



2026:AHC:130195

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 5744 of 1978

Mithai Lal And Others

.....Petitioner(s)

Versus

D.D.C. And Others

.....Respondent(s)

Counsel for Petitioner(s)

:

Counsel for Respondent(s)

:

A.F.R.

Court No. - 37

Reserved on 29.4.2026

Delivered on 1.7.2026

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Arvind Srivastava, learned counsel for the petitioners and learned Standing Counsel for the State respondents.

2. Mr. Yogendra Pati Tripathi, learned counsel, has appeared before the Court at the time of disposal of delay condonation / restoration application as well as substitution application on 01.04.2026, but on the subsequent dates, Sri Yogendra Pati Tripathi had not appeared before the Court. Accordingly, the matter was heard finally in presence of learned counsel for the petitioners as well as learned Standing Counsel for the State respondents, and judgment was reserved on 29.04.2026.

3. Brief facts of the case are that the dispute relates to Chak No. 70, situated in Village Gursardi, Tehsil and District Mirzapur. Respondent No. 4, Mathura Prasad Pandey (dead) now represented by his legal heirs, was recorded Bhumidhar of the aforementioned Chak No. 70. Respondent No. 4, Mathura Prasad Pandey applied for permission before the Settlement Officer of Consolidation under Section

5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'the U.P. C.H. Act') to transfer the Chak No. 70 in favour of the petitioners (dead) now represented by their legal heirs. The Settlement Officer of Consolidation granted the permission on 30.06.1972 with the condition that the transfer shall be made up to 29.07.1972. Since there was a restriction on the transfer of agricultural land at the relevant point of time on account of legislative changes, accordingly, the registered agreement to sell was executed between the parties on 15.07.1972 and possession was delivered to the petitioners. As soon as the restriction of transfer of agricultural land was lifted, the registered sale deed was executed by respondent No. 4 in favour of the petitioners on 16.02.1973. In pursuance of the execution of the sale deed in favour of the petitioners on 16.02.1973, an application for mutation was filed before the Consolidation Officer. In the aforementioned proceeding, respondent No. 4 filed an objection that mutation should be refused as the sale deed was executed after 29.07.1972, which was the condition, mentioned in the order of permission granted by the Settlement Officer of Consolidation under Section 5(1)(c)(ii) of the U.P. C.H. Act. The Consolidation Officer, vide order dated 10.05.1977, rejected the application / objection of the petitioners for recording of his name on the basis of the sale deed dated 12.02.1973 and maintained the earlier entry of the chak in question. Petitioners challenged the order of the Consolidation Officer dated 10.05.1977 by way of appeal under Section 11 (1) of the U.P.C.H. Act before the Settlement Officer of Consolidation. The aforementioned appeal was heard and dismissed by the Assistant Settlement Officer of Consolidation vide order dated 15.09.1977. Petitioners challenged the order of the consolidation authorities before the Deputy Director of Consolidation under Section 48 of the U.P.C.H. Act, which was heard and dismissed by the Deputy Director of Consolidation vide order dated 05.07.1978.

Hence, this writ petition on behalf of the petitioners for the following relief:

"(a). Issue account of certiorari quashing the ordrs dated 5.7.1977, 15.9.1977 and 10.5.1977 passed by respondent nos.1 to 3 respectively."

4. This Court admitted the writ petition on 20.7.1978 and stayed the dispossession of the petitioners from the land in dispute.

5. In pursuance of the order of this Court dated 20.7.1978, parties have exchanged their pleadings.

6. Learned counsel for the petitioners submitted that there was no necessity to get permission to transfer the complete chak comprising of a compact holding even then, petitioners applied for permission under Section 5 (1) (c) (ii) of the U.P.C.H.Act by way of abundant caution, accordingly, permission was granted by the Settlement Officer of Consolidation with the condition that the transfer shall be made up to 29.7.1972. He submitted that there was a restriction on transfer at the relevant point of time, accordingly, instead of execution of a sale deed, a registered agreement to sell was executed between the parties on 15.7.1972 and possession of the chak was delivered in favour of the petitioners. He submitted that as soon as the restriction on transfer was lifted, a registered sale deed was executed by respondent no. 4 himself on 16.2.1973, as such, respondent no. 4 cannot object to the mutation of the names of the vendees over the chak in dispute. He further submitted that the object of permission under Section 5 (1) (c) (ii) of the U.P.C.H.Act was to see that the transfer did not result in fragmentation of holdings, and in the instant case, there was a transfer of the complete chak no. 70 in favour of the petitioners, as such, there was no fragmentation of holdings at all. He submitted that in view of the restriction on transfer at the relevant point of time and the execution of the sale deed on 16.2.1973 as

soon as restriction on transfer was lifted is sufficient grounds for the execution of the sale deed after the time period fixed by the Settlement Officer of Consolidation under Section 5 (1) (c) (ii) of the U.P.C.H. Act. He placed reliance upon the following judgments of this Court in order to demonstrate that if a sale deed has been executed after the time period fixed by the Settlement Officer of Consolidation under Section 5 (1) (c) (ii) of the U.P.C.H. Act it cannot be held to be void.

1. 1996 (87) RD 544 Lalta Prasad Srivastava vs. IXth Additional District Judge, Agra.

2. 1997 (88) RD 285 Smt. Sita Devi vs. Deputy Director of Consolidation, Jaunpur and others

3. 2018 (138) RD 685 Surya Narayan vs. Deputy Director of Consolidation

7. On the other hand, learned standing counsel for the State respondents submitted that there is no illegality in the exercise of jurisdiction by consolidation authorities, as the sale deed was executed by respondent no. 4 in violation of the condition mentioned in the order of permission granted by the Settlement Officer of Consolidation under Section 5(1)(c)(ii) of the U.P.C.H. Act. He submitted that all three consolidation authorities have recorded concurrent findings; as such, there is no scope for interference against the impugned judgments passed by the consolidation authorities. He further submitted that the argument advanced by learned counsel for the petitioners that possession was transferred to the petitioners on 15.7.1972 in pursuance of the registered agreement to sell executed by respondent no. 4 cannot be accepted, as there is no document which demonstrates that possession was transferred to the petitioners. He further submitted that the argument advanced by learned counsel for the petitioners that complete chak

was transferred by respondent no. 4 in favour of the petitioners is also incorrect as such, permission was very much necessary for making transfer during consolidation operations. He further submitted that no interference is required in this matter and the writ petition is liable to be dismissed.

8. I have considered the arguments advanced by learned counsel for the petitioners, learned standing counsel for the State respondents, and perused the record.

9. There is no dispute about the fact that respondent no. 4 was the recorded owner of Chak No. 70 and respondent no. 4 had applied for permission to transfer Chak No. 70 in favour of the petitioners. There is also no dispute about the fact that the Settlement Officer of Consolidation granted permission on 30.6.1972 under Section 5(1)(c)(ii) of the U.P.C.H. Act in favour of respondent no. 4 to execute the sale deed of Chak No. 70 in favour of the petitioners up to 29.7.1972. There is also no dispute about the fact that the sale deed was actually executed on 16.2.1973 by respondent no. 4 in favour of the petitioners. There is also no dispute about the fact that an application for mutation was filed on behalf of the petitioners which has been rejected by the Consolidation Officer on the ground that the sale deed executed on 16.2.1973 is void, as the time limit for execution of the sale deed was only up to 29.7.1972. There is also no dispute about the fact that the appeal under Section 11(1) of the U.P.C.H. Act and the revision under Section 48 of the U.P.C.H. Act filed by the petitioners have also been dismissed by the Assistant Settlement Officer of Consolidation and Deputy Director of Consolidation.

10. In order to appreciate the controversy involved in the matter, perusal of Section 5(1)(c)(ii) of the U.P.C.H. Act will be relevant, which is as under:

"5.Effect of notification under Section (4)

(c) notwithstanding anything contained in the U.P.Zamindari Abolition and Land Reforms Act, 1950, no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

.....
(ii). transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area."

11. The aforesaid Section 5(1)(c)(ii) of the U.P.C.H. Act has been omitted by U.P. Act No. 30 of 1991 w.e.f. 19.2.1991. In view of the aforesaid omission of Section 5(1)(c)(ii) of the U.P.C.H. Act, there is no necessity for taking permission for making transfer during consolidation operations with effect from 19.2.1991, but in the instant matter execution of sale deed was made in the year 1973 in pursuance of the permission granted in the year 1972, as such, the instant matter will be examined in the light of the provisions of Section 5(1)(c)(ii) of U.P.C.H. Act, which was existing in the year 1972-73.

12. In order to adjudicate the controversy involved in the matter, it will be necessary to examine the ratio of law laid down by this Court in the case of **Lalta Prasad Srivastava (supra)**, in which this Court, while considering the provision contained under Section 5(1)(c)(ii) of U.P.C.H. Act, has held that the invalidity of a transfer resulting in the absence of prior permission as provided under Section 5(1)(c)(ii) of the U.P.C.H. Act does not per-se render the transaction void or legally ineffective and the invalidity is curable. Paragraphs No. 28, 29, and 30 of the judgment rendered in **Lalta Prasad Srivastav (supra)** will be relevant for perusal, which are as under:

"28. A Full Bench of this Court in its decision in the case of Smt. Ram Rati and others v. Gram Samai. Jehwa and others reported in A. I. R. 1974 Allahabad 106 had clarified that the ban

envisaged under clause (ii) of Section 5 of U. P. Consolidation of Holdings Act was intended to prevent fragmentation of holdings and as such it was placed only on a transfer of a part of the holding. There could be no objection to the transfer of the holding as a whole because it would not involve fragmentation but would involve only a change in ownership. The Full Bench observed that the scheme underlying the Act was to consolidate agricultural holdings and to prevent their further fragmentation for which the said provision had been made. It is also observed that it was not the intention to restrict the right of an owner to deal with his property by way of sale, exchange or transfer except to the extent that the necessary to carry out the objects of the Act. The Full Bench further observed that the expression any holding occurring in clause (i) of S. 5 (1) (c) of the act does not include the whole holding so that it is not necessary to obtain the permission of Settlement Officer (Consolidation) for the transfer of the holding as a whole.

29. It seems to me that the invalidity of a transfer resulting in the absence of the prior permission as envisaged under Section 5(1) (c) (i) of the U. P. Consolidation of Holdings Act does not per se render the transaction void or legally ineffective. The invalidity is curable.-Considering the policy and the object behind the aforesaid provisions, this invalidity can be cured before the finalisation of the provisional consolidation scheme. It is obvious that to begin with the Settlement Officer (Consolidation) had granted the permission which was to remain effective for thirty days but considering that the sale had been executed after the period provided for in the order passed in the year 1977, the Settlement Officer (Consolidation) again granted the permission in March 1978 extending the duration of the earlier permission. The invalidity if any, therefore, stood cured as it is no body's

case that the provisional consolidation scheme had attained finality by the date of permission which had been granted for the second time.

30. In the aforesaid view of the matter the transfer in question could not be held to be void or non-est being legally ineffectual or without any authority of law."

13. This Court, in the case of **Smt. Sita Devi (supra)**, has held that a sale deed executed beyond the period fixed in the permission order cannot be held to be void. Paragraph No. 6 of the judgment rendered in **Smt. Sita Devi (supra)**, for perusal, which is as under:

"6. In case the permission is granted to execute the sale deed within a specified period and it has not been executed within that period but the vendees indicate the circumstances on account of which the delay occurred and if it is not on account of their conduct, the sale deed executed after the period fixed for its execution cannot be held to be void for want of permission as provided under Section 5(1) (c) of the Act. The intention of the legislature was that the sale deed should be executed with the permission of the Settlement Officer Consolidation so that the consolidation proceedings should not be jeopardised in the carving of chaks. In Lalji v. Joint Director of Consolidation and others, it was held that the purpose of grant of permission by the Settlement Officer Consolidation to the proposed transfer of the land under Section 5(1) (c) is that the transfer does not have adverse effect on the consolidation scheme. Respondent No.1 has found that the vendees were not in any way guilty of laches. The sale deed shall be obtained by them cannot be treated as invalid."

14. In the case of **Surya Narayan (supra)**, it has been held that in case the whole land is transferred, there is no necessity for taking permission from the Settlement Officer of Consolidation. Paragraphs 21 to 26 of the judgment rendered in **Surya Narayan (supra)** will be necessary, which are as under:

"21. From the above discussion, it is quite clear that for transfer of part of the land, the permission from the Settlement Officer, Consolidation is required as per Section 5 (c) (ii) of the Act. In case whole land is transferred, then there is no necessity for taking the permission from the Settlement Officer, Consolidation. The permission has been obtained by the respondent-5 from the Settlement Officer, Consolidation in the present case on 31.1.1973 and accordingly, the registered sale-deed was executed by the respondent-5 in favour of the petitioners. Therefore, the sale-deed has been executed in accordance with the permission granted by Settlement Officer, Consolidation.

22. So far as the contention of the learned counsel for the petitioner that the registered instrument cannot be ignored in the mutation proceeding and for that purpose, suit has to be filed for cancellation of the said instrument. Here the statute provides that permission has to be obtained in respect of the transfer of any part of the holding falls within consolidation area and in absence of the said permission, the registered instrument rendered void and in such circumstances, there is no necessity for filing any suit for cancellation of sale-deed.

23. So far as the question that the present sale-deed in question has been executed by the respondent-5 in favour of the petitioners in order to evade the payment of loan alleged to have taken from the Society, it is clear from the record that the award as well as sale-deed has been executed on the same day and prior to sale-deed, 20 times land revenue has been deposited by the respondent-5, even he applied for obtaining the permission from the Settlement Officer, Consolidation and in such circumstances, it cannot be said that the sale-deed has been executed by the respondent-5 in order to evade the payment of loan and to render the award ineffective. If any award is passed against the respondent-5 under any statute that has to be executed in accordance with law even in absence of the land, which has been sold by the respondent-5.

24. All the Consolidation Authorities have committed illegality

while holding that the sale-deed has been executed contrary to the permission granted by the Settlement Officer, Consolidation. The provisions of Section 5 (c) (ii) of the Act as stood prior to amendment by U.P. Act No. 34 of 1974 has totally been ignored by them.

25. The writ petition deserve to be allowed and the impugned orders dated 23.7.1979, 25.10.1975 and 15.9.1973 passed by the Deputy Director of Consolidation, Deoria, Settlement Officer, Consolidation, Deoria and Consolidation Officer, Deoria respectively are quashed. Writ petition is, accordingly, allowed.

26. The matter is remanded to the Consolidation Officer, Deoria to decide the mutation application of the petitioners afresh after hearing the parties in the light of the observations made above. Since, the matter is an old one and therefore, the same should be decided expeditiously preferably within a period of six months from the date of production of certified copy of this order. In the circumstances of the case, the parties shall bear their cost throughout."

15. Perusal of the judgment rendered in **Lalta Prasad Srivastva (supra)** fully demonstrates that transfer made in absence of prior permission as provided under Section 5(1)(c)(ii) of the U.P.C.H. Act does not per se render the transaction void or legally ineffective; rather, the invalidity is curable.

16. In the instant matter, the permission was granted, but due to ban on the transaction at the relevant point of time, the transfer could not be made; rather, a registered agreement to sell was executed and as soon as the ban was lifted, the registered agreement to sell was executed by respondent no. 4 on 16.2.1973 in favour of the petitioners, in pursuance of the permission granted by the Settlement Officer of Consolidation on 30.6.1972, as such, the mutation applied by the petitioners cannot be refused by the Consolidation Officer on the ground that the sale deed executed by respondent no. 4 is void

17. It is material to mention that respondent no. 4 himself executed the sale-deed as such, he cannot object the mutation proceedings in order to deprive the petitioners from the property which has been transferred in his favour by respondent no. 4 himself. It is also material to mention that, according to the petitioners, the entire Chak No. 70 was transferred by respondent no. 4 in favour of the petitioner but the version of the petitioners for transfer of the entire holding has been denied by private respondent no. 4.

18. Considering the ratio of law laid down by this Court in **Lalta Prasad Srivastva (supra)**, **Smt. Sita Devi (supra)**, and **Surya Narayan (supra)**, as well as in the facts and circumstances of the case as mentioned, the orders dated 5.7.1978 passed by respondent no.1, 15.9.1977 passed by respondent no.2 and 10.5.1977 passed by respondent no.3 are liable to be set aside and the same are hereby set aside.

19. The writ petition stands allowed.

20. Respondent No. 3- Consolidation Officer, Mirzapur, is directed to restore the proceeding on its original number and record the name of the petitioners in pursuance of the sale deed executed on 16.2.1973 over Chak No. 70, within a period of three months from the date of production of a certified copy of this order.

21. No order as to costs.

July 1, 2026
PS*

(Chandra Kumar Rai,J.)