

Court No. - 7

Case :- WRIT - B No. - 216 of 1994

Petitioner :- Jumayee

Respondent :- D.D.C And Ors

Counsel for Petitioner :- U.C. Pandey, U.C. Pandey, Umesh Chandra Pandey

Counsel for Respondent :- C.S.C., J.P. Tripathi, Satish Kr. Tripathi

Hon'ble Saurabh Lavania, J.

Taking note of the facts stated in the affidavit(s) filed in support of application(s) (*C.M. Application Nos. 56980 of 2016 and 56981 of 2016*), the same are ***allowed***. The delay in filing the application for recall is hereby condoned. The order dated 03.11.2015 dismissing the writ petition in default is hereby recalled and the petition is restored to its original number.

(1) Heard learned counsel for the petitioner and Sri Hemant Kumar Pandey, learned counsel for the State.

(2) By means of this petition, petitioner has assailed the order dated 13.01.1994 passed by respondent No.1-Deputy Director of Consolidation, Pratapgarh (in short "D.D.C.").

(3) Brief facts of the case are to the effect that before the Assistant Consolidation Officer (in short "A.C.O."), in Case No. 3137 instituted under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"), a compromise was filed on 13.09.1967 and based upon the compromise the A.C.O. passed the order on the same day i.e. on 13.09.1967 which reads as under:-

"The case is disposed of in terms of compromise. The compromise deed will form part of the order."

(4) The order dated 13.09.1967 was challenged by means of the Appeal No. 350/487/0287 instituted under Section 11(1) of the Act of 1953 by the respondent No.2-Smt. Sakunta widow of Ali Husain.

(5) The appellate authority namely Settlement Officer of Consolidation (in short "S.O.C.") vide order dated 22.06.1987 dismissed the appeal after considering the provisions as envisaged under Section 52 of the Act of 1953 in filing the appeal.

(6) Being aggrieved by the order dated 22.06.1987, respondent No.2-Smt. Sakunta filed the Revision No. 1761/1284/95 under Section 48 of the Act of 1953.

(7) The revisional authority namely respondent No. 1/D.D.C. after considering the various pronouncements of this Court held that after publication of notification under Section 52 of the Act of 1953, the appeal or revision, as the case may be, would be maintainable.

(8) On the issue of explanation of delay, respondent No. 1 vide order dated 13.01.1994, after taking note of the facts of the case including the plea raised by the respondent No. 2 before the appellate authority that the compromise is not genuine and the law on the issue of dealing with the application for condonation as also the undisputed averments related to knowledge of the order dated 13.09.1967 made by the respondent No. 2 in the application seeking condonation of delay in filing the appeal challenging the order dated 13.09.1967, interfered in the order dated 22.06.1987 and remanded the matter back to the S.O.C. with direction to decide the case afresh. The relevant portion of the order dated 13.01.1994 reads as under:-

"गाटा सं० 10 व 13 आधार वर्ष खाता सं० 6 से सम्बन्धित है। गाटा नं० 14 के बारे में कोई विवाद नहीं उठा था। मैंने बन्दोबस्त अधिकारी चकबन्दी के यहां मियाद अधिनियम धारा 5 के अन्तर्गत दी गयी

दरखास्त का अवलोकन किया जिसमें विलम्ब का कारण यह कहा गया है कि ग्राम में हामिद ने कहना शुरू किया कि शकुन्ता का नाम खाते से कटा दिया है तभी हमें जानकारी हुई तो हम तुरन्त प्रतापगढ़ आकर पत्रावली अपने वकील से दिखालाया व अपील दायर किया जिसे बन्दोबस्त अधिकारी चकबन्दी ने नहीं माना। इब्राहीम ने उनके विरुद्ध कोई मुकदमा दायर नहीं किया है।"

(9) From a conjoint reading of order dated 13.09.1967 and the compromise dated 13.09.1967, which form part of order dated 13.09.1967, it is apparent that A.C.O. while deciding the case in terms of compromise has not followed the procedure as prescribed under Rule 25-A of U.P. Consolidation of Holding Rules, 1954 (in short "Rules of 1954").

(10) It would be apt to indicate, at this stage, that in the case of *Hori Lal vs. Deputy Director of Consolidation, Allahabad & Others; 1981 SCC OnLine All 851: 1982 RD 78*, this Court held that Rule 25-A of the Rules of 1954 are intra vires and valid and mandatory and also held that procedure prescribed under Rule 25-A is to be followed by A.C.O. while exercising the power under Section 9-A of the Act of 1953 and also that A.C.O. shall record the terms of conciliation in the presence of atleast two Members of Consolidation Committee and these terms shall be read over to the parties and their signatures or thumb impression shall be obtained and also that the Members of Consolidation Committee present shall also sign the terms of conciliation and also that an order passed by A.C.O. in compliance of the order under Rule 25-A of the Rules of 1954 would be illegal and without jurisdiction. Reference can be made to paras 17 to 45 of the judgment passed in the case of *Hori Lal (Supra)*, which read as under:-

17. The first crucial question which, therefore, crops up for consideration in this regard is whether rule 25-

A of the Rules is valid or ultra vires and secondly, whether it is mandatory or merely directory and its non-compliance would or would not make the order passed by the Assistant Consolidation Officer illegal and without jurisdiction.

18. *Rules and Regulations are made by authority in exercise of specific power conferred under the statute to make rules and regulations for giving effect to the provisions of the Act. Under S. 54(1) of the Act the State Government has been given power to make rules for the purpose of carrying into effect the provisions of the Act and under sub-s. (2) of S. 54 of the Act it has been provided that without prejudice to the generality of the foregoing power, such rules may provide for the matters enumerated therein. Under sub-cl. (d), rules could be framed for*

“procedure relating to the revision of maps and records including declaration of rights, partition of joint holdings, valuation of plots, determination and apportionment of compensation for wells, trees and other improvements and the preparation for publication of the statement of principles under sections 7 to 11 and 12,”

and under sub-cl. (g) rules have to provide for:—

“the duties of any officer or authority having jurisdiction under this Act and the procedure to be followed by such officer and authority;”

19. *Rules operate as supplementing the statutory provisions in the form of regulations bearing on the same matter. The rules so framed have force of law unless they are repugnant or inconsistent with the provisions of the Act. When they are repugnant and inconsistent with the provisions of the Act, they will be ultra vires. In Smt. Abida Begum v. Rent Control and Eviction Officer, 1959 All LJ 704 : (AIR 1959 All 675), a Division Bench of this Court held that (at p. 680 of AIR):*

“In our opinion it is within the competence of the Legislature to delegate its authority to the Government to frame rules in accordance with which that administrative discretion would be exercised. That discretion is not primarily of a judicial nature and in our opinion it is always open, if the Act so provides, to provide for Rules. When once that authority is delegated as in the present case, we think it has properly been delegated, the exercise by the State Government of that power would be an exercise of that power by the Legislature itself and it would be

treated as if the rules had been expressed in the first instance in the Act itself. It was so held in National Telephone Company v. Baker, (1893) 2 Ch. D. 186 at p. 203.

20. *The rules can be challenged—*

(i) if they are not reasonable and not convenient for carrying out the Act into effect,

(ii) if the rules relate to matters outside the scope of the Act.

(iii) if they relate to matters not provided for in the Act and

(iv) if they are inconsistent with the provisions of the Act.

21. *Thus applying the relevant tests to R. 25-A it appears to me that the State Government in framing the aforesaid rule had neither exceeded their power, nor the rule is inconsistent, unreasonable or inconvenient.*

22. *The aforesaid R. 25-A prescribed the procedure to be followed by the Assistant Consolidation Officer while dealing with the objection filed by the tenure-holders and to pass orders thereon in exercise of his jurisdiction under S. 9-A(1) of the Act. The said rule, does not operate to curtail the jurisdiction of the Assistant Consolidation Officer in entertaining and deciding the objections in exercise of jurisdiction under S. 9-A(1) of the Act by conciliation between the parties appearing before him and to pass such orders on the basis of such conciliation. Rule 25-A merely prescribes the mode in accordance with which the Assistant Consolidation Officer will proceed to exercise his jurisdiction in passing the orders on the basis of conciliation under S. 9-A(1) of the Act. The rule does not travel beyond the scope of the Act nor it is repugnant and inconsistent with the provisions of the Act. The said rule, therefore, cannot be said to be ultra vires.*

23. *The next question for consideration would be whether the said rule is mandatory or directory in nature and its non-compliance would vitiate the order passed by the Assistant Consolidation Officer or not.*

24. *The relevant rule 25-A reads as follows:*

“Sections 9-A, 9-B and 9-C.—(1) The Assistant Consolidation Officer, shall, as far as possible, deal with and the objections filed by a tenure-holder with regard to matters referred to in clause (i) of sub-section (1) of section 9-A and sub-section (i) of section 9-B in the village itself. If deciding disputes on the basis of conciliation in terms of sub-section (1) of section 9-A, he shall record terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall then pass the orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2).....”

25. Rule 25-A prescribes the procedure and the manner in which the Assistant Consolidation Officer has to exercise jurisdiction under S. 9-A(1) of the Act. Firstly, it provides that the Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by the tenure-holder with regard to matters referred to cl. (i) of sub-s. (1) of S. 9-A and sub-s. (1) of S. 9-B in the village itself. The use of the words as far as possible indicates that if the Assistant Consolidation Officer, for certain unavoidable circumstances, is unable to hold his court in the village itself for dealing with the cases, he can decide cases at his headquarter or elsewhere. Second requirement of the said rule is that in deciding disputes on the basis of conciliation in terms of sub-s. (1) of S. 9-A he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The third requirement of the said rule is that the members of the Consolidation Committee present shall also sign the terms of conciliation. After following the said procedure of recording the terms of conciliation in the manner aforesaid, the said rule provides that the Assistant Consolidation Officer shall then pass orders

deciding the dispute in terms of conciliation specifying the precise entries to be made in the record. The learned counsel for the opposite party No. 4 contended that the use of the words to the effect that ‘the Assistant Consolidation Officer shall then pass orders deciding the dispute ‘clearly indicates that the procedure prescribed in R. 25-A is mandatory and the Assistant Consolidation Officer would get jurisdiction to pass orders deciding the dispute, only on the faithful compliance of the procedure prescribed under R. 25-A for recording the terms of conciliation on basis of which he has to pass the order. He further contends that if the procedure has not been strictly followed and the terms of conciliation have not been recorded in accordance with the aforesaid prescribed procedure, the order passed by him would be void and without jurisdiction, although the rule does not prescribe the consequence for its non-compliance. The learned counsel referred to a decision of the Privy Council in Nazir Ahmad v. King Emperor, AIR 1936 PC 253 (2) at p. 257 wherein the Privy Council held that:

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

26. *The learned counsel next referred to two decisions of the Supreme Court on the said point. The Supreme Court in State of Gujarat v. Shanti Lal, (1969) 1 SCC 509 : AIR 1969 SC 634 at 654 observed that:*

“It is a settled rule of interpretation of statutes that when power is given under statute to do a certain thing in a certain way, the thing must be done in that way or not at all.”

27. *The same view was taken by the Supreme Court in another decision in Ramchandra v. Govind, (1975) 1 SCC 559 : AIR 1975 SC 915 and in Hukam Chand v. Union of India, (1976) 2 SCC 128 : AIR 1976 SC 789.*

28. *The said cardinal principle was enunciated more than a century ago in Taylor v. Taylor, (1875) 1 Ch. D. 426 and it has been constantly followed.*

29. *It is thus, well settled that where either under the Act or in the Rules a procedure for the performance of a particular act has been prescribed, the same has got to be done in that manner or not at all. Every court*

and Tribunal has to exercise jurisdiction in the manner provided in the Act or Rules framed thereunder and the orders passed in utter disregard of the prescribed procedure would be illegal having been passed in the manner unwarranted in law and in irregular exercise of jurisdiction. This would, however, be not correct to say in those cases where the breach is of a provision of Act or rule which is not mandatory but directory. If a provision contained in the Act or Rules is merely directory its non compliance would not make the order illegal or without jurisdiction.

30. *Now reverting to the crucial question whether the provisions contained in R. 25-A of the Rules are mandatory or directory, it is to be noted that in the said rule negative words are not used, which are ordinarily used as a legislative device to make a statutory provision imperative. The use of the word ‘shall’ no doubt raises a presumption that the particular provision is imperative but the prima facie inference may be rebutted by other considerations, such as object and scope of the enactment and the consequences following from such construction. In State of U.P. v. Manbodhan Lal, AIR 1957 SC 912, the Supreme Court held that (at p. 917):*

“The use of the words ‘shall in a statute’ though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect that is to say, that unless the words of the statute are punctually followed, the proceedings or the outcome of the proceedings, would be invalid. On the other hand, it is not always correct that where the word ‘may’ has been used, the statute is only permissible or directory in the sense the non-compliance with those provisions will not render the proceedings invalid.”

31. *In a subsequent decision, State of U.P. v. Babu Ram, AIR 1961 SC 751 the Supreme Court held that (at p. 765):*

“When a statute uses the word ‘shall’ prima facie, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the

circumstance that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the legislation will be defeated or furthered.”

32. *In Bhikraj Jaipuria v. Union of India, AIR 1962 SC 113, it was held by the Supreme Court that (at p. 119):*

“Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity : if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.”

33. *In Liverpool Borough Bank v. Tumer, (1860) 30 L.J. Ch. 379 : 45 E.R. 715 Lord Campbell observed:*

“No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.”

34. *The Supreme Court also took the same view in Banwarilal v. State of Bihar, AIR 1961 SC 849 and observed that (at p. 851):*

“No general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity, or only directory i.e. a direction, the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the Court has to decide the legislative intent. To decide this the Court has to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same.”

35. *As already observed above, R. 25-A has been framed under rule making power contained in S. 54 of the Act, providing procedure to be followed by the Assistant Consolidation Officer while exercising his jurisdiction under S. 9-A(1) of the Act. Sub-s. (3) of S. 9-A provides that the Assistant Consolidation Officer, while acting under sub-s. (1) shall be deemed to be a court of competent jurisdiction, notwithstanding anything to the contrary contained in any other law for the time being in force. Under sub-s. (2) of S. 9-A it is provided that all cases which are not disposed of by the Assistant Consolidation Officer under sub-s. (1) shall be forwarded by him to the Consolidation Officer for being decided by him in the manner prescribed. It has been provided under sub-s. (3) that the Consolidation Officer, while acting under sub-s. (2), shall be deemed a court of competent jurisdiction notwithstanding anything to the contrary contained in any other law for the time being in force. It is thus evident that for the disposal of cases relating to claims to land and partition of joint holdings and also with regard to all other cases relating to valuation of plots, trees, wells or other improvements and for calculation of compensation therefor and its apportionment against co-owners, if there be more owners than one, are to be disposed of under S. 9-A of the Act. The Assistant Consolidation Officer has to settle the disputes by conciliation between the parties appearing before him. In all these cases which cannot be disposed of by the Assistant Consolidation Officer by conciliation and compromise between the parties, the Assistant Consolidation Officer has to forward the case to the Consolidation Officer for decision on merits. The Assistant Consolidation Officer has to exercise jurisdiction for deciding only those cases which are not contested between the parties and are settled by conciliation. The procedure to be followed by the Assistant Consolidation Officer while exercising jurisdiction under section 9-A(1) of the Act has been provided under rule 25-A.*

36. *It is well settled that rules made under statute must be treated for all purposes of construction or application exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes, construction or application. Rules cannot be treated as administrative directions but shall have the same effect as the provisions of the statute, whereunder they are made, in so far as they are not inconsistent with the provisions thereof. Rule 25-A cannot be said to be*

inconsistent with the provisions of S. 9A of the Act. It has been framed under the rule making power under S. 54 of the Act providing the procedure to be followed by the Assistant Consolidation Officer while exercising jurisdiction under the aforesaid provision of the Act. The Assistant Consolidation Officer, has, therefore, to exercise his powers in the manner provided under the aforesaid R. 25-A.

37. *Apparently, while providing in the aforesaid rule that the conciliation be recorded in the presence of two members of the consolidation committee and they are also to put their signatures on the recorded conciliation, the real intention appears to be that the dispute should be decided by conciliation by a genuine compromise arrived at between the parties without any undue influence, coercion or fraud and that the parties, who enter into compromise, are genuine persons and not an imposter and that the terms of conciliation have been faithfully and accurately recorded. The rule is in the main governed by considerations of convenience and justice and to rule out any possibility of causing injustice to innocent tenure-holders, who are mostly illiterate persons. The real intention in making provision in the rule for recording the terms of conciliation in the presence of two members of the consolidation committee appears to be that the conciliation should be made between genuine persons and a possibility of arriving at a fictitious compromise by presenting someone to impersonate for the concerned tenure-holder be ruled out. The consolidation committee is constituted under R. 3-A for each unit having not less than 5 and not more than 11 members. Under sub-rule (3) of R. 3-A it is provided that the members of the consolidation committee shall, preferably be literate and must be (i) not below 21 years of age and (ii) carrying on cultivation within the unit, provided that if a sufficient number of members of the Land Management Committee carrying on cultivation in the unit is not available to make up the required number of elected members, the remaining may be elected out of other members of the Land Management Committee. It is thus evident that the members of the consolidation committee are persons who are well aware about the tenure holders of the unit, whose disputes are to be decided by conciliation under S. 9-A(2). The presence of at least two members of the consolidation committee at the time of recording conciliation would rule out a possibility of any one impersonating for a tenure-holder. The terms of conciliation, which are to*

be recorded, are required to be signed by those members of the consolidation committee in whose presence the same are recorded by the Assistant Consolidation Officer, so that it may be faithfully and correctly recorded what has been settled between the parties. The aforesaid rule thus, does not operate to defeat the object of the Act nor it operates to curtail the jurisdiction of the Assistant Consolidation Officer in deciding the cases by conciliation. The aforesaid provision in the rule will obviate the possibility of an illiterate tenure-holder being defrauded and duped by tricky manipulations of some of those persons who can stoop low and can go even to the extent of gaining favour of the Assistant Consolidation Officer in manipulating the terms of conciliation to be recorded by the Assistant Consolidation Officer. The provision in the rule to the effect that the members of the Consolidation Committee in whose presence terms of conciliation are recorded should also affix their signatures on it, is a salutary provision as it will obviate the possibility of incorrect recording of terms of conciliation. The main purpose for providing that the members of the consolidation committee shall sign the terms of conciliation is to assure that the terms of conciliation have been faithfully recorded by the Assistant Consolidation Officer as the members of Consolidation Committee are supposed to ascertain whether the terms of compromise have been accurately recorded or not before signing it. It does not in any manner affect the jurisdiction of the Assistant Consolidation Officer in deciding the case in terms of the bona fide and genuine compromise between the parties, the terms of which are recorded by him in the conciliation proceedings in the presence of two members of Consolidation Committee in the aforesaid manner. In this view of the matter, I am of the opinion that R. 25-A is quite reasonable, just and proper and is perfectly valid.

38. *Learned counsel for the petitioner next contended that since there is no provision in the Act or in the Rules to the effect that the members of the Consolidation Committee can be made to sign the terms of conciliation in the event of their refusing to do so and as such the said part of the rule is not mandatory but merely directory and its non-compliance cannot vitiate the order passed by the Assistant Consolidation Officer. He further contended that there is no provision in the Act nor in the Rules to the effect that non-compliance of the said R. 25-A*

will make the order invalid and without jurisdiction. I am unable to agree with this contention.

39. *It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden. There would be implied nullification of the act done in non-compliance with the mandatory provisions in the statute or the rules, although the statute does not set out the consequence of its non-compliance.*

40. *If the members of the consolidation committee before whom the terms of conciliation are recorded by the Assistant Consolidation Officer refuse to sign it in that event the Assistant Consolidation Officer can proceed to record the terms of conciliation before any other two members of the consolidation committee who may be required to attend the proceedings in that eventuality. As already seen above, the consolidation committee for each unit shall consist of not less than five and not more than eleven members. The Assistant Consolidation Officer can, therefore, proceed to record the terms of conciliation before some other two members of the consolidation committee in the aforesaid contingency. The said provision of the rule, therefore, cannot be said to be directory on the aforesaid ground urged by the learned counsel for the petitioner.*

41. *Now there remains to be considered one more contention advanced on behalf of the petitioner to the effect that R. 25-A is not exhaustive, hence it cannot be treated to be a mandatory provision. Learned counsel argued that it has not been provided in R. 25-A as to how a written compromise, which may be filed by the parties appearing before the Assistant Consolidation Officer settling their dispute amicably, will be dealt with by the Assistant Consolidation Officer. What will be done by the Assistant Consolidation Officer in such a situation. Will he proceed to record the terms of conciliation in his own handwriting, which are contained in the written compromise, in the presence of two members of the Consolidation Committee and require them to affix their signatures thereon. According to him the aforesaid rule does not prescribe such a procedure to be followed in the event of a written compromise is filed by the parties appearing before him. He thus, contended that since nothing has been provided in the*

said rule to meet such a situation, it is not exhaustive and so it cannot be treated to be mandatory and it should be considered to be merely directory. I am unable to agree with this contention. A statutory rule may or may not be exhaustive on the matter covered by it but it will nonetheless be operative and have binding effect and its literal compliance would be necessary. If a provision in the Act or Rules is not exhaustive it cannot be struck down as ultra vires, nor it can be held to be merely directory on that score or its non-observance can be ignored. Instances are not wanting where all the matters sought to be covered by certain rules on any particular subject are not prescribed and are not provided for in the rules, but in such a situation the courts can do no more than look at the language used and give it a fair and reasonable construction and leave it to the legislature and to rule-making authority to amend the Act and the Rules. In my opinion, the provisions in the Act and the Rules cannot be held to be merely directory and not mandatory, simply on the ground that they are not exhaustive.

42. *It is well settled that courts should as far as possible avoid a construction which results in anomalies. In Veluswami v. Raja Nainar, AIR 1959 SC 422 the Supreme Court held that (at p. 426):*

“It is a sound rule of construction that procedural enactments should be construed liberally and in such manner as to render the enforcement of substantive rights effective.”

43. *The Assistant Consolidation Officer, as already observed above, can exercise jurisdiction under S. 9-A(1) for settling disputes and deciding cases only in the manner prescribed by R. 25-A, according to which he can proceed to deal with matter only in the presence of two members of Consolidation Committee. There can thus be no escape from the conclusion that the written compromise, if filed by the parties appearing before the Assistant Consolidation Officer, has got to be filed and verified in presence of two members of the Consolidation Committee, whose presence is prerequisite condition for exercising jurisdiction by him under S. 9-A(1) while proceeding to settle dispute by conciliation between the parties appearing before him. Even in those cases where written compromise is filed, the Assistant Consolidation Officer has to indicate in the order the precise entry to be made in the revenue records in*

accordance with the terms settled in the conciliation between the parties and for that he has to incorporate in the order the settled terms contained in the written compromise. It would thus be sufficient compliance of R. 25-A if the written compromise is filed and verified by the parties in presence of two members of the Consolidation Committee and they also put their signatures thereon, which contains the terms of conciliation.

44. *After carefully considering the arguments advanced by the learned counsel for the parties, I am of the opinion that the aforesaid R. 25-A is mandatory and its non-compliance will vitiate the proceedings and the order passed by the Assistant Consolidation Officer in utter disregard of the said provisions will be per se illegal and without jurisdiction and cannot be sustained.*

45. *It is well settled that the jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior tribunal has to try and decide. The pre-requisite conditions for the exercise of jurisdiction by a tribunal are vital and mandatory and their non-compliance would impliedly operate to nullify the action taken and order passed by the concerned authority. A statutory authority has to exercise jurisdiction in the manner provided under the Act or the Rules. As already seen above under rule 25-A, the Assistant Consolidation Officer can proceed to exercise jurisdiction to settle the dispute between the parties appearing before him on the basis of conciliation only in the presence of two members of the Consolidation Committee, which is a condition precedent for exercising jurisdiction under S. 9-A(1) of the Act. The members of the Consolidation Committee have also to sign the terms of conciliation recorded in their presence. It, therefore, follows that if any order is passed in utter disregard of the aforesaid mandatory provision contained in rule 25-A it would be per se illegal and without jurisdiction."*

(11) In another judgment passed by this Court in the case of *Shiv Prasad vs. Deputy Director of Consolidation, Ghazipur and Others*; 2006 SCC OnLine All 1485: (2006) 101 RD 624, this Court reiterated the view taken by this Court in the case

of *Hori Lal (Supra)*. Relevant paras of the judgment passed in the case of *Shiv Prasad (Supra)*, are extracted hereinunder:-

"7. On the basis of pleadings and arguments of the parties, the first question that arises for consideration is whether under the U.P. Consolidation of Holdings Act a compromise could be entered into between the parties as contemplated under the C.P.C. at any stage in proceedings arising out of Section 9-A(2)/Section 11/Section 12/Section 21/Section 48 of the U.P. Consolidation of Holdings Act, secondly, whether title of the parties in the land which is creation of a statute could be determined on the basis of a compromise for exclusive title or for determination of share in a joint holding and, thirdly, whether a person could be declared as Bhumidhar, Sirdar or Asami on the basis of a compromise in the proceeding under the U.P. Consolidation of Holdings Act or any other proceeding under the U.P. Zamindari Abolition and Land Reforms Act without any title in law.

8. Before delving into this question, I feel called to advert to certain provisions of U.P. Consolidation of Holdings Act. Section 3(4-C) of the U.P. Consolidation of Holdings Act defines land, same is being reproduced as under:—

“3(4-C) ‘Holding’ means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders.”

Section 3(11) defines tenure-holder which runs as under:—

“3(11) ‘Tenure-holder’ means a (bhumidhar with transferable rights or bhumidhar with non-transferable rights), and includes—

(a) an asami,

(b) a Government lessee or Government grantee, or

(c) a co-operative farming society satisfying such conditions as may be prescribed.”

9. Definition in Section 3(12) also makes it clear that “Words and expressions not defined in this Act but (used or) defined in the U.P. Land Revenue Act, 1901, but (used or) in the U.P. Zamindari Abolition and Land Reforms Act, 1950 shall have the meaning

assigned to them in the Act in which they are so (used or) defined.”

10. *Under the U.P. Consolidation of Holdings Act, the procedure prescribed is that after spot verification, as required under the Act and the Rules, Consolidation Officer shall prepare a statement of principles under Section 8-A as well as statement under Section 8 of the U.P. Consolidation of Holdings Act on verification of map and land record, thereafter, record shall be published and the statement showing the mistakes (undisputed cases of succession) and disputes discovered during the test and verification of the record of right during the course of the field to field portal shall be published in the village. Any objection to that shall be filed on publication of record under S. 9 of the U.P. Consolidation of Holdings Act before Assistant Consolidation Officer disputing the correctness and nature of the entries in the record or in the extract furnished therefrom or in the statement of principles, or the need for partition. At the stage of Assistant Consolidation Officer, the only provision under which a compromise, by way of conciliation, could be entered into is Rule 25-A of the U.P. Consolidation of Holdings Rules which is being reproduced below:—*

“25-A. Sections 9-A, 9-B and 9-C.—(1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in clause (i) of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B in village itself. In decided dispute on the basis of conciliation in terms of sub-section (1) of Section 9-A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misiband register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2) In all cases in which the Assistant Consolidation Officer sends a report, under the provisions of sub-section (2) of Section 9-A, or sub-section (1) of

Section 9-B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation Officer and communicate the same to the parties present before him and issue notices in C.H. Form 6-A to the parties not so present. The report of the Assistant Consolidation Officer in such cases clearly brings out the points in dispute between the parties and the efforts made by him to reconcile them.”

11. *The quintessence of the above rule i.e. Rule 25-A of the U.P. Consolidation of Holdings Rules at the risk of repetition is that at the stage of Assistant Consolidation Officer conciliation may take place in terms of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B and Assistant Consolidation Officer shall record terms of conciliation in the presence of two members of Consolidation Committee. The terms shall then be read over to the parties concerned and their signature and thumb impression shall be obtained. The members of Consolidation Committee shall also sign the terms of conciliation and then Assistant Consolidation Officer shall pass orders deciding dispute in terms of conciliation. The details of the operative part of the order passed by the Assistant Consolidation Officer, it is further envisaged in the Rule, shall be noted in the Misiband Register. No ex parte order or order in default shall be passed by the Assistant Consolidation Officer. All disputed cases received from the Assistant Consolidation Officer shall be entered in the Misiband Register in the office of the Consolidation Officer and the Consolidation Officer shall hear the parties, frame issues on the points in issue and take evidence and then decide the dispute. In the case of partition in case any objection is filed, the Consolidation Officer shall proceed with the partition, only after recording reasons in writing if he considers it in the interest of better consolidation.*

12. *There is no provision under the U.P. Consolidation of Holdings Act or Rules framed thereunder by which provisions of O. XXIII, R. 3 of C.P.C. have been made applicable to consolidation proceedings. The intention of the Legislature while enacting U.P. Consolidation of Holdings Act was development of agriculture land as is eloquent from the preamble of the Act.*

13. *As stated supra, the only provision under the U.P. Consolidation of Holdings Act and the Rules framed*

thereunder for conciliation is Rule 25-A. Rule 25-A of the U.P. Consolidation of Holdings Rules, as discussed above, provides that a person could get his rights settled through conciliation in case his rights are recognised by a statute. A person cannot get any right settled or declared in conciliation proceedings under Rule 25-A of the U.P. Consolidations of Holdings Rules if his rights are not recognised by statute. The intention of Legislature while framing Rule 25-A of the U.P. Consolidation of Holdings Rules clearly is that the parties may not be drawn into avoidable and unnecessary litigation relating to their legitimate rights created under U.P. Zamindari Abolition and Land Reforms Act and for correction of the entries in the revenue records. Intention of Legislature while enacting Rule 25-A of the U.P. Consolidation of Holdings Rules is clear and a person cannot get any right under Rule 25-A of the U.P. Consolidation of Holdings Rules which was never created and recognised by the statute under the U.P. Zamindari Abolition and Land Reforms Act on abolition of Zamindari or under any other subsequent amendment of U.P. Zamindari Abolition & Land Reforms Act. A tenure-holder could get his legitimate right of co-tenancy in case land was acquired by common ancestors or jointly by way of reconciliation. Similarly, if an entry in the joint name of a number of tenure-holders is incorrectly recorded, parties may get the entry corrected by conciliation under Rule 25-A of the U.P. Consolidation of Holdings Rules setting the matter/rights by mutual partition or by recognising family settlement already taken place and already acted upon by the parties to get the entry corrected accordingly. But a tenure-holder cannot get any exclusive right in a proceeding under Section 25-A of the U.P. Consolidation of Holdings Rules unless such Rules are recognised by statute.

14. *In 1976 (2) R.D. 69, Kale v. Deputy Director of Consolidation, it has been held by the Supreme Court that family arrangements acted upon by parties could be recognised by the consolidation authorities as family arrangement operates as estoppels against parties having taken benefit thereunder.*

15. *There is no provision under the U.P. Consolidation of Holdings Act for compromise at any of the stage of consolidation proceedings either under Sections 9-A, 9-B, 11, 20, 21 or Section 48 of the U.P. Consolidation of Holdings Act. Though under the U.P. Zamindari Abolition and Land Reforms Act, the provisions of C.P.C. are made applicable by virtue of*

Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and in appropriate cases in the suits arising out of U.P. Zamindari Abolition and Land Reforms Act, a compromise could be entered into.

16. Under the U.P. Consolidation of Holdings Act, provisions of C.P.C. are not made applicable like Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and as such there is no provision of compromise under the U.P. Consolidation of Holdings Act, but in order to secure interest of justice and cut short litigation, rights recognised by statute may be settled by mutual agreement before any Consolidation authority other than Assistant Consolidation Officer. Procedure prescribed under the C.P.C. are not applicable to consolidation proceedings, but if an agreement was entered into which was not contrary to the rights conferred by the U.P. Zamindari Abolition and Land Reforms Act, such agreement in which all the parties including State joined may be legitimately relied upon by the Consolidation authorities. Thus, a tenure-holder who did not have any right under the statute could not get any right by way of compromise or settlement.

17. Order XXIII, Rule 3 of the C.P.C. is being reproduced below:—

“3. Compromise of suit.— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit).

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reason to be recorded, thinks fit to grant such adjournment.)

Explanation— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872

(9 of 1872), shall not be deemed to be lawful within the meaning of this rule.)”

18. *Since right of a tenure-holder in land is a creation of statute under the U.P. Zamindari Abolition and Land Reforms Act and these rights are declared or adjudicated by the Consolidation authorities for the area where the notification under S. 4 of the U.P. Consolidation of Holdings Act is made, only such statutory rights already in existence in favour of a person could be recognised through a lawful agreement or compromise in consolidation proceedings. A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or any other provision of law could not be recognised by any agreement or compromise in the consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognised or admitted by a compromise or a new right could not be created through compromise or conciliation.*

19. *It is clear from the law laid down by the Supreme Court in AIR 1961 SC 1790, Rana Sheo Ambar Singh v. The Allahabad Bank Ltd., Allahabad that Bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition and Land Reforms Act. Relevant portion of the judgment is being reproduced below:—*

“(7)..... We are of opinion that the proprietary rights in sir and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by S. 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914.”

20. *In view of the discussions made above, as in the present case there is no such family arrangement acted upon between the parties in which parties have taken benefit as claimed by the petitioners, the Deputy Director of Consolidation rightly set aside the compromise and orders passed by the Consolidation Officer and the Assistant Settlement Officer, Consolidation. Finding recorded by the Deputy Director of Consolidation does not suffer from any error of law apparent on the face of record in holding that the compromise relied upon by petitioner was not lawful. Impugned order was rightly passed in accordance with law. The questions framed above are decided accordingly.”*

(12) Before proceeding further, it would be apt to indicate the law related to maintainability of the appeal or revision, as the case may be, after publication of notification under Section 52 of the Act of 1953.

(13) In the case of *Siddh Narayan vs. The Deputy Director of Consolidation and Ors.*; MANU/UP/1284/2007, the Co-ordinate Bench of this Court, after taking note of earlier pronouncements on the issue including the judgment passed by the Division Bench of this Court in the case of *Hari Ram vs. Deputy Director of Consolidation, Azamgarh & Ors.*; 1989 RD 281, as also the judgment passed in the case of *Nanhki vs. Deputy Director of Consolidation, Pratapgarh and Ors.* 1995 Part 1 Volume 13 LCD 1: 1994 RD 264, held that the appeal would be maintainable even after publication of notification under Section 52 of the Act of 1953. The relevant paras of the judgment passed in the case of *Siddh Narayan (Supra)* are extracted hereinunder:-

"3. It has been urged by learned counsel for the petitioner that appeal filed by Gaon Sabha after denotification of consolidation operation under Section 52 of the Act was not at all maintainable and his preliminary objection has wrongly been overruled. Reliance in support of the contention has been placed on the decisions of learned single Judge of this Court in the case of Raj Bahadur Singh v. Deputy Director of Consolidation, Hardoi, 1974 R.D. (Suppl.) 181 and Nanhki v. Deputy Director of Consolidation, Pratapgarh, 1994 R.D. 264 and a Division Bench of this Court in the case of Hari Ram v. Deputy Director of Consolidation, Azamgarh, 1989 R.D. 281. In so far as the cases of Hari Ram (supra) and Nanhki (supra) are concerned, the same have no application to the facts and circumstances of the present case inasmuch as in the said two cases the question before the Court was whether Deputy Director of Consolidation could have entertained and decided reference proceedings in

exercise of powers conferred by Section 48(3) of the Act even after issuance of the notification under Section 52 of the Act.

4. The question for consideration in this case is whether an appeal against the order of the Consolidation Officer could be filed, entertained and proceeded with even after notification under Section 52 of the Act has been issued.

5. It is well settled that institution of a suit or proceedings carries with it the implication that all rights of Appeal then in force remain preserved with the parties thereto till the proceedings are finally decided and that right of appeal is a vested right which accrues to the litigant from the date the lis commenced. Reference may be made to the following observation of the Hon'ble Supreme Court in the case of Garikapati v. Subbaih Choudhary, AIR 1957 S.C. 540.

"Legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic entity and are to be regarded as one legal proceeding and that the right of Appeal was not a mere matter of procedure but was a substantive right."

6. Thus, it is clear that right of a litigant to take proceedings to a higher Court, in case of an adverse order, comes into existence the moment proceeding is initiated and continues till the lis continues. The right is to be governed by the law prevailing at the time of institution of the suit, proceedings or appeal and not by the law that prevails at the time of decision or that of the filing of the appeal unless it was expressly or by necessary implication so provided.

7. Section 11 of the Act providing for appeals reads as under:

"11. Appeals:— (1) Any party to the proceedings under Section 9-A 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."

8. Section 52(1) and (2) of the Act around which the entire controversy revolves reads as under-.

"52. Close of consolidation operations:— (1) As soon as may be after fresh maps and records have been prepared under sub-section (1) of Section 27, the State Government shall issue a notification in the official Gazette that the consolidation operation have been closed in the unit and village or villages forming part of the unit shall then cease to be under consolidation operations:

Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix, distribute and recover the cost of operations under this Act.

(1-A) The notification issued under sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.

(2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have not been closed.

(3)....."

9. From the aforesaid it would be seen that sub-section (2) of Section 52 which has been added by amending Act No. VIII of 1963 is a deeming clause which clearly provides that for the purpose of giving effect to the orders which may be passed by a Court of competent jurisdiction either in cases of writs or proceedings pending under the Act on the date of issuance of notification under Section 52, Consolidation operation shall not be deemed to have been closed.

10. There is nothing either in Section 11 or in Section 52 of the Act which either expressly or by necessary implication takes away the right of appeal. In view of the deeming clause contained in Section 52(2) of the Act, in cases where the proceedings under the Act are pending on the date of issuance of notification under

sub section (1), the consolidation operation shall not be treated to be closed meaning thereby in such cases the provisions of the Act shall continue to remain in force as if notification under Section 52(1) notifying the close of consolidation operation has not been issued.

11. In the case in hand, against the order passed by the Consolidation Officer the contesting respondents had a right to approach the Settlement Officer Consolidation in appeal. However, before their rights to approach the appellate Court came to an end notification under Section 52(1) of the Act was issued. However, in view of the deeming clause under Section 52(2) notification issued under section 52(1) of the Act will have not have the effect of destroying the right of appeal which came to be vested in the constesting respondents inasmuch as the proceedings initiated under Section 9 of the Act had not been finally decided when notification under section 52(1) of the Act was issued.

12. The question whether an appeal or revision could be filed even after issuance of notification under Section 52(1) of the Act came up for consideration before a learned single Judge in the case of Gopi Singh v. Deputy Director of Consolidation, (1967) AWR 264. Learned single Judge while holding that the appeal would be maintainable observed as under;

"The term 'proceedings' in S. 52(2) has, in my opinion, been used in that comprehensive sense to include the entire series of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal court. When an appeal is instituted the proceeding which commenced in the trial Court continues. The appeal does not initiate afresh proceeding. On the institution of the appeal the proceedings which have become dormant on the decision by the trial court, revive and remain pending. The only difference being that it is now pending in the different court, namely the Court of appeal."

It was further observed;

"The word 'cases' in the phrase 'cases of writs filed under the Constitution', in sub-Sec. (2) will include orders passed by higher courts of appeal including the Supreme Court. Thus, sub-Sec. (2) is designed to preserve and make effective orders passed by any one or more of the hierarchy of Courts established under the Act, irrespective of whether the proceeding was

pending in any particular court or in any Court subordinate thereto, on the date of issue of the notification in sub-Sec. (1)"

13. The aforesaid view of the learned single Judge was approved by a Division Bench in the case of Dilawar Singh v. Gram Samaj, 1972 AWR 557. The same was the view of another Division Bench in the case of Ram Bahadur v. Deputy Director of Consolidation, 1973 AWR 207.

14. The same principles have been applied with equal force in case of a revision before the Deputy Director of Consolidation under Section 48 of the Act by the Division Bench in the case of Dilawar Singh (supra) wherein it was observed as under;

"The principle of a vested right of a litigant to take a proceeding to the superior Court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a court or authority to be exercised at its discretion but it does not mean that the litigant does not possess the right to approach the superior court through a petition for revision. The only basic difference between an appeal and a revision is that in case of an appeal the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound contrary to law.

15. In case of a revision that court has discretion to refuse the relief if, for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmitites which could justify an interference by the revising court..... If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be Pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists it cannot be said that the proceedings had finally come to an end. The right to approach the superior Court through an appeal or a revision can be exercised only after an adverse judgment order is passed against the party. Till then the right only remains dormant and when that right is exercised, the original proceedings become pending."

16. Even in cases where the limitation of filing recall application or appeal or revision has run out prior to date of notification under section 52 of the Act, aggrieved person can file restoration application,

appeal or revision as held by the Division Bench in the case of Ram Bahadur (supra). The Bench was of the view that proceedings for recall are on the same footing as an appeal because they have the effect of reviving the original proceedings. The same view was again reaffirmed by another Division Bench in the case of Jiwa Ram v. Deputy Director of Consolidation, 1974 (Suppl.) R.D. 40. Reference may also be made to the following decisions of the learned single judge taking the same view; Jhagru v. Deputy Director of Consolidation Basti, 1989 RD 126, Shyam Narain Rai v. Deputy Director of Consolidation Ballia, 1981 RD 307, Ram Rati v. Deputy Director of Consolidation, 1998 (2) AWC 973 : (1998 All LJ 1740) and Tara Chand v. Deputy Director of Consolidation Ballia, 2004 (96) RD 193).

17. In view of the aforesaid discussions and the law laid down by the Division Bench pronouncements in the case of Dilawar Singh (supra), Ram Bahadur (supra), Jiwa Ram (supra), the contrary decision of a learned single Judge in the case of Raj Bahadur Singh v. Deputy Director of Consolidation, Hardoi (supra) relied upon by the learned counsel for the petitioner cannot be accepted as laying down correct law and has no binding or even persuasive value.

18. In view of above, there is no illegality in the impugned orders passed by Settlement Officer Consolidation overruling the preliminary objection raised by the petitioner that the appeal would not be maintainable after issuance of notification under Section 52(1) of the Act as well as the revisional order passed by Deputy Director of Consolidation.

19. In the result, the writ petition fails and is dismissed.

20. Petition Dismissed."

(14) On the issue of maintainability of appeal after de-notification under Section 52 of the Act of 1953, the Co-ordinate Bench of this Court in the judgment passed in the case of ***Dahari Lal & Ors. vs. D.D.c. & Ors., MANU/UP/2756/2010: 2010(6) ADJ 705***, observed as under:-

"18. Division Bench decisions of this Court in the cases of Ram Bahadur and Jiwa Ram and Anr. (supra) are cited before me by Petitioners' counsel wherein it is clearly held that in certain circumstances,

restoration application or application challenging an ex parte order will be governed by Section 52(2) of the Act, therefore. Settlement Officer, Consolidation and Dy. Director of Consolidation were liable to hear objection raised on behalf of Petitioners, at least examine question on merits instead of cursorily rejecting objection without judicially examining the entire matter.

19. Sub-section (2) of Section 52 of the Act was added by U.P. Act 8 of 1953 which is an exception to Sub-section (10). Section 52 of the Act does not take away vested right of appeal which is continuation of proceedings even after denotification and appeal or revision is maintainable if delay is sufficiently explained.

20. In the case of Fateh Singh v. Dy. Director of Consolidation, Mathura and Ors. MANU/UP/2135/2004 : 2004 (96) RD 559 : 2004 (5) AWC 4167, this Court held that provision of Section 5 of Limitation Act to consolidation proceedings is made applicable by virtue of Section 53B which reads as under:

53B. Limitation.--The provisions of Section 5 of the Limitation Act, 1963 shall apply to the applications, appeals, revisions and other proceedings under this Act or the rules made thereunder.

21. It is, therefore, incumbent on the consolidation authorities that in the event application for condonation of delay is moved and the delay is sufficiently explained then it will have an effect of obliterating different status between an appeal filed within time or filed after lapse of period of limitation. Settlement Officer, Consolidation has not even tried to look into grounds for condonation of delay but dismissed the appeal as not maintainable since appeal was filed after village stood denotified.

22. Similar view was accepted in the case of Tara Chand and Anr. v. Dy. Director of Consolidation Ballia and Ors. MANU/UP/0805/2003 : 2004 (96) RD 193 : 2004 (2) AWC 1236, that appeal can be made maintainable in the event delay is sufficiently explained. Obviously, Settlement Officer, Consolidation has completely overlooked explanation given in the application for condonation of delay. He has failed to examine the question of limitation and the reason/explanation for delay.

23. In the case of Bechan Ali v. Dy. Director of Consolidation/A.D.M. Siddharthnagar and Ors. MANU/UP/1060/2001 : 2001 (92) RD 317 : 2001 (2) AWC

1003, it was held that an appeal or revision can very well be filed even after denotification against the order which was passed prior to the date of denotification in spite of fact that limitation of filing of an appeal or revision has already expired."

(15) This Court in the case of ***Sudarshan and Ors. vs. Chief Revenue Officer and Ors., MANU/UP/1960/2021: 2022 (154) RD 43***, on the issue involved in the petition, observed as under:-

"11. So far as maintainability of the appeal after denotification under Section 52 of the U.P.C.H. Act is concerned, in the case of Siddh Narayan (supra), a Co-ordinate Bench of this Court has already held, after considering the decision of a Division Bench of this Court, that the filing of an appeal is a statutory remedy available to the parties and the same cannot be hampered due to denotification under section 52 of the U.P.C.H. Act. Relevant paragraphs i.e. paragraph 10, 11, 13, 14 and 15 of the aforesaid judgment is quoted below:-

"10. From the aforesaid it would be seen that sub-section (2) of Section 52 which has been added by amending Act No. VIII of 1963 is a deeming clause which clearly provides that for the purpose of giving effect to the orders which may be passed by a Court of competent jurisdiction either in cases of writs or proceedings pending under the Act on the date of issuance of notification under Section 52, consolidation operation shall not be deemed to have been closed.

11. There is nothing either in Section 11 or in Section 52 of the Act which either expressly or by necessary implication takes away the right of appeal. In view of the deeming clause contained in Section 52 (2) of the Act, in cases where the proceedings under the Act are pending on the date of issuance of notification under sub-section (1), the consolidation operation shall not be treated to be closed meaning thereby in such cases the provisions of the Act shall continue to remain in force as if notification under Section 52 notifying the close of consolidation operation has not been issued.

13. The question whether an appeal or revision could be filed even after issuance of notification under Section 52(1) of the Act came up for consideration before a learned Single judge in the case of Gopi Singh v. Deputy Director of Consolidation, MANU/UP/

0345/1967 : 1967 AWR 264. Learned Single judge while holding that the appeal would be maintainable observed as under:

"The term proceedings' in Section 52(2) has, in my opinion, been used in that comprehensive sense to include the entire series of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal Court. When an appeal is instituted the proceeding which commenced in the trial Court continues. The appeal does not initiate a fresh proceeding. On the institution of the appeal the proceedings which have become dormant on the decision by the trial Court, revive and remain pending. The only difference being that it is now pending in a different Court, namely the court of appeal."

It was further observed:

"The word cases' in the phrase cases of writs filed under the Constitution', in sub-section (2) will include orders passed by higher Courts of appeal including the Supreme Court. Thus, sub-section (2) is designed to preserve and make effective orders passed by any one or more of the hierarchy of Courts established under the Act, irrespective of whether the proceeding was pending in any particular Court or in any Court subordinate thereto, on the date of issue of the notification in sub-section (1)."

14. The aforesaid view of the learned Single judge was approved by a Division Bench in the case of Dilawar Singh v. Gram Samaj, MANU/UP/0142/1973 : 1972 AWR 557. The same was the view of another Division Bench in the case of Ram Bahadur v. Deputy Director of Consolidation, MANU/UP/0143/1973 : 1973 AWR 207.

15. The same principle have been applied with equal force in case of a revision before the Deputy Director of Consolidation under Section 48 of the Act by the Division Bench in the case of Dilawar Singh (supra) wherein it was observed as under:

"The principle of a vested right of litigant to take a proceeding to the superior Court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a Court or authority to be exercised at its discretion but it does not mean that the litigant does not possess the right to approach the superior Court through a petition for revision. The only basic difference between an appeal

and a revision is that in case of an appeal the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound contrary to law. In case of a revision that Court has discretion to refuse the relief if, for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmities which could justify an interference by the revising Court If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists, it cannot be said that the proceedings had finally come to an end. The right to approach the superior Court through an appeal or a revision can be exercised only after an adverse judgment or order is passed against the party. Till then the right only remains dormant and when that right is exercised, the original proceedings become pending."

12. In this conspectus as above, I do not find any merit in the present writ petition. Counsel for the petitioners could not substantiate his submissions as made in assailing the impugned orders passed by the S.O.C. and the D.D.C. The findings recorded by the S.O.C. with regard to non compliance of the provisions as enshrined under section 25-A of the U.P.C.H. Rules and not controverting the pleadings taken by the appellants, by filing the counter affidavit, became final between the parties, inasmuch as, the same has neither been challenged before the Revisional court nor before this Court in the present writ petition. There is no illegality, perversity or any manifest error in the impugned orders so as to warrant the indulgence of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. Present writ petition is devoid of merits and it is, accordingly, dismissed."

(16) Accordingly, this Court finds no force in the submissions of the learned counsel for the petitioner that the appeal or revision would not lie after publication of notification under Section 52 of the Act of 1953.

(17) Needless to say that this petition has been filed challenging the order dated 13.01.1994 whereby, the D.D.C. exercised its discretionary jurisdiction and condoned the delay and remanded the matter back to S.O.C. for deciding the appeal on merits so as to advance the substantial justice. As such, the scope of interference by this Court is limited.

(18) In regard to delay, this Court finds that the issue dealing with the application for condonation of delay is well settled.

(19) The law on the issue of dealing with the applications for condonation of delay is well settled. This Court as also Hon'ble Apex Court in various judgments have held that an opportunity of hearing should be given and the hearing should not be shut down and in the said judgments, it is also settled that liberal, pragmatic, justice oriented and non pedantic approach should be taken by the Courts concerned while dealing with the applications for condonation of delay so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned. The Courts concerned while dealing with such applications should also consider the fact that whether the delay has sufficiently been explained or not. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words "sufficient cause" under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone

the delay. It is also settled principle of law that the discretion if exercised by the Courts concerned then the Appellate Courts should not interfere in the discretion exercised by the Courts concerned, if the discretion so exercised has been exercised judicially and not arbitrarily.

(20) The Hon'ble Apex Court in the case of ***Ramji Dass and others v. Mohan Singh, 1978 ARC 496*** has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex-parte decree after eight years and the District Court as well as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Apex Court observed as under:

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

(21) The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in the case of ***N. Balakrishnan Vs. M. Krishnamurthy; (1998) 7 SCC 123***, wherein Hon'ble Apex Court observed as under:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain

other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide

Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575 and State of W.B. v. Administrator, Howrah Municipality, (1972) 1 SCC 366 ."

(22) In the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nefar Academy and others*** reported in **(2013) 12 SCC 649**, the issue before the Apex Court was that whether the High Court rightly condoned the delay of 2449 days in challenging the interim order dated 25.02.2004, which was duly communicated to the authorities and even for compliance of the same, the District Inspector of Schools, Howrah on 24.01.2006, directed the school authorities to comply with the directions issued vide order dated 25.02.2004. The Apex Court after considering the earlier judgments allowed the appeal and set aside the order of the High Court, condoning the delay. In the case of ***Esha Bhattacharjee (supra)***, the Apex Court in para 21 of the judgment culled out the principles on the issue of condoning the delay, which are as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on

the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

(23) In the case of *Brijesh Kumar and others v. State of Haryana and others* reported in (2014) 11 SCC 351, the Hon'ble Apex Court observed as under:-

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in *General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim* [(1939-40) 67 IA 416 : (1941) 53 LW 212 : AIR 1941 PC 6] , relied upon the writings of Mr Mitra in *Tagore Law Lectures, 1932* wherein it has been said that:

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In *P.K. Ramachandran v. State of Kerala* [(1997) 7 SCC 556 : AIR 1998 SC 2276] , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

9. While considering a similar issue, this Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy* [(2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450] laid down various principles *inter alia*: (SCC pp. 658-59, paras 21-22)

"21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

(24) On the issue of condonation of delay, reference can also be made to relevant paras of the judgment passed by the Hon'ble Apex Court in the case of ***Bhivchandra Shankar More v. Balu Gangaram More*** reported in ***(2019) 6 SCC 387***, which reads as under:-

“15. It is a fairly well-settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under:

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.”

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy [N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123], this Court held as under:-

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.....”

(25) The Hon'ble Apex Court in the case of *Ajay Dabra vs. Pyare Lal and others* reported in **2023 SCC OnLine SC 92**, observed as under:-

"12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela v. Financial Commissioner, Revenue, Punjab, Chandigarh (1977) 4 SCC 69 has held:

"21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

13. This Court in the case of Basawaraj v. Special Land Acquisition Officer (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was

no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

(26) The expression "date of that order" was considered by the Hon'ble Apex Court in the judgment passed in the case of ***D. Saibaba v. Bar Council of India*** reported in ***(2003) 6 SCC 186***, wherein, the Hon'ble Apex Court after considering the earlier judgments related to similar expressions has held that "date of that order" means "date of knowledge of the order".

(27) In the light of aforesaid settled principle, this Court took note of the facts of the case as indicated in the impugned order as also in other documents on record including the compromise dated 13.09.1967 and the order dated 13.09.1967 passed by the A.C.O. and the pleas taken by the respondent No. 2 in the memo of appeal as also in the application seeking condonation of delay.

(28) From the aforesaid, the position which culled out is to the effect that:-

(i) The compromise dated 13.09.1967 was not signed by the Members of Consolidation Committee of the village and as such, it can be inferred that the Members of Consolidation Committee were not present nor their presence reflects from the order dated 13.09.1967, quoted in para 3 of this judgment nor it appears from the order dated 13.09.1967 that the terms of conciliation was read over to the parties.

(ii) The A.C.O. has passed the cryptic order and accordingly for this reason as also this Court finds that the A.C.O. failed to follow the procedure prescribed under the law. This order of A.C.O. dated 13.09.1967 is non-est and illegal.

(iii) In the application for condonation of delay the respondent No. 2 has stated that on being saying by one Hamid in the vicinity/village that the name of Smt. Sakunta (respondent No.2) has been expunged from the revenue record the respondent No. 2 came to know about the order dated 13.09.1967 and immediately thereafter an appeal was filed and this fact was not refuted before the authority concerned i.e. S.O.C.

(iv) From the aforesaid as also the order passed by the S.O.C. and the memo of appeal alongwith an application and affidavit for condonation of delay, which is on record as CA-1 to the counter affidavit filed by the respondent No. 2, it appears that immediately on coming to know regarding the order dated 13.09.1967 passed by the A.C.O. the appeal was filed on 01.07.1986 and accordingly, considering the unopposed averments regarding date of knowledge and date of filing of appeal, this Court is of the view that the appeal was filed well within time from the date of knowledge.

(29) Thus, for all the reasons aforesaid, this Court is of the opinion that passing the order dated 13.01.1994, impugned in the petition, the respondent No.1/D.D.C. has not committed any irregularity and illegality and accordingly, there is no force in the petition. It is accordingly *dismissed*.

(30) S.O.C. now shall proceed in terms of order of the revisional authority i.e. respondent No.1/D.D.C. dated 13.01.1994 and conclude the proceedings expeditiously.

Order Date :- 15.3.2024

Vinay/-