
(1995) 07 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 2387 of 1975

Abdul Gaffar

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1996) AWC 146 Supp

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant; S.C. and Swaraj Prakash, for the Respondent

Final Decision : Allowed

Judgement

G.S.N. Tripathi, J.—This is a petition under Article 226 of the Constitution of India with a prayer to issue a writ of certiorari quashing the order dated 30.1.75 (Annexure 3 to the writ petition) passed by the Dy. Director of Consolidation, Basti and the orders dated 30.9.67 and 19.10.73 (Annexures 1 and 2 to the writ petition) passed by the Consolidation Officer.

2. The facts of the case are very simple. The Petitioner before this Court had moved an application before the Consolidation Officer earlier than 30.9.67. It seems that it was dismissed on the date as the Petitioner was absent. An application for restoration was moved. That was dismissed by the Consolidation Officer on 19.10.73, as it was very much time-barred. Against both these orders, two separate revisions were filed before the Dy. Director of Consolidation (D.D.C). He summoned the record and ultimately dismissed both the revisions without examining the allegations.

3. Feeling aggrieved, the Petitioner has come to this Court.

4. I have heard learned Counsel for the parties at stretch and gone through the record. Main thrust of the argument advanced on behalf of the Petitioner is based upon a Full Bench Ruling of this Court in Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and Others, . The following observations have been made in that ruling:

After the record has been called for by the Deputy Director of Consolidation u/s 48, he should examine the record to decide whether it was a fit case for exercise of the revisional Jurisdiction suo motu. Such opinion shall have to be formed even where the application in revision moved by a party is defective having been made beyond the prescribed period of limitation or all the necessary parties have not been impleaded.

If the Deputy Director of Consolidation finds that the case requires further hearing, he shall give notice to all the necessary parties irrespective of whether they were or were not impleaded in the application and after giving them reasonable opportunity of hearing, pass such orders as he thinks fit. Where the application in revision is not defective and is maintainable, the exercise of revisional Jurisdiction shall be at the instance of the parties and not suo motu.

It was held in that Full Bench ruling that when the record has been summoned by the D.D.C., he has to examine the allegations of the parties on merits. He cannot dismiss a revision on the ground of lapse of time.

5. As against it, Sri Swaraj Prakash, learned Counsel for the Respondents has relied upon a ruling of the Hon"ble Supreme Court reported in 1984 RD 333. in that case, it was observed that when an order has been passed by the lower court dismissing an application u/s 5 of the Limitation Act, that order should not be lightly interfered unless the lower court has acted with material irregularity or contrary to law or has come to that conclusion on no evidence. These points raised before a Full Bench ruling (supra) have not been considered in this ruling and I think those points still hold good.

6. The judgment of the learned D.D.C. impugned before this Court clearly goes to show that he had not applied his mind over the allegations regarding the explanation of the Petitioner with regard to delay, what to think about the merits of the case. Therefore, it was, in fact, a summary disposal without application of judicial mind. Thus, this order suffers from manifest Illegality and deserves to be set aside.

7. The orders passed by the lower courts dated 30.9.67 and 30.1.75 (Annexures 1 and 2 respectively) also suffer from same defect. Therefore, both deserve to be set aside.

8. The petition is allowed. The orders dated 30.9.67 and 30.1.75 (Annexures 1 and 2 respectively) are set aside. The matter is sent back to the court of Consolidation Officer, who shall after giving an opportunity to the parties, determine the allegations of the Petitioner with regard to his title. He shall also

consider the application u/s 5 of the Limitation Act on merits. Cost easy.