

AFR
Reserved

Case :- WRIT - B No. - 6303 of 2015

Petitioner :- Shabbar Husain

Respondent :- Dy. Director Of Consolidation Muzaffarnagar And Anr.

Counsel for Petitioner :- Ramesh Pundir, Smt. Rekha Pundir

Counsel for Respondent :- C.S.C., Santosh Srivastava, Smt. Karuna Srivastava

Connected with

Case :- WRIT - B No. - 4477 of 2018

Petitioner :- Gulsher And 2 Others

Respondent :- State Of U.P. And 18 Others

Counsel for Petitioner :- Santosh Kumar Srivastava, Karuna Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble M.C. Tripathi, J.

Hon'ble Siddhartha Varma, J.

(Delivered by Hon. Pradeep Kumar Singh Baghel, J.)

This is a reference to the Full Bench made at the instance of a learned Single Judge, who found contradictory views expressed in some of the decisions of this Court.

The question for determination is thus stated in the referring order:

“Whether the territorial jurisdiction to entertain/decide appeal or revision, against the order passed on the objection or appeal transferred outside the district will be at the transferred district or at the district where the subject matter of dispute/unit situates?”

The learned Single Judge found that there are two sets of opinion, which in his view were contradictory. The first set of the judgments are; **Darbari Lal Vs. Deputy Director of**

Consolidation and others, 1989 RD 304, Ram Das Rai Vs. Deputy Director of Consolidation and others , 1994 RD 62, and Yadram and others Vs. Deputy Director of Consolidation, 2013 (120) RD 429. The other set of judgments, which were found contradictory by the learned Single Judge, are; **Parshuram Vs. Deputy Director of Consolidation, Ballia and others, 2006 (100) RD 746,** and **Haider Ali Vs. State of U.P. through Consolidation Commissioner and others, 2012 (115) RD 695.**

The question that calls for determination is as to whether a revision under Section 48 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (for short the Act) would lie before the Deputy Director of Consolidation in whose jurisdiction holding (Unit) situates or before the Deputy Director of Consolidation in whose district the appeal was transferred.

Answer to the question is clearly discernible from the plain language of Section 48 of the Act read with Rule 111 of the Uttar Pradesh Consolidation of Holdings Rules, 1954 (for short the Rules).

Before we advert to the question, we may briefly set out the facts in the background. An objection under sub-section (2) of Section 9 of the Act was filed before the Consolidation Officer, Saharanpur-II. Both the parties were resident of the same village i.e. Gram Nanauta, Pargana Rampur, Tehsil Deoband, district Saharanpur. The Consolidation Officer decided the objection after furnishing opportunity to both the parties.

Dissatisfied with the order of the Consolidation Officer three separate appeals, being Appeal No. 501 (Mohd.Isha Vs. Jakira Begum & others), Appeal No.502 (Shabbar Husain Vs. Jakiya Begum & others) and Appeal No. 503 (Mohd. Isha Vs. Mohd. Shama & others), were preferred before the Settlement Officer of Consolidation, Saharanpur. One of the parties preferred Writ Petition No. 45463 of 2006 for the transfer of appeals to some other district. This Court

vide order dated 04.09.2006 transferred the appeals to Settlement Officer of Consolidation, Muzaffarnagar.

On 22.05.2008 the Settlement Officer of Consolidation, Muzaffarnagar allowed the appeals and quashed the order passed by the Consolidation Officer, Saharanpur.

Aggrieved by the order of the Settlement Officer of Consolidation, Muzaffarnagar two separate revisions were filed before the Deputy Director of Consolidation, Muzaffarnagar. One of the respondents in the revision, Shabbar Husain, filed an objection before the Deputy Director of Consolidation, Muzaffarnagar that the Deputy Director of Consolidation, Muzaffarnagar does not have jurisdiction because the holding/unit is situated in district Saharanpur, therefore, the revision would lie before the Deputy Director of Consolidation, Saharanpur and not in district Muzaffarnagar. The said objection of Shabbar Husain was rejected by the Deputy Director of Consolidation, Muzaffarnagar on 29.09.2014.

The order of the Deputy Director of Consolidation, Muzaffarnagar dated 29.09.2014 was challenged by Shabbar Husain by filing a writ petition (Writ Petition No.6303 of 2015) before this Court. The parties relied on the judgments referred above. The learned Single Judge found that there are conflicting opinions on the point by this Court, hence, he has referred this matter to the Full Bench vide order dated 03.07.2015.

We have heard Sri Ramesh Pundir, learned counsel for the petitioner, Sri Neeraj Tripathi, learned Additional Advocate General, Sri Manu Ghildyal, learned Standing Counsel, Sri Santosh Srivastava and Mrs. Karuna Srivastava, learned counsel for the respondents.

To answer the aforesaid question, it will be necessary to have the benefit of relevant sets of Act and Rule governing the subject. At this stage it would be advantageous to reproduce Sections 3(4), 3(4-A), 4, 11, 42 and 48 of the Act.

“3(4) *'Director of Consolidation' means the*

person appointed as such by the State Government to exercise the powers and perform the duties of the Director of Consolidation under this Act or the rules made thereunder and shall include an Additional Director of Consolidation and a Joint Director of Consolidation.

3(4-A) *'Deputy Director, Consolidation' means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director of Consolidation and Assistant Director of Consolidation.*

4. Declaration and notification regarding consolidation.— *(1) (a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, make a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation -*

(i) to enter upon and survey, in connection with rectangulation or otherwise, and to take levels of any land in such area;

(ii) to fix pillars in connection with rectangulation, and;

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under clause (a) to be given at convenient places in the said district or part thereof.

(2)(a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under sub-section (1) or in any other area, it may issue a notification to this effect.

(b) Every such notification shall be published in the Gazette and in a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such

manner as may be considered appropriate.

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.*

42. Officers and authorities. - (1) *The State Government may appoint such authorities and officers, and for such areas, as may be necessary, to give effect to the provisions of this Act.*

(2) *The District Deputy Director of Consolidation may, subject to such directions as the Director of Consolidation may issue from time to time, demarcate the circles to be assigned to Consolidation Lekhpals, Consolidators and other authorities appointed for the district under sub-section (1).*

48. Revision and reference. - (1) *The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.*

(2) *Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).*

(3) *Any authority subordinate to the Director of*

Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under subsection (1).

Explanation. -(1) For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2) - For the purposes of this section the expression 'interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

Explanation (3). - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence.

In exercise of the powers conferred upon it under Section 54 of the Act, the State Government has framed the Rules i.e. the Uttar Pradesh Consolidation of Holdings Rules, 1954. Rule 65 of the Rules deals with the transfer of cases. Rule 111 of the Rules provides the procedure to file an application under Section 48 of the Act. Rules 65 and 111 reads as under:

“65. Section 54. - (1) The Settlement Officer, Consolidation, may withdraw any case from the file of any Consolidation Officer or Assistant Consolidation Officer subordinate to him and may refer the same for disposal to any other Consolidation Officer or Assistant Consolidation Officer competent to deal therewith.

(1A) The Officer before whom appeals, revisions or references under the provisions of the Act or these rules are instituted may transfer any case instituted or pending before him to any other officer empowered to hear and decide such case, or recall case pending before any other officer

from the file of that officer to his own file. The District Deputy Director of Consolidation of a district where Joint/Deputy/Assistant Director of Consolidation is posted may call for record of any revision or case pending before such officer for disposal and may transfer it to such officer if he is unable to decide it for some reason.

(2) The Director of Consolidation may withdraw any case from the file of any Settlement Officer, Consolidation, and refer the same to any other Settlement Officer Consolidation for disposal.”

“111. Sections 48 and 54. - An application under Section 48 of the Act shall be presented by the applicant or his duly authorised agent to the Joint/Deputy/Assistant Director of Consolidation, nominated by the Director of Consolidation, Uttar Pradesh for the District or Settlement Officer (Consolidation) unit concerned or failing posting of any such Joint/Deputy/Assistant Director of Consolidation in the district, to the District Deputy Director (Consolidation) within 30 days of the order against which the application is directed. It shall be accompanied by copy of the judgment or order in respect of which the application is preferred. Copies of judgment or order, if any, of other subordinate authorities in respect of dispute shall also be filed alongwith the application.”

As can be seen from the bare reading of the statutory provisions referred above, the Director of Consolidation may call for and examine the record of any case or proceeding taken by any subordinate authority. The word 'subordinate' in the section assumes significance. It clearly denotes that the revisional court can correct the order of its subordinate authority. Therefore, the Deputy Director of Consolidation of the district, where the case was transferred can correct the order of the Settlement Officer, Consolidation, who is his subordinate authority. In case revision is filed in the district where the holding (unit) situates, the revisional authority, in our opinion, has no jurisdiction to correct the judgment of the appellate authority of

another district, who is not his subordinate authority.

It is pertinent to mention that the State Government is empowered to delegate its power to any officer or authority. It can also confer power of the Director of Consolidation on any officer or authority. The State Government exercising its power under the said section has delegated the power of the Director of Consolidation upon the Deputy Director of Consolidation of each district. Therefore, the Deputy Director of Consolidation cannot exercise his power beyond his delegated authority. It is only the Director of Consolidation, who has power to call for the record of any subordinate authority. Sub-section (4) of Section 3 of the Act defines the Director of Consolidation and sub-section (4-A) of Section 3 of the Act separately defines the Deputy Director, Consolidation. Though the Act does not spell out the power and duties of various authorities but a careful reading of the Rules shows that the power of each authority under the Act has been enumerated in the Rules. The scheme of the Act has been designed to redress of all the grievances of the tenure holder in respect of scheme of consolidation in a unit. Rule 111 of the Rules amplifies the said power by specifically providing that an application under Section 48 of the Act shall be presented to Joint/Deputy/Assistant Director of Consolidation nominated by the Director of Consolidation. Thus, it is clear that a Deputy Director of Consolidation has power only to correct the order of his subordinate authority, i.e., the Settlement Officer, Consolidation or the Consolidation Officer.

Regard may be had to the fact that before the learned Single Judge it was submitted that Rule 111 of the Rules provides that an application under Section 48 of the Act shall be presented to the Joint/Deputy/Assistant Director of Consolidation, nominated by the Director for the District or Settlement Officer (Consolidation) where the unit concerned situates. It was urged that the unit has been defined under Section 3(11A) of the Act, which reads as under:

(11A) 'Unit' means a village or part thereof, and where the Director of Consolidation so notifies by publication in the Official Gazette, two or more villages or parts thereof, for which a single scheme of consolidation is to be framed."

On the basis of said definition it was sought to be urged that the words 'District' and 'Unit' mentioned in the Rule clearly indicate that only in the district where subject matter of dispute (Unit) situates, revision has to be filed. The said submission was raised on the premise of the law laid down in the case of **Haider Ali (supra)** and **Parshuram (supra)**.

Now we shall consider the cases which have been found to be conflicting.

In **Haider Ali (supra)** the learned Single Judge in his short judgment has relied on the law laid down in the case of **Parshuram (supra)**.

In **Parshuram (supra)**, the same issue fell for consideration that whether revision would lie before the Deputy Director, Consolidation, where the unit situates, or before the Deputy Director of Consolidation of a district where the matter was transferred. The Court went elaborately into all implications of statutory provisions and it followed the law laid down in the case of **Darbari Lal (supra)**.

We find that the case of **Darbari Lal (supra)** is the root authority on the issue. In all subsequent decisions said case has been followed.

In **Darbari Lal (supra)** the holding was in village Kodari Nadhogarh, district Jalaun. An objection was filed under Section 9 (2) of the Act. The Consolidation Officer decided the objection. The aggrieved party preferred an appeal before the Settlement Officer of Consolidation, Jalaun at Orai. One of the parties moved an application for transfer of the appeal. The appeal was transferred to the court of Settlement Officer of Consolidation, Kanpur. The appeal

was dismissed. Against the order of the Settlement Officer of Consolidation a revision was filed under Section 48 of the Act in the court of Deputy Director of Consolidation, Jalaun at Orai. The opposite party filed an objection that the Deputy Director of Consolidation, Jalaun at Orai has no jurisdiction since the appeal was decided by the Settlement Officer of Consolidation, Kanpur, hence, the revision would lie before the Deputy Director of Consolidation, Kanpur. The objection filed by the opposite party was rejected by the revisional court vide its order dated 20.01.1987. The said order was challenged in the writ petition under Article 226 of the Constitution. This Court after considering sub-section (4-A) of Section 3, Sections 4 and 48 of the Act came to hold that the Deputy Director of Consolidation, Jalaun had no jurisdiction to entertain the revision against the order of the appellate authority/Settlement Officer Consolidation, Kanpur. The following passage of the judgment is in this regard apposite:

“Section 4 of the U.P. Consolidation of Holdings Act, 1953 defines 'Director of Consolidation' which means the person appointed as such by the State Government to exercise the powers and perform the duties of the Director of Consolidation under this Act or the rules made thereunder and shall include an Additional Director of Consolidation and a Joint Director of Consolidation. Section 3(4-A) defines, 'Deputy Director of Consolidation' which means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director of Consolidation and Assistant Director of Consolidation.

In view of the above definitions and Rule 111, I think that the contentions raised on behalf of the petitioner have force. The said Rule of the Act emphasises the officers of the Director as competent authorities to entertain the revision petition. Therefore, in the facts and circumstances of the present case I think that the revision petition against the order of the appellate authority of Kanpur should have been preferred in

the district of Kanpur. The reason of the revisional court for entertaining the revision petition on the ground that only appeal had been transferred to Kanpur for decision and no other proceedings for ever does not appear to me as correct. It is well known that the order of the original officer merges in the order of the appellate authority, therefore, it was incumbent upon the revisional court to have addressed itself to the question whether the appellate authority was subordinate to the revisional court in the facts and circumstances of the present case. To my mind, the appellate authority was of District Kanpur, therefore the revisional court of Jalaun cannot have jurisdiction to look into the illegality, irregularity or impropriety committed by the appellate authority of Kanpur. The impugned order of the revisional court dated January 20, 1987 appears to me suffering from potent error of law in view of the above quoted provisions of the Consolidation Act and Rules.”

The judgment of **Darbari Lal (supra)** was followed in the case of **Parshuram (supra)**. In the said case the dispute relates to Khata No. 245 situate in village Sikandarpujr, District Ballia. The Consolidation Officer allowed the objection filed by one of the parties under Section 9-A(2) of the Act. Dissatisfied with the order of the Consolidation Officer an appeal was preferred before the Settlement Officer Consolidation, Ballia. Later, on an application filed by one of the parties the appeal was transferred to the Settlement Officer Consolidation, District Mau and it was decided on 01.02.2006. The aggrieved party preferred a revision before the Deputy Director of Consolidation, Ballia against the order passed by the Settlement Officer Consolidation, Mau.

An objection was raised regarding maintainability of the revision before the Deputy Director of Consolidation, Ballia. The said objection was rejected on 10.03.2006. The order was challenged by way of a writ petition under Article 226 of the Constitution. This Court followed the decision of **Darbari Lal (supra)** and came to hold that the Deputy Director of Consolidation, Mau will have the

jurisdiction and not the Deputy Director of Consolidation, Ballia where the unit and holding situates.

In the case of **Haider Ali (supra)** the holding situates in district Gorakhpur. An appeal was filed against the order of the Consolidation Officer before the Settlement Officer of Consolidation, Gorakhpur but the same was transferred to district Maharajganj. Against the order of the appellate authority a revision was filed before the Deputy Director of Consolidation, Maharajganj. One of the parties Haider Ali preferred a writ petition seeking a writ of mandamus to transfer the said revision to the Deputy Director of Consolidation, Gorakhpur where the holding situates. The learned Single Judge in his short judgment has held that the law is settled that the revision lies before the Deputy Director of Consolidation where the appeal has been originally filed and not before the Deputy Director of Consolidation of the transferee district. The judgment reads as under:

“Heard learned counsel for the petitioner.

2. An appeal under Section 11 of the U.P. Consolidation of Holdings Act, 1953 was pending in relation to the holding in dispute in the District of Gorakhpur. The holding is also situate within the District of Gorakhpur. The appeal was transferred for decision to the appellate authority in another District, namely, District of Maharajganj. The appeal has been decided and has gone adverse to the petitioner. The petitioner has now filed a revision before the Deputy Director of Consolidation, Maharajganj. The prayer made in this petition is that a mandamus be issued to transfer the said revision to the Deputy Director of Consolidation Gorakhpur.

3. Having heard learned counsel for the petitioner and having perused the judgment of this court in the case of Parshuram Vs. Deputy Director of Consolidation, Ballia & others, reported in 2006 RD 746, the law is now settled that a revision would lie before the Deputy Director of Consolidation of the district where the appeal had been originally filed and not before the Deputy Director of Consolidation of

the transferee district.

4. *Accordingly, the petitioner ought to have filed his revision before the Deputy Director of Consolidation, Gorakhpur which has not been done and the revision has been wrongly preferred before the Deputy Director of Consolidation, Maharajganj. In such a situation, the writ petition is consigned to records with liberty to the petitioner to approach the Deputy Director of Consolidation, Gorakhpur.*

Ordered accordingly.”

It is worthwhile to mention that though the learned Single Judge has relied upon the judgment in the case of **Parshuram (supra)** but the finding has been recorded contrary to the law laid down in the said case of **Parshuram (supra)**.

Later, this contradiction was pointed out before the learned Single Judge by way of review/recall application. The learned Single Judge on the said application has passed the following order:

“Heard learned counsel for the applicant Sri Ashish Kumar Srivastava.

This application has been filed after serving a copy of the same on Sri Amit Kumar Singh learned counsel for the petitioner. The matter has been taken up in the revised call. None appears on behalf of the petitioner.

This application has been filed for recall of the judgment dated 30.11.2011 on the ground that the direction issued appears to be contrary to the law laid down in the case of Parashuram Vs. Deputy Director of Consolidation, Ballia and others, 2006 RD Pg. 746, particularly paragraph 8 thereof. Prima facie, it appears to be correct.”

From the order passed on the recall application it is evident that the learned Single Judge was prima facie satisfied that the earlier order is contrary to the law laid down in the **Parshuram (supra)**, on which he has placed reliance.

This contradiction in the case of **Haider Ali (supra)** has also been noticed in the case of **Yadram (supra)** in the following terms:

“9. So far as the decision rendered in Haider Ali (supra) is concerned, learned Single Judge of this Court taking note of the decision in Prashuram Vs. Deputy Director of Consolidation, Ballia, has held that revision would lie before the DDC of the district where the appeal had been originally filed and not before the DDC of the transferee district. It may be noticed that later on the learned Single Judge has reviewed his judgment and stayed all further proceedings pursuant to the judgment of this Court dated 30.11.2011 taking note of paragraph 8 of the judgment in Prashuram (supra).”

In the said case also the learned Single Judge has followed the judgment of **Darbari Lal (supra)** and **Parshuram (supra)**. The relevant part of the judgment reads as under:

“11. Following the judgment in Darbari Lal (supra) another learned Single Judge of this Court has also taken the same view in Prashuram (supra). In Prashuram (supra) all other contrary decisions have been considered and distinguished and to my knowledge this judgment still holds the field. So far as judgment in Haider Ali (supra) is concerned, as has been noticed the learned Single Judge himself has stayed the further proceedings pursuant to the judgment rendered in that case.”

In the case of **Ram Das Rai (supra)** the fact was that the Consolidation Commissioner on 28.01.1993 transferred the appeal from the court of Settlement Officer Consolidation, Deoria to the Court of Settlement Officer Consolidation, Gorakhpur. The said appeals were assigned to one Ram Chandra Yadav, the Settlement Officer, Consolidation, Gorakhpur, who was directed to hold a camp at Deoria from 15.02.1993 to 22.02.1993 and decide the aforesaid appeals. In compliance thereof Sri Ram Chandra Yadav, Settlement

Officer, Consolidation, Gorakhpur held his camp at Deoria and decided the appeals by an order dated 22.02.1993 at Deoria. Against the order of the appellate authority 13 revisions were filed before the District Deputy Director of Consolidation, Deoria. A preliminary objection was raised regarding the maintainability of the revision before the Deputy Director of Consolidation, Deoria amongst other grounds that since the Settlement Officer, Consolidation, Gorakhpur has decided the appeal, hence the Deputy Director of Consolidation, Gorakhpur has the jurisdiction to decide the revision and not the Deputy Director of Consolidation, Deoria. The said objection was rejected by the Deputy Director of Consolidation, Deoria vide order dated 17.09.1993, which was challenged by **Ramdas Rai (supra)**. This Court referring the judgment of **Darbari Lal (supra)** held that Section 48 of the Act has used the words 'subordinate court' which means a judicial subordination. The Settlement Officer, Consolidation is subordinate to the Director of Consolidation, which term includes the Deputy Director of Consolidation, hence the Deputy Director of Consolidation while exercising the power of Director of Consolidation under Section 48 of the Act is competent to entertain and decide the revision. The relevant part of the judgment reads as under:

“5. It is evident that under Section 42(1) of the Act the State Government is empowered to appoint authorities/Officers with a view to giving effect to the provisions of the Act for such area as may be necessary. The powers vested in the District Deputy Director of Consolidation to demarcate the circle to be assigned to the consolidation authorities appointed for the district under Sub-Section (2) of Section 42 of the Act is subject to such direction as the Director of Consolidation may issue from time to time. Section 44 of the Act empowers the State Government to confer powers of a Settlement Officer Consolidation to any officer or authority. It is not disputed that Sri Ram Chandra Yadav, the Settlement Officer, Consolidation, Gorakhpur had been conferred with the power of Settlement Officer Consolidation, for the purposes of the

Act. In my opinion the direction given by the Consolidation Commissioner vide order dated 28.1.1993 to Sri Ran Chandra Yadav, the Settlement Officer, Consolidation, Gorakhpur to decide the appeals specified in the order by holding a camp at Deoria, is a direction within the meaning of Sub-section (2) of Section 42 of the Act. Sri Ram Chandra Yadav though appointed as Settlement Officer Consolidation, Gorakhpur would be deemed to be the Settlement Officer Consolidation, Deoria for the purposes of the appeals specified in the Consolidation Commissioner's order dated 28.1.1993. The argument of the learned counsel that Sri Ram Chandra Yadav, the Settlement Officer, Consolidation having been conferred powers of Settlement Officer Consolidation for the purposes of the Act only in so far as the Gorakhpur district is concerned has therefore no merits. The Revision against his order could be preferred before the District Deputy Director of Consolidation, Deoria. Section 48(1) of the Act read with Rule 111 of the Rules made under the Act, no doubt comprehends that an application (revision) under Section 48 of the Act would be presented to the District Deputy Director of Consolidation against the order passed by an authority subordinate to the District Deputy Director of Consolidation. But a perusal of Sub-Section (4) and (4-A) of Section 3 and Section 48 (1) of the Act makes it abundantly clear that the District Deputy Director of or Deputy Director of Consolidation discharge the function of the Director of Consolidation as delegated by virtue of Section 44(ii) of the Act. That apart the power under Section 48 of the Act being in the nature of judicial power, the term 'subordinate authority' occurring in the Section means judicial subordination. Explanation (1) to the Section makes it crystal clear that Settlement Officer Consolidation is subordinate to the Director of Consolidation (which term includes District Deputy Director of Consolidation) for the purposes of the Section. In my opinion, therefore, the Deputy Director of Consolidation, Deoria while exercising the power of Director of Consolidation under Section 48 of the Act is competent to entertain and decide the revisions preferred against the order passed by the Settlement Officer Consolidation, Gorakhpur

Camp at Deoria. The Consolidation Commissioner while transferring the appeals to the court of Sri Ram Chandra Yadav, the Settlement Officer, Consolidation, Gorakhpur had put a rider that the said Settlement Officer Consolidation would hold his court and decide the appeals at Deoria and not at Gorakhpur. Accordingly the revisions preferred before the District Deputy Director/Deputy Director of Consolidation at Deoria against the appellate orders passed by the Settlement Officer Consolidation, Gorakhpur, Camp at Deoria were quite competent.”

The conspection of the legal position that emerges from the aforesaid decisions are these:

- (1) The State Government has power to appoint authorities and officers for the respective areas, as may be necessary, to give effect to the provisions of the Act. In district the District Deputy Director of Consolidation is vested with the powers to demarcate the circles in his district and assign the duties and functions to the concerned officers in terms of the provision of the Act, the Rules and the directions issued from time to time by the Director of Consolidation.
- (2) The State Government may delegate its power to any officer or authority. It may also confer powers of other authorities and officers on any officer or authority.
- (3) The power under Section 48 of the Act is akin to judicial power, hence, in view of Explanation (1) of Section 48 of the Act, the Settlement Officers, Consolidation Officers, Assistant Consolidation Officers, Consolidators and Consolidation Lekhpals are subordinates to the Director of Consolidation. Since power of the Director of Consolidation has been delegated to the Deputy Director of Consolidation to exercise his powers under Section 48 of the Act, they become subordinate officer to the Deputy Director of Consolidation.
- (4) In view of the above, an application (revision) would lie before a Deputy Director of Consolidation against an order passed by his

subordinate authorities.

After careful consideration of the submissions of the learned counsel for the parties and the judgments mentioned by the learned Single Judge in the referring order, we find that there is no contradiction in the judgments discussed above where the same law has been laid down. We are in respectful agreement with the law laid down in **Darbari Lal (supra)**, which has been followed in the subsequent judgments.

Accordingly, we answer the reference in the following terms:

If an appeal or objection is transferred outside of the district, an application (revision) under section 48 of the Act would lie before the Deputy Director of Consolidation of the same District, where the matter was transferred and not in the District where holding or unit situates.

The reference is answered accordingly.

Let the matter be placed before the appropriate Bench.

Order Date :-2.4.2019

MAA/-