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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 28.07.2016
PRONOUNCED ON: 19.12.2016

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+ **FAO (OS) 402/2007, CM APPL.2839/2008**

VIJAY SAWHNEY Appellant

Versus

MRILANI CHOPRA & ORS. Respondents

FAO (OS) 404/2007

CDR. AJAY K. SAWHNEY Appellant

Versus

**G.B. PANT UNIVERSITY OF AGRICULTURE AND TECHNOLOGY
THROUGH: ITS VICE CHANCELLOR & ORS.** Respondents

Appearance: Mr. Anip Sachthey with Mr. Mohit Paul, Ms. Anjali Chauhan and Ms. Diksha Jhingar, Advocates for appellant in FAO (OS) 402/2007.
Mr. Meet Malhotra, Sr. Advocate with Mr. Ravi S.S. Chauhan, Mr. Manjeet Chawla and Ms. Pallak Singh, Advocates for appellant in FAO (OS) 404/2007.

Mr. Manoj Swarup with Mr. Ashish Mohan, Advocates for respondents in both matters.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. The appellants are aggrieved by the order dated 31.05.2007 of the Single Judge in IA No. 2551 of 1983 and IA No. 6540 of 2005 filed in CS (OS)

26 of 1972 whereby the objections of GB Pant University to restrain the taking of any land from its possession in the name of farmland belonging to Mrs. Damyanti Khanna were upheld.

Brief Facts

2. The present proceedings emanate from a suit filed by Mrinalini Chopra (“first respondent”) for partition of properties of Mrs. Damyanti Khanna. In her suit, she stated that Mrs. Damyanti Khanna had died on 11.7.1971 without leaving behind any children after her husband, H.L. Khanna predeceased her in 1970. It was stated that plaintiff and defendants were in joint possession of the immovable properties whereas the movable properties were in the possession of the banks and the defendants. After years of litigation, the parties entered into a compromise filing an application under Order 23 Rule 3 r/w Section 151 of the Code of Civil Procedure, 1908 (“CPC”) and a preliminary partition decree was passed by this court in consonance with the terms of that compromise agreement on 22.4.1980. In terms of the said application (and the agreement underlying it), the 15 acres of farmland belonging to Mrs. Damyanti was to be mutated in favour of Mrs. Mrinalini Chopra, Mr. Umesh Khanna, Mr. Ramesh Kapoor, Ms. Prem Arjun Singh, Mrs. Vidyawati Chopra, Mrs. Primila Vohra, Mrs. Madhu Khosla, Cdr. Ajay Sawhney, Mrs. Anjana Kirpal and Smt. Ambika Soni. Subsequently, on 19.04.1983, this Court further passed orders directing receivers to take over possession of this farmland.
3. After this order of taking possession, two applications namely IA Nos. 2552 and 2551 of 1983 were filed by GB Pant University in response to

which the Single Judge of this Court on 15.06.1983 stayed the taking over of possession by the receivers and recorded that objections have been filed by the Vice Chancellor of the University.

4. Since then the suit was pending disposal and passing of a final decree (as observed by the Learned Single Judge of this Court in his order dated 28.7.2005). The order observed that 15 acres of land belonging to HL Khanna was to be given to GB Pant University of Agricultural Technology and the remaining 15 acres belonging to Mrs. Damyanti Khanna was to be distributed amongst the legal representatives of the deceased as per the terms of the preliminary decree. Additionally, the Learned Single Judge noted that despite issuance of notice, the University failed to file objections in the present case. Finally, the Court directed SDM, Kolarhia District, Udham Singh Nagar to direct the revenue authorities to provide all assistance to the receivers/their nominee for identification of 15 acres of land belonging to Mrs. Damayanti since the exact khasra numbers of the said land was not available.
5. After this order, the court passed its detailed judgment/order on 31.05.2007 in I.A. Nos. 2551 of 1983 and 6540 of 2005 filed by the University holding that neither the ownership of any farmland belonging to Mrs. Damayanti nor identity of such land was proven in court. The learned Single Judge held that the Court cannot pass any order for delivering possession of unidentified land based on the compromise decree passed. The impugned order stated that such a decree does not bind any third person and upheld the University's objection to the taking possession of any land by receivers. It was also clarified that the value of

the property given by the plaintiff did not represent its market value even as of 1972 and required them to file a report of an authorized valuer for ascertaining the same. It is against this order that the present appeal is being entertained.

Arguments and Analysis

6. The appellants argue, through Mr. Meet Malhotra, senior counsel and Mr. Anip Sachtey, learned counsel, that the order, dated 31.05.2007 is erroneous inasmuch as it accepted the objections by the University when it was not a party in the suit/impleaded as a party. They submitted that as per the settled position of law, objections filed by third parties, cannot be heard as they have no right to participate in the proceedings passed. Learned counsel highlighted that despite pendency of proceedings for several years, no worthwhile objections as to why the University should not be dispossessed were made; counsel stressed that any question as to the legality of possession set up by an occupier in the course of execution proceedings had to be decided by the executing court and none else.
7. It is contended that the documents of the University establish that the disputed 15 acres of land belonging to Mrs. Damayanti Khanna was transferred after the filing of the suit attracting application of *lis pendens*. The appellants submitted that the Learned Single Judge failed to account for the documentary evidence establishing the possession of land by the University after 19.03.1972 (after filing of the original suit) and assisting in its identification. The appellants have approached this Court through the present appeal pleading the Court to set aside the judgment dated 31.05.2007; quash consolidation proceedings before the Consolidation

Officer, Kiccha, Udham Singh Nagar directing the officer to start afresh; and direct transfer of possession of the disputed land from the University to the Receiver. Counsel for the appellants relied on a letter written by Mr. S.L. Khanna, on 18.03.1972, (of 15 acres) to say that what was intended to be and actually gifted was 15 acres belonging to his late brother Mr. H.L. Khanna and that the said document unequivocally stated that title to the balance 15 acres belonged to Mrs. Khanna.

8. It is contended that the document relied upon by the University/objector to disclose uninterrupted possession, i.e. minutes of meeting dated 20.05.1972, evidencing acceptance of the gift of the Khannas as recorded in it, including the handing over of possession of 30 acres never saw the light of the day. It was contended that whilst late Mr. Khanna undoubtedly donated the lands through a gift, that extended to only 15 acres; the balance belonged to his wife, Mrs. Khanna, who did not make any bequest or gift in favour of the university. The university could not also rely on any document nor did it produce it, showing that her 15 acres was never lawfully handed over to it. In these circumstances, the learned single judge fell into error in accepting the respondent/ university's contentions. It was argued that the receivers were empowered to take over possession of that land on 19.04.1983; the university appeared shortly thereafter and at its request operation of the direction to take possession of the lands was suspended. Proceedings dragged on. Eventually, on 28.07.2005, the court authorized two receivers appointed by it to take possession of the lands and also asked local authorities to ensure execution and implementation of its directions. That order, *inter alia*, reads as follows:

“However, the objections have not been filed as yet. Keeping in view the fact that specific Khasra numbers of the land in question are not available, in the circumstances aforesaid and the fact that the receivers had been directed to file a final report, there is a prayer that some further time be allowed for submitting the final report. I direct the SDM Kolaria Bhagwanpur Tehsil Kiccha District Udham Singh Nagar to direct the revenue authorities to provide all assistance to the receivers or their nominee for identification of the 15 acres of land belonging to Smt. Damayanti Rani Khanna in the revenue estate. Copy of this order be given dasti.”

9. Learned counsel submitted that after the hearing of 28.07.2005 or even any date thereafter, the University never disclosed that it had moved the UP Consolidation officials for an order under the U.P. Consolidation of Holding Act 1953 (hereafter “the Consolidation Act”) and that it appears to have acted in a clandestine manner, by approaching the state officers under the Act, to secure rights over the suit property. It is said that this amounts to overreaching this Court’s order and is clearly contumacious. Reliance is placed on *Govind Sahai v State of UP* AIR 1968 SC 1513. Since the title to the land always belonged to Mrs. Damayanti Sawhney and the consolidation order was obtained without considering relevant evidence, it was a nullity and therefore, unenforceable. Learned counsel relied on the decision in *Karbalai Begum v Mohammed Sayeed* AIR 1981 SC 77 as well as *Suba Singh vs Mahendra Singh* AIR 1974 SC 1657 to say that the jurisdiction and authority of a civil court is never ousted, in respect of matters of title and that orders of authorities in revenue are inconclusive as to title, for which the courts of competent jurisdiction are civil courts.

10. Counsel highlight that the University never filed any objections; consequently it could not validly resist the proceedings for securing possession. Moreover, the university never showed or disclosed lawful title to the land; in fact even the basis for its claim to have been in lawful possession was not disclosed. Learned counsel submitted that even the proceedings before the consolidation officer showed the University's claim that it took over possession and that basis for valid occupation was never revealed. It was submitted, therefore, that the claim for separate title too was barred, by virtue of Order XXI, Rule 101 CPC; the only forum to decide issues of title was the executing court. Since concededly the single judge did not return a finding that the respondent university had title or semblance of title, his conclusion was unsustainable. Reliance is placed on the decision reported as *N.S.S. Narayana Sarma v M/s Goldstone Exports (P) Ltd* AIR 2002 SC 251. Counsel also stated that a decree - even a consent decree - is binding and its validity cannot be gone into in execution proceedings. Reliance was placed on *Mohit Sharma v Ram Bahadur Thakur* AIR 2006 SC 1690.
11. Mr. Manoj Swaroop, learned counsel for the university argues that the question of any contumacious conduct does not arise. He highlights that the university had, from inception opposed the appellants' attempts to secure possession. Although it did not file detailed objections for a long time, the appellants cannot cry foul on that aspect. He argues that the University's right to seek a consolidation order, under the state enactment was competent. The appellants in those proceedings opposed the university's application to the state authorities; if they felt aggrieved, they could have challenged the order in appellate or writ proceedings.

Learned counsel submitted that the legality of an order, by a competent authority, has to be challenged and set aside in appropriate proceedings. In the absence of a determination about its effect, any statutory or judicial order, even an illegal one, has to be given effect to and cannot be ignored as void or untenable. Mr. Swaroop relied on *M. Meenakshi & Ors v Metadin Agarwal* 2006(7) SCC 470.

12. It was argued on behalf of the university that the competent officer, in the case of deciding issues of rights and interests in agricultural properties, was the Consolidation officer, under Section 9A of the Consolidation Act. He highlighted that this provision did not exist when the Supreme Court decided *Karbalai Begum (supra)*. Therefore this change in statute law rendered that decision inapplicable to the facts of this case. Since the Consolidation officer had authority and jurisdiction to try issues relating to title, rights and partition as well, the civil court's jurisdiction was ousted. As long as the decision and order of that officer stands and remains unaltered, parties- including the appellants are bound by it. Consequently, urged counsel, the appeal does not merit consideration and has to be rejected.

Analysis and Findings

13. The three main issues for consideration in the present case are as follows-

- a) Whether the Court was right in accepting objections by the University in 2005.
- b) Whether the doctrine of *lis pendens* applies in the present dispute.
- c) Whether the Court can implement the terms of the compromise decree requiring the delivery of possession from the University to the Receiver in the present execution proceedings.

14. In the present case, the appellants argued that the University failed to comply with the direction given by this Court by its order, dated 19.04.1983. It is to be noted that the said order required the Vice Chancellor of GB Pant University to deliver possession of the disputed 15 acres land unless he has an objection, in which case it would have to be intimated within 15 days.

15. This court agrees with the views expressed in the order dated 15.06.1983 by this Court treating IA No.2551 of 1983 and IA No. 2552 of 1983 as objections in compliance with the order dated 19.04.1983. As observed in the two applications, the University primarily sought a stay to the delivery of possession of the disputed farmland in the execution proceedings. In the present case the University despite being a non-party to the suit could file objections, contrary to the position taken by the appellants. Since the University was directed to transfer possession of the farmland by order of 19.04.1983, reliance may be placed on the judgment of the Kerala High Court in *Paramound Industries v CM Malliga*¹ which stated that: -

"It is open to the person in possession of an immovable property, not being a party to the decree for possession or ejectment or an order of eviction passed under the Act, to obstruct the execution either by filing an objection to the execution before the delivery warrant is issued; or to obstruct the execution of the delivery warrant."

16. In view of this position, this court is of opinion that the order dated 15.06.1983 correctly treated the university's applications as objections envisaged by the earlier order of 19.04.1983. As discussed in *Paramound Industries (supra)*, the *rationale* behind stating objections is to "obstruct

¹1990 (3) KarLJ 437.

execution” and filing of the stay application was reflective of such intent by the University and in concurrence with the court’s requirement to intimate any objection to the delivery of possession within 15 days.

17. On the question of *lis pendens*, the appellants had argued that the possession of the farmland was handed over to the University on 19.03.1972 after the filing of the suit for partition on 10.01.1972 attracting the application of this principle. The doctrine of *lis pendens* finds statutory presence under Section 52 of the Transfer of Property Act, 1882 imposing a prohibition of transfer or otherwise dealing of any property during the pendency of a suit provided the conditions laid down in the section are satisfied.²

18. In the present case, the appellants submitted that the disputed farmland was under the joint possession of all the parties involved in the original partition suit. Subsequently, Mr. Gurcharan Lal Khanna and Mr. SL Khanna without the consent/knowledge of anyone else wrote a letter to the Vice Chancellor of GB Pant University stating that they were only gifting their rights and interests in the 30 acre farmland (including the 15 acres belonging to Mrs. Damayanti). In pursuance of this letter, the appellants contended that the possession of the entire farmland was transferred to the University despite the property being subject matter of the C.S(OS) 26 of 1972.

19. At this point of time, a bare reading of the letters exchanged between Mr. Gurcharan Lal Khanna, Mr. SL Khanna, Mr. DP Singh (Vice Chancellor) and Mr. Ved Vyas (Legal Adviser to the Vice Chancellor) suggests that the parties were aware that there was an application pending for

²SOLIL PAUL, MULLA: THE TRANSFER OF PROPERTY ACT, 367-368, (9TH ED., 2003).

appointment of receiver for the entire estate including the farmland before the High Court. It was also clarified that Mr. GL Khanna and Mr. KL Khanna had specifically stated that the rights and interests of the heirs of Mrs. Damyanti remained unaffected by the transaction. However, the minutes of the XXVI Meeting of the Board of Management of the University on 20.05.1972 recorded the donation of the entire 30 acre farmland and taking over of its possession on 19.03.1972.

20. This court finds it difficult to agree with the view of the learned Single Judge that since there was no restraint order by the Court in this respect and the appellants accepted that they themselves were in possession of the farmland, gift of the disputed property cannot be challenged. On application of Section 52 of the Transfer of Property Act, 1882, it can be ascertained that in the original suit CS (OS) 26 of 1972, the right to the disputed farmland subjected to transfer was directly in question and pendency of proceedings began from the date of filing of the suit. Also, the Single Judge failed to consider the order of the consolidation officer dated 22.08.2005, which accepted that the University had been in possession of the farmland only since 1972, and mutated the same in their favour on the basis of "*adverse possession*". Reliance can be placed upon the Supreme Court decision in *Jayaram Mudaliar v Ayyaswami*³ which states that: -

"The need for this doctrine arises from the very nature of the jurisdiction of Courts and their control over the subject of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the court to deal with it and thus make the proceedings infructuous."

³AIR 1973 SC 569.

21. Furthermore, it is the appellants' submission that they were in joint possession of the property leaving open the possibility of foul-play on behalf of the University. Hence, the impugned transfer of property is to be treated in the manner suggested by the Supreme Court in *Vinod Seth v Devinder Bajaj*⁴ where it was clarified that: -

"It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

22. Having established that the rights of the appellants remain unaffected by the impugned transaction attracting the doctrine of *lis pendens*, this court at the same time agrees with the view of the learned Single Judge that the compromise decree was not binding on the university, which was not a party to the original proceedings. The Single Judge was of the opinion that even the Court could not pass an order for taking over possession from a third party (University in this case) in order to implement the compromise decree. In the present case, the learned Single Judge observed that - *"the plaintiff and other persons who under the compromise claimed the ownership of the farm land will have to file a separate suit for taking possession of the farm land from the person/authority who is allegedly in position"*. Since the present

⁴(2010) 8 SCC 1.

proceedings are concerned with the execution of the compromise deed under Order 23 Rule 3 of the CPC, it is important to note that the order of the Consolidation Officer dated 22.08.2005 has mutated the farmland in favour of the University granting them the title, rights and interests therein. Here, it is important to notice that though the university was not a party to the suit, it maintained, right from inception of its awareness in these proceedings, that it was in lawful possession; it relied on the minutes of meeting of 19.03.1972. The plaintiff/appellants were aware of the university's physical occupation of the entire extent of the property, i.e., including the 15 acres which stood partitioned through the compromise decree, in 1980. The question therefore, is whether in the circumstances of the case, having regard to all the facts, the single judge erred in not directing the handing over of possession of the suit lands by the university to the plaintiffs.

23. The university contends that the order of the Consolidation officer, made on 22.08.2005, is an intervening event important enough to displace the efficacy of the compromise decree, to which it was never a party in the first instance. It urges that consolidation proceedings were the appropriate method or lawful procedure to determine issues of title, having regard to the fact that the lands are agricultural; reliance is placed on Section 9A of the Consolidation Act. The appellants contend that the civil court's jurisdiction is not barred; it also contends that all matters of title are to be settled by the civil court, in the execution proceedings, where possession is to be delivered, even in the case of disputed title where third parties set up their lawful title; they also contend that the

university applied in consolidation proceedings clandestinely and thus contumaciously, rendering the order of the Officer invalid.

24. At this stage, it would be useful to notice the relevant provisions of the UP Consolidation of Holdings Act. Section 4 of the Consolidation Act enables issuance of notification for bringing specific village land in the district under consolidation operations. Section 5 (2) (a) provides that every proceeding for correction of records in every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under the Act, pending before any court or authority, whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated. Section 9A reads as follows:

"9-A. Disposal of cases relating to claims to land and partition of joint holdings –

(1) The assistant consolidation Officer shall -

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

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

(2)

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

It is thus evident that declaration under Section 4 leads to abatement of every proceeding relating to rights over agricultural lands, which are covered by it. The remedy of anyone claiming rights, or whose claims are pending or who dispute the rights of others over such lands is to apply under Section 9A. The reference to dispute over “claims to land” clearly means that if anyone wishes to seek a declaration as to his or its rights to agricultural land, which is covered by the Consolidation notification under Section 4, such claim is to be considered and ruled upon by the Consolidation officer.

25. The judgment of the Supreme Court in *Muneshwar (Dead By LRs) v Raja Mohammad Khan* 1998 (6) SCC 582 is an authority for the proposition that even pending a final decree a consolidation order under the Consolidation Act can be conclusive as to the rights of parties over agricultural lands, covered by notification under Section 4. In the present case, the order of the Consolidation officer took note of the fact that the land recorded the ownership of late Damayanti Khanna; yet the University’s application for correction was dismissed *ex-parte*, without a hearing and the lands were entered in the records as unoccupied and fallow. The order further noted the arguments of the appellants, i.e., that they were the heirs of the owner; that the University had no manner of ownership rights and that the late land owner had bequeathed the property to them and also that the University was in unlawful possession. The order further noted the University’s contention, its uninterrupted physical possession, which was verified in physical verification proceedings and that the University’s request for entering its name in the records had been made in consolidation proceedings, under Section 9A.

After considering these submissions, the consolidation officer made an order in the University's favour.

26. The Supreme Court in the context of proceedings under the Consolidation Act, has held that orders made under it are valid and the jurisdiction of the officers exercising powers under that Act cannot be displaced or ignored. The Supreme Court ruled, in *U.P. State Sugar Corporation Ltd v Dy. Director Of Consolidation* AIR 2000 SC 878 that:

“In the instant case, it was found as a fact by the Consolidation Officer as also by the Settlement Officer (Consolidation) that part of the land in question was the land appurtenant to the staff quarter of the Sugar Mill while the other part was utilised for storage tanks for molasses and for sullage water and other purposes connected with the functioning of the Mill. Since the land in question was being utilised as land appurtenant to the Staff Quarter of the Mill from before the date of vesting, that land would not vest in the State on account of Notification issued under Section 4 of the Act. The easement right available to the Sugar Mill in respect of the plots in question would also not stand destroyed and would continue to be enjoyed by the Mill.

The findings recorded concurrently by the Consolidation Officer as also the Settlement Officer (Consolidation) regarding the land in question being the land appurtenant to the Staff Quarter of the Mill or the land being utilised for storage of molasses and sullage water etc. have not been set aside by the Deputy Director of Consolidation nor has the High Court held that the findings were erroneous. That being so, the property, at no stage, vested in the State and, therefore, it could not, at any subsequent stage, vest in the Gaon Sabha. The Gaon Sabha, therefore, could not legally execute any lease in respect of these plots in favour of the respondent.

*The High Court, without considering these questions, held that the validity of the lease, executed by the Gaon Sabha in favour of the respondent, could not be legally examined by the Consolidation Authorities under the U.P. Consolidation of Holdings Act, 1953. Reliance for this purpose was placed by the High Court on the Full Bench decision of the Allahabad High Court in *Similesh Kumar v**

Gaon Sabha, Ushkar, Ghazipur & Ors 1977 Revenue Decision 409 = AIR 1977 Allahabad 360 and Bhurey and another vs. Board of Revenue, U.P. and ors., 1984 Revenue Decision 294, in which the Allahabad High Court while considering the effect of amendment introduced in Section 210 held that a trespasser over the Gaon Sabha land cannot acquire sirdari rights even if he was in possession of that land for more than 12 years. The High Court also relied upon another decision in Chatar Singh vs. Sahayak Sanchalak, Chakbandi and others, 1979 A.C.J. 335, in which it was again held that even if a person was in possession over the property of the Gaon Sabha for more than 12 years, he would not acquire sirdari rights under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act.

*In the Full Bench decision of the Allahabad High Court, referred to above, it was held that the Consolidation Authorities have no jurisdiction to consider the question of cancellation of lease which could be considered only by regular courts. The decision of this Court in Gorakh Nath Dube v Hari Narain Singh & ors, (1973) 2 SCC 535 = 1974 (1) SCR 339 = 1973 Revenue Decision 423, in which it was held that a void document which was liable to be ignored by the court would not affect the jurisdiction of the Consolidation Courts was distinguished. So also the decision of the Division Bench of the Allahabad High Court in Jagarnath Shukla vs. Sita Ram Pande and others, 1969 A.L.J. 768, which was affirmed by this Court in Gorakh Nath Dube's case (supra) was also distinguished. We have carefully considered these decisions and, in our opinion, the Full Bench of the Allahabad High Court was in error in distinguishing the decision of this Court in Gorakh Nath Dube's case (supra) which has since been followed by this Court in Dulari Devi v Janardan Singh 1990 Supp. SCC 216; Ashrafi Lal v Koili (1995) 4 SCC 163; and *Muneshwar vs. Raja Mohammed Khan* (1998) 6 SCC 582.*

The decision of this Court in Gorakh Nath Dube's case (supra) was also followed by the Allahabad High Court in Ramanand vs. D.D.C. and others, 1987 Revenue Decision 430, and it was held that a document which is void and is, therefore, liable to be ignored by the courts, would not affect the jurisdiction of the Consolidation Courts and they would be within their jurisdiction in adjudicating upon that document so as to finally decide the rights of the parties."

27. A careful reading of the above extract would show that not only is a Consolidation officer's jurisdiction over the rival rights and interests of various parties to agricultural land, competent, it is also apparently overriding. As long as such an order stands, it cannot be ignored and treated as void, even if, *arguendo* there is some fundamental defect or infirmity. In this connection, this court recollects the decision of the Supreme Court in *State of Punjab v Gurdev Singh* AIR 1991 SC 2219. The Court enunciated the relevant principle as follows:

"But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East. Elloe Rural District Council, [1956] AC 736 at 769 Lord Redcliffe observed:

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its fore-head. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:

"The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plain-tiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for

another, and that it may be void against one person but valid against another." (Ibid p. 352)

It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

28. The above discussion clearly shows that even though the decree might be binding on the parties, the order of the Consolidation officer has cast a cloud or doubt about its relevance and efficacy now. The Court cannot implement the terms of the compromise decree to the extent of delivery of possession of farmland since that would require quashing an order of a statutory authority that is beyond the jurisdictional ambit of this court in the present execution proceedings. The appellants have not invoked this court's writ jurisdiction and therefore, cannot say that the UP Consolidation Officer's order is void and inoperative.

29. This Court is of the opinion that the learned Single Judge primarily erred on the issue of determination of application of *lis pendens* vis-à-vis the transfer of property to the University. This court, however affirms the position allowing the University to file objections in 2005 since they had satisfactorily complied with the order of 19.04.1983 requiring the Vice Chancellor to state any objections to transfer possession of the disputed farmland. Since the ultimate relief sought in the present matter is directing such transfer of possession from the hands of the University to the receiver, it would necessarily require quashing of the Consolidation Officer's order, which has mutated the land in favour of the University. Till such order is set aside by a

higher official concerned with valid jurisdiction or power, it has legal force and cannot be ignored in execution proceedings - out of which the present appeal has been preferred.

30. In light of the above findings, the appeals against the impugned order are dismissed as unmerited.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

DECEMBER 19, 2016

