

**Court No. - 18**

**Case :-** WRIT - B No. - 3214 of 2018

**Petitioner :-** Smt. Usha

**Respondent :-** Deputy Director Of Consolidation Lucknow  
And Ors.

**Counsel for Petitioner :-** Mohammad Aslam Khan

**Counsel for Respondent :-** C.S.C.,A.Z.Siddiqui,Akash  
Deep Dubey,Amrendra Nath Tripathi,Balram Singh,Balram  
Yadava,Khushbu Tripathi,Lalla Chauhan,Rubi Tripathi,Salik  
Ram Yadav,Shailendra Singh Chauhan,Shiv Poojan  
Maurya,Vijay Bahadur Verma

***and***

**Case :-** WRIT - B No. - 26598 of 2018

**Petitioner :-** Nagar Nigam Lucknow Throu.Municipal  
Commissioner Lucknow

**Respondent :-** Deputy Director Of Consolidation Lucknow  
And Ors.

**Counsel for Petitioner :-** A.Z. Siddiqui

**Counsel for Respondent :-** C.S.C.,Arunendra Mohan  
Shukla

**Hon'ble Manish Kumar,J.**

**Order on C.M Application No. 124794 of 2018**

1. Heard Shri Arif Khan, learned Senior Counsel assisted by Shri Shadab Khan, learned counsel for petitioner, Shri Amrendra Nath Tripathi assisted by Ms. Khushbu Tripathi, learned counsel for the respondent.
2. An impleadment application has been preferred by Shri Genda Lal and Jagdish as they are affected by the order of this Court dated 13.02.2018 whereby this Court had directed to seal the records and kept in seal cover with the Senior Registrar, High Court Lucknow Bench, Lucknow. On that date, the case of the applicants were also listed and due to this order, from the last six years, their matter could not be heard.
3. Learned counsel for petitioner and learned State Counsel has no objection to the prayer made for impleadment.
4. Thus, the impleadment application is **allowed**.
5. The applicants are impleaded as respondent nos. 8 and

9 to the writ petition.

6. Learned counsel for applicants are permitted to make necessary amendment/incorporation in the writ petition during the course of the day.

### **Order on Petition**

1. The similar controversy is involved in the aforesaid two petitions thus, these are being heard and decided together by this common judgment.

2. The **Writ Petition No. 3214 of 2018** has been filed with the following main prayers:-

"That by a writ of certiorari, the order dated 18.06.2015 (Annexure No. 12) as well as the order dated 23.12.2017 (Annexure 19) passed by the opposite party no. 1 and the order dated 06.07.1982 (Annexure No. 3) as well as order dated 14.02.1989 (Annexure 4) passed by the opposite party no. 2 may kindly be quashed. "

3. The **Writ Petition No. 26598 of 2018** has been filed with the following main prayers:-

"(I) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.12.2017 (Annexure No. 1 to this Writ petition).

(II) Issue a writ, order or direction in the nature of certiorari quashing the order dated 18.06.2015 (Annexure No. 9 to the Writ Petition)

(III) Issue a writ, order or direction in the nature of mandamus commanding and directing the Opposite party no. 1 to consider the application of the petitioner for recall of the order dated 18.06.2015 and pass an order on merit after giving an opportunity to the petitioner."

4. Learned State Counsel has submitted that the present writ petition has become infructuous as the order dated 06.07.1982 passed by the Consolidation Officer in favour of late Azoor Khatoon, who is now represented by respondent nos. 4 and 5 i.e. subsequent purchasers from the legal heirs of late Azoor Khatoon has been set aside by the Settlement Officer of Consolidation in appeal by its judgment and order dated 13.08.2018 and remanded the matter to the Consolidation Officer to decide the same afresh. Once the order of the Consolidation Officer dated 06.07.1982 has been set aside in appeal, then the consequential orders of implementation/reference of the order dated 06.07.1982 has also lost efficacy and the

petition has become infructuous.

5. On the other hand, learned counsel for petitioner has submitted that after the filing of the present writ petition, the Settlement Officer of Consolidation in appeal set aside the order dated 06.07.1982 passed by the Consolidation Officer, but the impugned orders dated 18.06.2015 and 23.012.2017 were passed by the Deputy Director of Consolidation, which cannot be treated to have come to an end by the order passed by the Sub-ordinate authority in appeal by its judgment dated 13.08.2018.

6. Learned counsel for petitioner has very fairly admitted this fact that the order dated 14.02.1989 is an order passed by the Consolidation Officer under Rule 109(A) on the application of late Azoor Khatoon preferred in pursuance of the order passed by the Consolidation Officer dated 06.07.1982 for the implementation of the same.

7. It is further submitted that after the order of the Consolidation Officer, Deputy Director of Consolidation has passed an order on 18.06.2015 by granting approval for compliance/implementation of the order dated 06.07.1982.

8. It is further submitted that against the said order, the petitioner being a subsequent purchaser of land from Nagar Nigam, has moved a recall application for recalling the order dated 18.06.2015 for making entry in the name of the legal heirs of late Azoor Khatoon in the revenue records which was rejected by order dated 23.12.2017 and at that time, the order dated 06.07.1982 was in existence. After the order of the Settlement Officer in appeal dated 13.08.2018 by which, order dated 06.08.1982 has been set aside. All the consequential orders are also liable to be quashed particularly the orders passed by the Deputy Director of Consolidation i.e. the higher authority of the Settlement Officer of Consolidation.

9. On the other hand, learned State Counsel has submitted that though the orders passed on 14.02.1989, 18.06.2015, 23.12.2017 are now treated to be no more in existence after the setting aside of the order dated 06.07.1982 by order/judgment dated 13.08.2018 by the Settlement Officer of Consolidation in the appeal and the petitioner has an opportunity to present his case before the Consolidation Officer as it has been remanded by the Settlement Officer of Consolidation by its order dated 13.08.2018, but for clarity, the orders of the Deputy Director of Consolidation may specifically be quashed by this Court.

10. After hearing learned counsel for the parties and going through the records of the case, after the passing of the judgment and order dated 13.08.2018 by the Settlement Officer of Consolidation in the appeal setting aside the order dated 06.07.1982, it is to be emphasised and noticed that on setting aside of original order dated 06.07.1982 passed by the Consolidation Officer, all the consequences that followed relating to implementation of order dated 06.07.1982 under Rule 109-A, which may have even though confirmed by the Deputy Director of Consolidation would fall and would remain no more effective for any purposes. The apprehension of the parties that the orders passed by Deputy Director of Consolidation in confirming the order for implementation of order dated 06.07.1982 and rejecting the recall application of the petitioner by impugned order dated 23.12.2017 is without any basis. The Consolidation Officer after remand of the matter while dealing the case on merits will not be influenced or prejudiced by order or observation by Deputy Director of Consolidation dated 18.06.2015 and 23.12.2017.

11. In view of the facts, circumstances and discussion made hereinabove, the the present writ petition is **allowed**.

12. The newly impleaded respondent nos. 8 and 9 have also moved an application for modification of the order dated 13.02.2018 for release of their case from sealed cover as directed by this Court vide order dated 13.02.2018 as their case is not related to the controversy involved in the present writ petition. The Hon'ble Court vide its order dated 13.02.2018 has passed an order for sealing of the record and keeping it before the Senior Registrar, Lucknow Bench, Lucknow and thereafter no further direction has ever been issued by this Court. Once the present writ petition is being decided finally by this Court, the Senior Registrar is directed to return the records.

**Order Date :- 23.4.2024**

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