2026:AHC:231581

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 3620 of 2026

Mohd Hasan Khan And Another

.....Petitioner(s)

Versus

State Of U.P. And 7 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mohd Arif, Saher Naqvi
Counsel for Respondent(s)	:	C.S.C., Ram Lakhan Deobanshi

Court No. - 50

HON'BLE ASHUTOSH SRIVASTAVA, J.

Supplementary affidavit filed today is taken on record.

Heard Ms. Saher Naqvi, learned counsel for the petitioners, Shri A.C. Nishad, learned Standing Counsel representing the State respondent nos. 1 to 5 as also Shri Ram Lakhan Deobanshi, learned counsel representing the respondent nos. 6/1 and 6/2.

The writ petition has been filed questioning the legality, propriety and correctness of the order dated 20.06.2026, passed by the Deputy Director of Consolidation, Fatehpur, in Revision as also the order dated 21.04.2017, passed by the Consolidation Officer, Sadar, District-Fatehpur, in proceedings under Rule 109-A (2) of the UPCH Rules.

Learned counsel for the petitioners has submitted that the petitioner nos. 1 and 2 and respondent nos. 6/1 and 6/2 are cousin brothers. The petitioners uncle namely Ismail Khan, was unmarried and had no legal heirs and the petitioners father namely Mehandi Hasan used to take care of Ismail Khan. Ismail Khan is stated to have executed Gift Deed on 31.01.1998 and 07.11.1998 in favour of the petitioners. He is stated to have also executed Will Deed in respect of his share on 07.11.1997 and also executed Sale Deeds dated 12.04.1988 and 16.04.1988 in favour of the petitioners. It is next submitted by the learned counsel for the petitioners that a mutation application was filed before the Assistant Consolidation Officer, Sadar, Fatehpur, for recording the name of the petitioners over the land purchased and gifted to them. The Assistant Consolidation

Officer on the basis of compromise passed orders dated 20.08.1988, 15.09.1988 and 07.10.1988, recording the name of the petitioners over the properties.

The respondent no. 6 preferred three Appeals against the aforesaid orders. The Settlement Officer Consolidation vide order dated 07.03.2009 allowed two Appeals being Appeal Nos. 1170 and 1171 and remanded the matter back to the Consolidation Officer for consideration afresh. After remand the Consolidation Officer vide order dated 21.04.2017 directed for deletion of the name of the petitioners from the Revenue records.

Aggrieved by the order dated 21.04.2017 the petitioners preferred an Appeal before the Settlement Officer Consolidation under Rule 109 (3) of the UPCH Rules which came to be allowed vide order dated 10.12.2018 and the order passed by the Consolidation Officer dated 21.04.2017 was set aside. Against the order dated 10.12.2018, passed by the Settlement Officer Consolidation, the respondent no. 6 stated to have preferred a Revision before the Deputy Director of Consolidation. The Deputy Director of Consolidation has allowed the Revision of the respondent no. 6 being of the view that the Appeal before the Settlement Officer Consolidation was not maintainable inasmuch as no Appeal lay against the order passed by the Settlement Officer Consolidation which was an order under Rule 109-A (1).

Learned counsel for the petitioners has invited the attention of this Court to the provisions of Rule 109-A to demonstrate that the order passed by the Consolidation Officer dated 21.04.2017 was an order passed under Rule 109-A (2) and in such view of the matter an Appeal lay before the Settlement Officer Consolidation under Rule 109-A (3) and the Deputy Director of the Consolidation committed manifest error of law in non suiting the petitioners on the ground that the Appeal was not maintainable.

Learned counsel for the contesting respondent nos. 6/1 and 6/2 has opposed the writ petition by submitting that the order passed by the Consolidation Officer dated 21.04.2017 was an order passed under Rule 109 (1). As the order merely approved the report of the Assistant

Consolidation Officer dated 07.11.2017 and as such no Appeal against the said order lay. Accordingly, it is prayed that the writ petition is liable to be dismissed at the threshold.

I have heard learned counsels for the parties and have given my anxious consideration to the rival submissions.

In order to appreciate the issues raised in the writ petition it would be apt to reproduce the Provisions of Rule 109-A:

> **109A.** [Section 52(2). - (1) Orders passed in cases covered by sub-section (2) of Section 52 shall be given effect to by the consolidation authorities, authorised in this behalf under sub-section (2) of Section 42. In case there be no such authority the Assistant Collector, incharge of the sub-division, the Tahsildar, the Naib-Tahsildar, the Supervisor kanungo, and the Lekhpal of the area to which the case relates shall, respectively, perform the functions and discharge the duties of the Settlement Officer, Consolidation, Consolidation Officer, the Assistant Consolidation Officer, the Consolidator and the Consolidation Lekhpal respectively for the purpose of giving effect to the orders aforesaid.
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> (2) If for the purpose of giving effect to any order referred to in sub-rule (1) it becomes necessary to reallocate affected chaks, necessary orders may be passed by the Consolidation Officer, or the Tahsildar, as the case may be, after affording proper opportunity of hearing to the parties concerned.
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> (3) Any person aggrieved by the order of the Consolidation Officer, or the Tahsildar, as the case may be, may, within 15 days of the order passed under sub-rule (2), file an appeal before the Settlement Officer, Consolidation, or the Assistant Collector incharge of the sub-division, as the case may be, who shall decide the appeal after affording reasonable opportunity of being heard to the parties concerned, which shall be final.
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> (4) In case delivery of possession becomes necessary as a result of orders passed under sub-rule (2) or sub-rule (3), as the case may be, the

provisions of Rules 55 and 56 shall, mutatis mutandis, be followed.]

[Added by Notification No. 437-CH/I-E-256-61, dated 25.3.1964.]

A perusal of the Provisions of Rule 109-A reflects that the orders passed by the Consolidation Authorities are to be given effect too under the said provisions. Sub clause 2 of the Rule 109-A reflects that if for the purpose of giving effect to any order referred to Sub Rule 1 is becomes necessary to reallocate the affected chaks necessary orders may be passed by the Consolidation Officer as the case may be after affording proper opportunity of hearing to the parties concerned. Sub Clause 3 of Rule 109-A provides for an Appeal against the order of the Consolidation Officer passed under Sub Rule 2.

It is thus clear that where it becomes necessary to reallocate affected chaks necessary orders may be passed by the Consolidation Officer or the Tehsildar as the case may be and Sub Rule 3 of Rule 109-A provides for an Appeal only against the order of Consolidation Officer passed under Sub Rule 2. It is necessarily implies that no Appeal against the order of the Consolidation Officer is provided in case the order passed can be given effect to without reallocation of Chaks. Appeal is also not provided against the order rejecting the application under Rule 109-A.

A perusal of the order dated 21.04.2017, passed by the Consolidation Officer, Sadar, Fatehpur, exercising powers under Rule 109-A of the UPCH Rules reflects that apart from approving the report of the Assistant Consolidation Officer dated 07.01.2017 Parvana and Amal Daramad has also been directed to be issued meaning thereby that the Chaks are required to be reallocated.

In such circumstances the Court is of the view that the view taken by the Deputy Director of Consolidation that the Appeal before the Settlement Officer Consolidation preferred by the petitioners against the order dated 21.04.2017 of the Consolidation Officer was not maintainable does not appear to be correct. Even otherwise the Court is further of the opinion that the Deputy Director of Consolidation was vested with wide powers under Section 48 of the Act to pass appropriate orders inasmuch as in exercise of powers under Section 48 of the CH Act the Deputy Director of

Consolidation can examine the legality, propriety and correctness of any order passed by the authorities subordinate to him. The Deputy Director of Consolidation thus has committed manifest error of law in following to exercise the said jurisdiction under Section 48 of the CH Act.

A Division Bench of this Court in case of ***Faujdar vs. DDC reported in 2006 (100) RD 462*** has taken a view that the Deputy Director of Consolidation can exercise Revisional jurisdiction under Section 48 against an Appealable order passed by the Consolidation Officer where no Appeal has been filed, the Revision filed by the petitioners was under Section 48 of the CH Act and in such circumstances the ends of justice would stand sub served if the order passed by the Deputy Director of Consolidation dated 20.06.2026 is set aside and the matter is remitted back to the Deputy Director of Consolidation to decide the Revision on merits after affording due opportunity of hearing to the parties concerned.

Accordingly, the writ petition is ***allowed***. The order dated 20.06.2026, passed by the Deputy Director of Consolidation, Fatehpur in Revision No. 134 of 2018, is hereby set aside and the matter is remitted back to the Deputy Director of Consolidation to decide the Revision on merits after affording due opportunity of hearing to the all parties concerned, strictly in accordance with law.

No order as to costs.

November 5, 2026
Deepak/

(Ashutosh Srivastava,J.)

Digitally signed by :-
DEEPAK KUMAR KUSHWAHA
High Court of Judicature at Allahabad