामदेवी ने अपने विक्रय में जो विक्रीत गाटे की चौहददी दर्शायी है, उससे स्पष्ट है कि रामदेवी के चक के उत्तर ओर सरिता देवी आदि का खेत और पश्चिम ओर खडण्जा, पूरब ओर खेत अहिबरन व दक्षिण ओर खेत अनुरुद्ध सिंह का है, वहीं पर चक बनाया गया है। रामदेवी ने भूमि का विक्रय कर दिया है। इनकी मांग के अनुसार यदि चक बनाया जायेगा तो सरिता देवी का चक दक्षिण ओर नाली आकार का हो जायेगा। ऐसी दशा में प्रस्तावित चक में कोई भी संशोधन किया जाना उचित नहीं है। निगरानी स्वीकार किये जाने योग्य नहीं है। उपरोक्त विवेचना के आधार पर आदेश हुआ कि :-

आदेश

निगरानी संख्या- 606/2023 रामदेवी आदि बनाम श्रीमती सरिता देवी आदि हैबतपुर, परगना-बिलग्राम, तहसील-बिलग्राम, जिला-हरदोई निरस्त की जाती है। पत्रावली बाद अमलदरामद दाखिल-दफ्तर हो। "

(xvi) It would be relevant to refer here that after the order dated 22.07.2022 whereby the respondent no.3/C.O. directed the concerned official to indicate the name of petitioner no.1/Smt. Rama Devi and respondent no. 5/Smt. Sarita Devi in Form-23, the petitioner no.1/Smt. Rama Devi sold half of her share to one Pawan Kumar (petitioner no.2 in the present petition) through registered sale deed dated 30.07.2022 specifically mentioning therein that no tree, well or boring is situated over land under the sale deed.

(xvii) The petitioner no.1/Smt. Rama Devi further executed a sale deed on 23.12.2022 in favour of one Jishan Ahmad son of Akeel Ahmad and this sale deed also indicates that no tree, well or boring is situated over land sold. The boundaries indicated in the sale deed are as under:-

East - Land of Ahibaran, West - Kharanja (road), North - Land of Sarita Devi (respondent no.5) and South - Land of Anirudh Singh.

(xviii) The sale-deed dated 23.12.2022 was executed after the order dated 27.09.2022 passed in appeal by respondent no.2/S.O.C. In this sale-deed, the boundaries have been indicated in terms of the order dated 10.08.2022 passed by the respondent no. 3 affirmed vide order dated 27.09.2022 passed by the respondent no. 2.

(xix) It would be relevant to note that the respondent no. 2/S.O.C. asked for a report for the purposes of disposal of appeal and in response, the report dated 26.09.2022 was submitted before the respondent no. 2/S.O.C. This report specifically indicates that the boring of respondent no. 5/Smt. Sarita Devi is situated over Gata No. 519 and this boring is on northern side of land, which is adjacent to Kharanja (road) connecting Hardoi-Bilgram Road.

(xx) The sale-deed(s) executed by the petitioner No. 1/ Smt. Rama Devi also proves the fact that no boring was there over the share of the petitioner No. 1/Smt. Rama Devi.

(xxi) It transpires from the order dated 27.09.2022 passed by the respondent no. 2/S.O.C. and order dated 06.04.2023 passed by the respondent no. 1/D.D.C. that after considering the boring and area purchased the chak was allotted to opposite party No. 5/Smt. Sarita Devi adjacent to Kharanja (road) connecting Hardoi-Bilgram Road, which is on northern side of Chak No. 422. Accordingly, the petitioner No. 1/Smt. Rama Devi was provided chak adjacent to Kharanja (road) on western side of Chak No. 422.

(xxi) It further transpires from the order dated 06.04.2023 passed by the respondent no. 1/D.D.C. that while dismissing the revision preferred by the petitioner No. 1/Smt. Rama Devi, the Revisional Authority/D.D.C. also considered the boundaries indicated in the sale-deed executed by the petitioner No. 1/Smt. Rama Devi in favour of Jeeshan Ahmad on 23.12.2022, according to which the land of respondent no. 5/Sarita Devi is situated, on northern side, and Kharanja (road) is situated on western side of the land.

(xxii) It is also to be indicated that the plea of jurisdiction based upon section 11-A was not taken by the petitioner no.1/Rama Devi either before S.O.C. or D.D.C.

5. In the aforesaid background, the present petition, as indicated by the counsel for the petitioner, has been filed on the following grounds:-

(a) After publication of notification under Section 20 of U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"), the Consolidation Officer was having no power to pass an order under Section 9-A of the Act of 1953, which includes the orders dated 22.07.2022 and 10.07.2022.

(b) The application/objection preferred by the opposite party no. 5/Smt. Sarita Devi on account of bar provided under Section 11-A of the Act of 1953, which was decided vide order dated 22.07.2022.

(c) The claim, if any, could be entertained in respect of change/transfer only.

(d) The order dated 10.08.2022 is nullity in view of bar indicated under Section 11-A of the Act of 1953.

(d) The order passed under Section 21 of the Act of 1953 is unsustainable, as the objection itself was not maintainable after confirmation of Provisional Consolidation Scheme under Section 23 of the Act of 1953.

(e) In nutshell, as appears from aforesaid, the orders impugned have been challenged on the ground that the same have been passed without there being any authority under the law.

(f) The allotment of plot over the property jointly purchased through registered sale deed dated 09.03.2022 is completely erroneous rather illegal in view of section 19 of the Act of 1953 according to which the co-sharers should be provided the share adjacent to road (Kharanja) and not providing the Chak to the petitioner no.1/Smt. Rama Devi adjacent to Kharanja situate at northern side is in violation of principle settled by this Court as also by Hon'ble Apex Court.

6. Opposing the present petition, Sri Anurag Narain Srivastava, learned counsel appearing for respondent No.5/Smt. Sarita Devi, (contesting

respondent) and Sri Hemant Kumar Pandey, learned standing counsel of state of U.P., submitted as under:-

(a) The property was purchased jointly by petitioner no.1/Smt. Rama Devi and respondent no. 5/Sarita Devi after conclusion of proceedings under Section 20 of the Act of 1953. through registered sale deed dated 09.03.2022.

(b) If it is presumed that Section 9-A(2) of the Act of 1953 would not be attracted even in that eventuality, Section 12 of the Act of 1953 would apply. Proceedings under Sections 9-A(2) and 12 of the Act of 1953 can be instituted before the respondent No. 3/C.O. and mere indicating a wrong provision would not vitiate the entire proceedings, as the respondent No. 3/C.O. is competent enough to deal with Sections 9-A(2) and 12 of the Act of 1953.

(c) The purchaser, who has purchased the property after conclusion of proceedings under Sections 10 or 20 of the Act of 1953 can approach the Consolidation Officer under Section 12 of the Act of 1953 to get the property partitioned or the name recorded.

(d) In view of Section 44-A of the Act of 1953, higher Authority under the Act of 1953 can exercise the power and jurisdiction vested in subordinate Authorities to it and being so the bar under Section 11-A of the Act of 1953 would not be attracted.

7. Learned Counsel for the petitioner in supports of his contention placed reliance on the following judgments:

(a) Gafoora and Another v. Dy. Director of Consolidation; (1975) 2 SCC 568

(b) Judgment dated 25.04.2023 passed by this Court in Writ B No. 331 of 2023 Baburam and other v. Dy. Director of Consolidation, Hardoi)

8. In the Case of **Gafoora (Supra)**, the Hon'ble Apex Court observed as under;

3. The short question that arises for consideration is whether the High Court is correct in not interfering with the order of the

Deputy Director (Consolidation) under Article 226 of the Constitution. The jurisdiction under Article 226 is well settled. The High Court will interfere only if some order is passed by an authority in excess of jurisdiction or there is a manifest error of law apparent on the face of the records. The principal question that was canvassed before the Deputy Director (Consolidation) was whether failure to prefer objection within the time-limit prescribed under Section 9(2) of the Act would entitle an aggrieved party to agitate the matter beyond the prescribed period without explaining the cause of delay in preferring the objection and obtaining a proper order of condonation of delay from the appropriate authority. It is clear from the records that no objection was preferred within the prescribed time. The Deputy Director (Consolidation) refused, if we may say so, rightly to accept that the appellants had earlier lodged any objection on November 21, 1966. That being the position, there was no material whatsoever before the Settlement Officer (Consolidation) for exercising his jurisdiction to condone the delay for lodging objection under Section 9(2) of the Act. Section 11-A bars all objections in respect of claim to land, partition of joint holdings and valuation of plots, etc. relating to the consolidation area which have been raised under Section 9 or which might or ought to have been raised under that section but have not been so raised. These questions under Section 11-A cannot be raised or heard at any subsequent stage of the consolidation proceedings. That being the position there is no error of law in the order of Deputy Director (Consolidation) nor is there any excess of jurisdiction committed by him in disposing of the matter as he did in exercise of his revisional power under Section 48.

9. In the Case of **Baburam (Supra)**, the Court observed that all the co-tenure holders/co-sharers should be provided a chak adjacent to road.

10. The side opposite placed reliance on the following judgments:

(a) Diwakar Rai v. Dy. Director of Consolidation; **2005 SCC OnLine All 1378.**

(b) Sudhir Kumar Goswami v. District Director of Consolidation ; **2011 SCC OnLine All 1320.**

(c) Ram Milan and Others vs. Additional Commissioner (Admin) Devi Patan and Others; **2019 SCC OnLine All 5478.**

(d) Harihar Prasad Pandey v. Deputy Director of Consolidation; **1979 SCC OnLine All 867.**

11. In the Case of **Diwakar rai (Supra)**, the Court observed as under:

"4. From a perusal of scheme of Consolidation of Holdings Act, it crystallizes that annual register is subjected to revision and record are prepared under section 10 of the U.P. Consolidation of Holdings Act. Section 10 of the Act being germane is quoted below.

"10. Preparation and maintenance of revised annual registers. -
(1) The annual register shall be revised on the basis of the orders passed under sub-section (1) and subsection (2) of Section 9-A. It shall thereafter be prepared in the form prescribed and published in the unit.

(2) Where any entry in the annual register, published under sub-section (1), is modified in pursuance of an order passed under this Act or under any other law; a reference to the order alongwith an extract of its operative portion shall be noted against the said entry."

It is further explicit from a perusal of the scheme that in case any cause of action arises thereafter, the same shall be dealt with according to provision embodied in section 12 of the Act. Section 12 being relevant is quoted below.

"12. Decision of matters relating to changes and transactions affecting rights or interests recorded in revised records.-

(1) All matters relating to changes and transfers affecting any of the rights or interest recorded in the revised records published under sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings under sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification under Section 52, or under sub-section (1) of Section 6.

(2) The provisions of Sections 7 to 11 shall mutatis mutandis, apply to the hearing and decision of any matter raised under subsection (1) as if it were a matter raised under the aforesaid sections."

Section 12 as quoted above, envisages that all matters relating to changes and transactions affecting rights or interests recorded in the revised records published under section 10 (1) for which a cause of action had not arisen and proceedings under sections 7 to 9 were started or were in progress, may be raised before Asstt. Consolidation Officer as and when they arise but not later than the date of notification under section 52 or under subsection (1) of Section 6. After allotment of chaks, proceedings came to a close and possession was handed over.

5. In the present, it brooks no dispute that Gorakh Rai, father of the petitioners and contesting Opp. Parties was recorded in the final revised record and cause of action arose his death and all the three sons of Gorakh Rai succeeded their respective 1/3rd shares in the chak, and by this reckoning, the cause of action for partition arises after preparation of final record under section 10 of the Act and hence the dispute could be raised under section 12 of the Act. It is further obvious from perusal of section 12

(2), that the provisions of sections 7 to 11 shall mutatis mutandis apply to the decision of any matter raised under sub-section (1) of section 12 if it were a matter raised under the aforesaid section. In this perspective, considering that sections 7 to 11 have been made applicable to the provisions of section 12 of the Act, a dispute shall be deemed to have arisen within the province of section 12 of the Act. The matter of partition of holding is contemplated under section 9-C of the U.P.C.H. Act which runs as under:

“Partition of Joint Holdings. - (1) The Assistant Consolidation Officer, or the Consolidation Officer, may partition joint holdings under Section 9-A, notwithstanding anything to the contrary contained in Section 178 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or any other law, and may also partition the same suo motu.

(2) The partition of joint holdings shall be effected on the basis of shares, provided that where the tenure holders concerned agree, it may be effected on the basis of specific plots.”

6. The provisions for partition applicable to the holding of a tenure holder under sections 9 and 12 of the U.P. Consolidation of Holdings Act will also be applicable to a chak of which a tenure holder was given possession after preparation of new record of right under section 27 in case a cause of action arose thereafter and before notification under section 27 in case a cause of action arose thereafter and before notification under section 52 of the U.P. Consolidation of Holdings Act.

7. At this stage, new revenue records are prepared under section 27 of the U.P. Consolidation of Holdings Act. And right, title and interest of tenure holder cease to exist in the erstwhile plots and same rights are created under section 30 of the U.P. Consolidation of Holdings Act. In this regard, section 30 (a), (b) and (e) of the U.P. Consolidation of Holdings Act may be referred and the same being relevant are excerpted below.

“30 Consequences which shall ensue on exchange of possession. - With effect from the date on which a tenure holder enters, or is deemed to have entered into possession of the chak allotted to him, in accordance with the provisions of this Act, the following consequences shall ensue-

(a) the rights, title, interest and liabilities-

(i) of the tenure-holder entering, or deemed to have entered into possession, and

(ii) of the former tenure-holder of the plots comprising the chak, in their respective original holdings shall cease; and

(b) the tenure holder entering into possession, or deemed to have entered into possession, shall have in his chak the same rights, title, interests and liabilities as he had in the original holding together with such other benefits of irrigation from a private source, till such source exists, as the former tenure holder of the plots comprising the chak had in regard to them;

(c) & (d) xxx xxx

(e) the encumbrances, if any, upon the original holding of the tenure-holder entering, or deemed to have entered, into possession, whether by way of lease, mortgage or otherwise, shall, in respect of that holdings, cease, and be created on the holdings, or on such part thereof, as may be specified in the final Consolidation Scheme.

Under section 30 (b) of the U.P. Consolidation of Holdings Act, it is clearly provided that a tenure holding entering possession or deemed to have entered into possession shall have in his chak the same right, title, interest and liabilities as he had in the original holding together with such other benefits of irrigation from a private source till such source exists as the former tenure holder of the plots comprising the chak had in regard to them. Section 30 (e) of the Act also makes it clear that encumbrances if any upon the original holding of the tenure holder entering or deemed to have entered into possession, whether by way of lease, mortgage or otherwise shall in respect of the holding cease and be created on the holdings or on such part thereof as may be specified in the final consolidation scheme. It is clear from the U.P.C.H. Act that a tenure holder in whose favour the final records were published under section 10 of the U.P.C.H. Act and new records of rights are prepared under section 27 he will have the same rights, in so far as new holding after allotment of chak is concerned.

8. In view of the above, this Court does not agree with the arguments of the learned counsel for the petitioner that right of parti tion is available to a tenure holder of the hold ings and not of chak holdings. Once the pos session is given on the basis of new record of right, chak attains the status of a holding and same rights which had accrued to a tenure holder on the basis of final record prepared under section 10 will accrue to the same ten ure holder in so far as chak which is called as holding after handing over possession on the chak allotted to a tenure holder in the con solidation scheme.

9. In the galaxy of the above provisions and regard being had to scheme of U.P. Consolidation of Holdings Act, it leaves no manner of doubt that the provision of partition of a joint holding is applicable on all fours to the partition of a chak if cause of action or changes arise at all stages i.e. on publication of record under section 9, after preparation of revised record under section 12 or after possession is handed over after carvation of chak and preparation of new record of rights under section 27 of the U.P.C.H. Act. The right of parties will apply till a notification under section 52 of the U.P. Consolidation of Holdings Act is made. In the present case Gorakh Rai father of the petitioner and contesting Opp. Parties was the tenure holder in whose name chak was allotted and who had taken possession of the new chak in accordance with law. The aforesaid Gorakh Rai died before notification under section 52 of the U.P. Consolidation of Holdings Act and chak which became holding of Gorakh Rai after taking possession was inherited by petitioner and contesting Opp. Parties. The cause of action arose thereafter as

all the brothers were not ready to keep the holding joint and hence application was moved and chak was partition. This Court does not agree with the argument of the learned counsel for the petitioner that chak cannot be partitioned.

10. On merits also, it is borne out from the record as also from a perusal of order dated 26.7.1996 passed by Collector/District Deputy Director Consolidation that compromise relied upon by the petitioner was not acceptable to all the parties. The order passed by District Deputy Director Consolidation refusing to act on the compromise between the parties has attained finality and cannot be dug out for being acted upon. It would appear that by the impugned order, the partition was effected in such manner that all the three brothers got their land after partition one main road and canal and as such the impugned orders do not suffer from any blemish of error of law apparent on the face of record. However, as is clear from the materials on record that one of the brother had already constructed a house. While taking into reckoning the house constructed on apart of land in dispute, in case partition is effected that portion of the land on which house was constructed may be allocated to the share of that brother. This will not impinge upon the partition already made in accordance with law. In case the brother concerned who had constructed house on a particular land, was not allotted the house over the land allotted by the impugned order, he may move application before Deputy Director consolidation for redressal or his grievance to that extent only."

12. In the Case of **Subhir Kumar Goswami (Supra)**, the Court observed as under:

Having heard learned counsel for the petitioner Sri Singh and Sri Sharma for the respondents, it is true that if a matter relating to a title is contested after the revision of records through the proceedings under Section 12, then they would proceed in the same manner as if it was an objection under Section 9-A(2) by virtue of sub-section (2) of Section 12. To that extent, Sri Sinha is right.

In the instant case, the cause of action as disclosed by the petitioner is that he is contesting the title of his own father over the land in dispute. The contention of the petitioner is that the name of his father was entered in revenue records only as a 'Karta' of the family and therefore, taking undue advantage of this status, he had no authority to dispose of the entire holding in favour of a third person, even beyond his share. The holding was being described in the impleadment application as a holding in representative capacity in the name of the petitioner's father.

According to the respondents counsel if this is the plea of the petitioner, then he is contesting the bumidhari rights of his father on the ground that the petitioner has an independent right. This cause of action, therefore, was available to the petitioner, as soon as Section 9 proceedings were initiated, and the proceedings under

the Consolidation of Holdings Act for decision of rights had commenced. At that stage, the petitioner had full opportunity to file his objection under Section 9-A(2) claiming his independent right. If the petitioner wanted a declaration against his own father then the remedy to the petitioner was to file an objection under Section 9-A(2). It is this opinion, which has been expressed in the judgment dated 4th July, 2011.

The judgments on scrutiny namely the decision in the case of *Raj Bahadur v. Board of Revenue*, 1979 RD 50 at Page 53 recites as under:-

“It does not, however, seem to follow from these provisions that the Legislature intended that even where members of a Hindu Joint Family were peacefully in joint possession and did not desire any partition, or where co-sharers were under a family arrangement peacefully in separate possession over their respective areas and did not desire any change in the recorded entry, the consolidation authorities were required to record their respective shares or necessarily to effect partition even if not required for ensuring proper consolidation, or that if the non-recorded co-parceners did not seek to get their names or shares specified, their title should get extinguished. The case of co-sharers who are in undisturbed cultivatory possession of different areas according to their shares can not be equated with one of trespassers or persons claiming adverse possession.”

In the instant case, the petitioner contends that the cause of action arose when the sale deed came to be executed in favour of contesting respondent by his father and also when the contesting respondent moved an application under Section 12 of the U.P. C.H. Act, 1953 for mutation. It is at that stage that the petitioner filed an impleadment application in order to contest the said proceedings under Section 12. The issue therefore is as to when did the cause of action arose for the petitioner.

A perusal of the pleadings that are on record, the cause of action to the petitioner did arise when the vendee of his father proceeded to get his name mutated meaning thereby when the father of the petitioner sold the property. In such a situation and keeping in view the ratio of the decision in the case of *Raj Bahadur* (supra) it cannot be said that the cause had already arisen to the petitioner at the stage of Section 9 of the U.P. C.H. Act.

The bar of Section 11-A of the U.P. C.H. Act, would obviously restrict the rights of petitioner to file an objection had the cause arisen earlier at the stage of Section 9. The aforesaid situation therefore makes it clear that the petitioner had no cause of action to file an objection at the stage of Section 9, and accordingly, the observation made by me in the judgment dated 4th July, 2011, is clearly an error apparent on the face of record without noticing the provisions of sub-section (2) of Section 12 as also the authorities referred to hereinabove. The judgment dated 4th July, 2011, therefore, deserves to be reviewed and accordingly, the same is hereby recalled.

The writ petition is restored to its original number.

In view of the writ petition having been restored, Sri Chandan Sharma prays for time to file a counter affidavit.

Let an affidavit be filed by Monday. Put up on Monday.”

The petitioner contends that as a matter of fact he had no cause of action in the year 1995 when the proceedings under The Uttar Pradesh Consolidation of Holdings Act had commenced and the notification was issued under Section 9 inviting objections. The provisions of sub-section (2) of Section 9 are quoted hereunder to appreciate the said controversy.

“9. (2) Any person to whom a notice under sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under sub-section (1), as the case may be, file, before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or the need for partition.

This provision gives a period of 21 days from the date of notification to any other person interested to file an objection in case there is a dispute relating to the correctness or nature of entries on record or the need for partition. Thus, the publication under Section 9 gives the first opportunity to file objections. The objections have to be filed under Section 9-A of the Act. For the purpose of partition of holdings, the provisions of Section 9-C are available if a partition is claimed on the basis of shares. On the basis of any such order passed under the aforesaid provisions, the records are revised with liberty to the parties to file appeals against any such decision under Section 11 of the Act. If an aggrieved person fails to file an objection then a bar comes to operate under Section 11-A which is quoted hereunder:-

“11-A. Bar on objection.—NO question in respect of—

(i) claims to land,

(ii) partition of joint holdings, and

(iii) valuation of plots, trees, wells and other improvements, where the question is sought to be raised by a tenure-holder of the plot or the owner of the tree, well or other improvements recorded in the annual register under Section 10,

relating to the consolidation area, [which has been raised under Section 9 or which might or ought to have been raised under that section], but has not been so raised, shall be raised or heard at any subsequent stage of the consolidation proceedings.]”

The submission of the petitioner is that the petitioner had no cause of action when the notification under Section 9 was issued as there was no dispute between him and his father at that point of time regarding the entry individually standing in the name of the father. In such a situation, there was neither any occasion to file an objection under Section 9-A and correspondingly there was no occasion for the bar under Section 11-A to operate against the petitioner.

Learned counsel submits that the cause of action arose long thereafter when the sale-deed came to be executed by the petitioner's father in favour of the respondent No. 4 in the year 2006. The sale-deed was executed on 9.10.2006. It is when the respondent No. 4 moved an application for recording of his name on the basis of the sale-deed that the cause of action arose. The provisions of Section 12 of the Act are quoted hereunder for an appropriate reference:-

“12. Decision of matters relating to changes and transactions affecting rights or interest recorded in revised records.—(1) All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings under Sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification under Section 52, or under sub-section (1) of Section 6.

(2) The provisions of Sections 7 to 11 shall mutatis mutandis, apply to the hearing and decision of any matter raised under sub-section (1) as if it were a matter raised under the aforesaid sections.”

A perusal of the said provisions indicates that if any change relating to a transaction affecting the right or interest of the recorded tenure holder intervenes, then all such matters have to be dealt with under the said provision. The Section clearly provides that the same would be attracted where a cause of action relating to such transaction had not arisen when proceedings under Sections 7 to 9 were started or were in progress. Learned counsel submits that the petitioner's claim is clearly protected under the said provision as no cause of action had arisen when the proceedings of Section 9 had been initiated or concluded. It is almost after more than 11 years of the notification under Section 9 that the transaction of sale took place in 2006 between the father of the petitioner and the respondent No. 4 giving rise to an application under Section 12 of the Act. He, therefore, contends that the section gives a right to raise a dispute in relation to all such matters which has to be decided as if it was an objection as understood under Section 9 of the Act, inasmuch as sub-section (2) of Section 12 declares that such an objection will be decided as sections 7 to 11 mutatis mutandis apply to such proceedings.

Learned counsel, therefore, submits that the impleadment and the objection raised by the petitioner, whatever worth it was, had to be entertained and the objection had to be decided by the Consolidation Officer. The petitioner submits that the Consolidation Officer has erroneously refused to exercise his discretion and jurisdiction for no valid reason which is contrary to the provisions of Section 12 of the 1953 Act. The contention in short is that whatever be the nature of the objection of the petitioner, his impleadment could not have been rejected and his objection had to be decided on merits after allowing him to lead

evidence. Reliance has been placed by the learned counsel for the petitioner on the decisions that were referred to at the time of the disposal of the review application and have been noted in the order dated 27.7.2011.

Sri Sharma, learned counsel for the contesting respondent No. 4, contends that the cause of action even otherwise had arisen to the petitioner if he was not on good terms with his father and for that the appropriate forum was an objection to be filed under Section 9-A(2) of the Act. He contends that the petitioner having failed to have availed of the said opportunity, there is a statutory bar operating against him. Hence the objection cannot be entertained at the stage of Section 12. In short, the submission is that if the cause of action had arisen earlier, as is evident from the nature of the dispute, then the filing of the objection under Section 12 by the answering-respondent cannot be the stage of raising any objections in view of the bar as pointed out herein above. He has invited the attention of the Court to the Supreme Court decision in the case of *Narendra Singh v. Jai Bhagwan*, AIR 2005 SC 582.

The position that emerges is that the impleadment sought by the petitioner would be entertainable on the issue relating to the occasion of the arrival of the cause of action to file an objection before the consolidation authorities. There is nothing on record to demonstrate that the petitioner and his father were on cross terms when the notification under Section 9 of the 1953 Act came to be issued in 1995. There is no material to indicate that the petitioner had any cause of action or any cause of action was disclosed otherwise demonstrating a rift between the father and the son upto 2006. On the contrary, the petitioner submits that he had set up a filling station on the land in dispute after it was purchased in the year 1993 in the name of his father and there being no dispute between them at that point of time, there was no reason to approach the consolidation authorities for declaration of any such right or separation of his share. In the absence of any such material, it cannot be said that the petitioner had a cause of action at the stage of Section 9 of the Act. To the contrary, the dispute appears to have surfaced in the year 2006 after the execution of the sale-deed.

The petitioner promptly moved his impleadment application as well as his objection which is on record. The filing of the civil Suit will not bar the right of the petitioner to file an objection so long as the consolidation operations had not come to an end on the date when the respondent No. 4 moved an application under Section 12 of the Act or the date on which the petitioner filed his impleadment application. The bar of Section 11-A or Section 49 would, therefore, not operate and the petitioner will have a right to move an objection. The petitioner had disclosed the nature of the right claimed by him. In such a situation, the observations made by this Court in the case of *Raj Bahadur v. Board of Revenue*, 1979 RD 50, as extracted herein above in the order dated 27.7.2011 would be squarely applicable. The decision in the case of *Ram Pal*

Singh v. Khandey, 1976 RD 162, is not an authority on the proposition which has emerged on the facts of the present case where the observations made in the case of *Raj Bahadur Singh* (supra) are more appropriate. The said decision has also been further approved in the case of *Rati Ram v. Rajvir*, 1991 ALJ 58. I am, therefore, of the opinion that the impleadment application coupled with the objection filed by the petitioner had to be entertained more so keeping in view the ratio of the decision in the case of *Narendra Singh* (supra) which clearly requires that the matter has to be raised before the revenue authority.

13. In the Case of **Ram Milan** (Supra), the Court observed as under:

10. On a bare reading of Section 12, it is evident that all matters relating to “changes and transfers” affecting any of the rights or interests recorded in the revised records published under Sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings under Sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification under Section 52, or under Sub-section (1) of Section 6. The wide sweep of this provision is evident from the language used therein but more of it later. Sub-section (2) of Section 12 further provides that the provisions of Sections 7 to 9 shall mutatis mutandis, apply to the hearing and decision of any matter raised under Sub-section (1) as if it were a matter raised under the aforesaid sections. In addition to the language used in Sub-section 1 of Section 12 which demonstrates the width of the scope of proceedings under Section 12 which covers all matters relating to changes and transfers affecting any of the rights and interest recorded in the revised records published under Sub-section 1 of Section 10, the language used in Sub-section 2 which makes Section 7 to 9 applicable to proceedings under Section 12, makes its amply clear that all rights and interest in lands which are the subject matter of consolidation operations can be adjudicated in proceedings under Section 12. The only caveat being that the cause of action should have arisen after publication of the revised records under sub-section 1 of Section 10 and should not have arisen when proceedings under Section 7 to 9 were started or were in progress. The language used in this provision when read conjointly with Section 7 to 9 of the Act, 1953 makes it very clear that rights and interest in a holding can be adjudicated at different stages depending as to when the cause of action had arisen. If the cause of action had arisen when the proceedings under Section 7 to 9 had started or were in progress, then, the claim to right and interest in an agricultural holding would be made under Section 9-A(2), however, once the revised records are published under Section 10(1) then the bar of Section 11-A of the Act, 1953 comes into play in respect of such claim for which the cause of action had arisen as aforesaid i.e. prior to publication under Section 10(1). If the cause of action arises subsequently i.e. after the publication under Section 10(1) and did

not arise earlier when the proceedings under Section 7 to 9 had started or were in progress then, the remedy lies under Section 12, therefore, for the S.D.M. to say that the proceedings under Section 12 are summary proceedings is based on a misconception as if, the said proceedings are only for the purposes of mutation. The proceedings under Section 12 are not only for mutation of names but also for determination and adjudication of rights and interests in holdings as stated herein above which is not permissible under Section 34 of the Act, 1901.

14. Relevant paras of the Case of [Harihar Prasad \(Supra\)](#), are as under:

2. The only question for consideration in this writ petition is whether an objection under Section 9-A(2) of U.P. Consolidation of Holdings Act (hereinafter referred to as Act) filed before the Consolidation Officer is maintainable?

5. I have considered the contentions raised by the learned counsel for both the parties. Under the provisions of the Act the Asstt. Consolidation Officer is empowered to receive the objection filed under Section 9A of the Act and in undisputed cases, he is competent to pass final orders. But in disputed cases, he shall forward the cases to the Consolidation Officer, who is empowered to dispose of the same according to law. Section 9A of the Act is as follows:—

“Disposal of cases relating to claims to land and partition of joint holdings—

(1) The Assistant Consolidation Officer shall—

(i) where objection in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned; and

(ii) where no objections are filed, after making such enquiry as he may deem necessary, settle the disputes, correct the mistakes and affect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation.

(2) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements, for calculating compensation therefor, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under sub-section (1) and the Consolidation Officer, while acting under sub-section (2), shall be deemed to be a court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding.”

6. This section makes it clear that the Asstt. Consolidation Officer's function is that of a pre-trial authority. He can, no doubt, pass final orders in undisputed cases. But in other cases, he tries to find out whether there is a dispute and attempts to bring about a compromise and can only report the matter to the Consolidation Officer, the trial court which takes evidence and adjudicates, if no compromise is possible. In other words, in a contested case, the Asstt. Consolidation Officer is only a pretrial court and the Consolidation Officer alone is the competent court to pass the final orders regarding the title of the parties. Therefore, even if an objection under Section 9A of the Act is entertained by the Consolidation Officer, in absence of the reference made by the Asstt. Consolidation Officer, the entertainment by the Consolidation Officer cannot be said to be without jurisdiction.

7. A reference has also been made by the learned counsel for the petitioners to the decisions in *Bhagwati v. Deputy Director of Consolidation* (Civil Misc. Writ. No. 4978 of 1971, decided on 5-4-1976), which was followed in *Ram Nagina v. Deputy Director of Consolidation* (Writ Petn. No. 4569 of 1970, decided on 17-5-1979). In these cases, the provision of Section 44A of the Act was taken into consideration which runs as follows:—

44A. "Powers of subordinate authority to be exercised by a superior authority—Where powers are to be exercised or duties to be performed by any authority under this Act or the rules made thereunder, such powers or duties may also be exercised or performed by an authority superior to it."

8. The above provisions of Section 44A make it clear that a superior authority may exercise powers as are given in the Act to an authority inferior to it. Therefore, it was held that the Consolidation Officer was entirely within the power to entertain the objection and the decision in the case of *Nand Kumar Tewari v. Deputy Director of Consolidation* (1969 Rev Dec 58) relied upon by the learned counsel for the respondents was distinguished on this basis.

9. There is yet another aspect of the case. The objection filed by the petitioners was received by the Consolidation Officer, no objection was raised on behalf of the respondents regarding its maintainability. The case was decided by the Consolidation Officer on merit. The question of maintainability was also not challenged in appeal as well by the respondents. The Settlement Officer (Consolidation) heard and decided the case on merit. The result was that the order of the Consolidation Officer merged in that of the Settlement Officer (Consolidation). The objection was taken for the first time before the Deputy Director of Consolidation in revision regarding the maintainability of the objection received by the Consolidation Officer. If a party does not take objection as for the jurisdiction at the very initial stage, then it would be deemed that he had waived the objection. In *State of U.P. v. Phool Singh* (1974 Unreported Revenue Cases 502), the Division Bench of this Court has observed as follows:—

“It is well settled that if a court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e. an appeal would lie to the Court to which it would lie if its order was with jurisdiction. Where an order of the trial court had been upheld on appeal by a Court of competent jurisdiction the mere fact that the trial court had acted without jurisdiction will not justify interference treating the appellate order also as a nullity. Evidently, the appellate Court in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly that the trial court had the jurisdiction to try and convict, it cannot be treated as a nullity. Held that the initial lack of jurisdiction in the entertainment of the objection by the Consolidation Officer vanished when the matter was decided by the Settlement Officer on appeal.”

10. In the case of *Tungal Singh v. Deputy Director of Consolidation* (1969 Rev Dec 54 (All)), it has been held that where an objection as to the procedure and jurisdiction of the Consolidation is not taken, it gives rise to an estoppel.

15. Upon due consideration of the facts and circumstances indicated above and the law propounded in the judgments referred above this court finds that there is no merit in the present petition. It is for the following reasons.

(a) It is settled principle of law that mentioning wrong provision would not be fatal if the authority is having power to decide the subject in issue.

(b) In other words, it is well settled principle of law that mentioning wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

(c) In the case of *Ram Sunder Ram Versus Union of India and Others* reported in (2007) 13 SCC 255, the Hon'ble Apex Court has observed as under:-

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be

traced to a source available in law.’ (See *N. Mani v. Sangeetha Theatre* [(2004) 12 SCC 278] , SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

(d) In the case of *In N. Mani v. Sangeetha Theatre* [(2004) 12 SCC 278] it is stated:

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

(e) In the instant case admittedly the land in issue was purchased through registered sale deed dated 09.03.2022 i.e. after conclusion of proceedings under Section 10 and 20, respectively, of the Act of 1953. The land in issue was purchased jointly by petitioner no.1/Smt. Rama Devi and respondent no.5/ Smt. Sarita Devi. Thus, the Cause of action to get the name mentioned in the revenue record and to get the land partitioned arose after conclusion of proceeding under Section 10 and 20 of the Act of 1953 and being so the bar of Section 11-A, as per this Section itself and as observed in the judgments referred above, would not be attracted.

(f) In the aforesaid background of the case and to remove further litigation between the parties the partition of the land jointly purchased by petitioner no.1/Smt. Rama Devi and respondent no.5/ Smt. Sarita Devi was required. It was also required that name of vendees of sale deed dated 09.03.2022 be recorded in the records during consolidation proceedings.

(g) After conclusion of proceedings under Section 10 of the Act of 1953, the name in the records can be introduced/ entered in the light of provisions as envisages under Section 12 of the Act of 1953 and in the instant case the order regarding entering the names of petitioner no.1/Smt. Rama Devi and respondent no.5/ Smt. Sarita Devi was passed on 22.07.2022 by C.O. and this order was not challenged by the petitioner no.1/Smt. Rama Devi before S.O.C. or D.D.C.

(h) The land can also be partitioned by Consolidation Authorities under the Act of 1953. In the instant case admittedly the land was purchased after conclusion of proceedings under Section(s) 10 and 20 of the Act of 1953.

(i) No doubt that for seeking partition the concerned has to first approach the Assistant Consolidation Officer under Section 9-A of the Act of 1953 and in the instant case the application(s) were preferred by petitioner no.1/Smt. Rama Devi, registered as Case No. 228, and by respondent no.5/Smt. Sarita Devi, registered as Case No. 224, under Section 21(1) of the Act of 1953 before the Consolidation Officer and this authority in view of provisions of the Act of 1953 including Sections 9-C, 12 and 44A is empowered to do needful as observed in various pronouncements referred above.

(j) The petitioner no. 1/Smt. Rama Devi herself approached the C.O. by instituting the case no. 228 and she accepted the order dated 22.07.2022, whereby the C.O. directed to indicate the names of petitioner no. 1/Smt. Rama Devi and respondent no. 5/Smt. Sarita Devi in the record as she did not challenge the same before S.O.C or D.D.C.

(k) Thus, taking note of the above including the settled principle related to mentioning of wrong provision this Court is of the view that the orders passed by the Consolidation Officer i.e order dated 22.07.2022 and order dated 10.08.2022 affirmed vide order dated 27.09.2022 passed by S.O.C. and order dated 06.04.2023 passed by D.D.C. are sustainable in the eyes of law.

(m) In regard to the allotment of Chak, after due consideration of facts and circumstances of the case particularly related to the boring of respondent no. 5/Smt. Sarita Devi and the documentary evidence filed in support thereof i.e. documents related to electric connection including the electricity bill and the contents of sale deed(s) dated 22.07.2022 and 23.12.2022 executed by petitioner no.1/Smt. Rama Devi wherefrom it is evident that there was no tree, well or boring over the land sold as also the boundary indicated in the sale deed dated 23.12.2022, this Court finds that the land allotted to the

respondent no. 5/Smt. Sarita Devi adjacent to Kharanja (road) connecting Hardoi-Bilgram Road and allotment of land to the petitioner no.1/Smt. Rama Devi adjacent to Kharanja (road) on western side of land purchased through sale deed dated 09.03.2022 is justified. Both the parties have provided land adjacent to Kharanja (road). Thus, the demand of petitioner no.1/Smt. Rama Devi to provide land over Kharanja (road) connecting Hardoi-Bilgram Road is unsustainable in law.

For the reasons aforesaid, the present petition is *dismissed*.

No order as to costs.

Order Date: 22.12.2023

Jyoti/-