

(2009) 10 UK CK 0010
In the Uttarakhand High Court

Balram

APPELLANT

Vs

Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 1 UC 63

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Heard Mr. Arvind Vashisht, learned Counsel for the petitioner, Mr. R.C. Arya, learned Brief Holder for the State of Uttarakhand and Mr. Ratan Lal, learned Counsel for the respondents No. 4 and 5.

2. Present writ petition is filed assailing the order dated 07.03.2008 passed by Deputy Director of Consolidation, Haridwar and order dated 03.10.2006 passed by Settlement Officer, Consolidation, Haridwar.

3. Facts of the case in nutshell are feeling aggrieved from the order dated 18.01.1993 passed by Consolidation Officer, petitioner filed an appeal No. 392/707 before Settlement Officer, Haridwar u/s 11 (1) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act 1953") along with application u/s 5 of the Limitation Act seeking condonation of delay in filing the appeal.

4. Learned Settlement Officer, Consolidation in first paragraph of his judgment dated 03.10.2006 observed that benefit of Section 5 of the Limitation Act for delay in filing the appeal is granted to the appellant and now, the appeal would be heard on merit. Meaning thereby the learned Appellate Court in paragraph 1 of the judgment condoned the delay in filing the appeal. However, for the reasons best known to him, he has dismissed the appeal on the ground that appeal was filed after long period, hence, same is not maintainable. Both the

findings are contradictory to each other. Aggrieved by the order dated 03.10.2006 petitioner preferred revision before Deputy Director of Consolidation and the Deputy Director of Consolidation dismissed the revision on the ground that appeal was filed after 11 years. Learned Appellate Court as well as Revisional Court committed grave error of law by dismissing the appeal and revision on the ground that appeal was filed after 11 years from the order of Consolidation Officer. Once, delay was condoned by the Appellate Court as discussed herein before, it was not open to the Appellate and Revisional Court to dismiss the appeal and revision saying that same is not maintainable after 11 years.

5. Mr. Ratan Lal, learned Counsel for the respondent Nos. 4 and 5 argued that appeal was not at all maintainable in view of de-notification of Section 52 of the Act, 1953, hence, impugned orders do not call for interference. To support his argument, he cited the judgment of Division Bench of Allahabad High Court in the case of Hari Ram v. DDC, Azamgarh reported in 1983 RD 281 and the judgment of Single Judge of Allahabad High Court in the case of Nankhi v. DDC, Pratapgarh reported in 1995 RD 264.

6. I have carefully perused both the judgments, in Hari Ram's case (supra) the Division Bench of Allahabad High Court has held after de-notification u/s 52 of the Act Deputy Director of Consolidation has no jurisdiction to exercise power u/s 48 (3) of the Act. Section 48 (3) reads thus:

48 (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 Sub-section (1).

7. From perusal of Section 48 (3) it is clear that consolidation authorities can make reference to the Deputy Director of Consolidation, however, as per Hari Ram's case no reference can be made by the Consolidation Authorities after de-notification u/s 52 of the Act. However, in the judgment of Hari Ram's case (supra) the High Court has not dealt with the question as to whether appeal or revision can be filed or not after de-notification u/s 52 of the Act. In the same manner learned Single Judge in the matter of Nanhki was dealing with the reference u/s 48 (3) of the Act and did not deal with contingency pertaining to the filing of appeal or revision that too with the application for condonation of delay in filing the same, hence, both the judgments have no application in the present case.

8. Mr. Arvind Vashisht, learned Counsel for the petitioner has placed reliance on two judgments of Allahabad High Court. He has cited judgment passed in Shyam Narain Rai's case reported in 1981 RD 307 and Fateh Singh's case reported in 2004 (96) RD 559. In both the matters, learned Single Judges of Allahabad High Court have held that after de-notification u/s 52 of the Act appeal or revision under the Act can be preferred with application u/s 5 Limitation Act of the Act.

For the ready reference paragraph 5 and 6 of the Fateh Singh's Judgment are reproduced as thus:

5. The maintainability of the appeal of respondent No. 5 was questioned on yet another ground that it was filed after the publication of the notification u/s 52 of the U.P. Consolidation of Holdings Act and therefore, not maintainable. The learned Counsel placed reliance upon the language employed in that section and contended that only pending cases are saved. Section 53 B of the Act makes applicable the provisions of Section 5 of the Limitation to consolidation proceedings. In *Shyam Narain Rai v. Director of Consolidation* it was held relying on a large number of cases that an application for restoration with an application u/s 5 Limitation Act can be filed after the issuance of a notification u/s 52. In *Hans Raj v. Deputy Director of Consolidation* which was relied upon in *Shyam Narain Rai (Supra)* it was held that if an appeal or revision is filed after the notification u/s 52 along with an application u/s 5 Limitation Act consolidation authorities would have jurisdiction.

6. Counsel for the petitioner relied upon a decision of this Court in *Ram Niwaz v. Consolidation Officer*. This decision does not take into notice the provisions of Section 53 B of the U.P. Consolidation of Holdings Act. The effect of an order condoning the delay in the filing of an application or appeal after a notification u/s 52 was not under consideration in this case. It is, therefore, distinguishable. It has also not considered the case of *Shyam Narain Rai* and other decisions cited in that case. If the decision in *Ram Niwaz* is interpreted to mean that no restoration application, appeal or revision can at all be filed after notification u/s 52, it would be directly in conflict with the ratio of the Divisions Bench decision in *Ram Bahadur v. Deputy Director of Consolidation*. The Division Bench relied upon a previous Division Bench in *Dilawar Singh Vs. The Gram Samaj and Others*, in which it was held that "an appeal does not initiate a fresh proceedings. On the institution of the appeal the proceedings which had become dormant on the decision of the Trial Court revive and remain pending and that the notification u/s 52 (1) does not have the effect of destroying vested rights of the litigants. For instance if a litigant has a right of appeal against a particular order, he can exercise it notwithstanding the publication of the notification u/s 52 (1) and the moment and appeal is filed the effect in law is that the original proceedings stand revived." In view of the fact that the right of appeal is a vested right and the U.P. Consolidation of Holdings Act makes applicable the provisions of Section 5 of the Limitation Act thereto, I am of the opinion that if an application for condoning the delay in allowed the difference in status between an appeal filed within time and that filed after the expiry of limitation would be obliterated and the appeal would be taken as a pending case on the date of the notification u/s 52 (1) although in actual fact it may have been filed after the notification.

9. From perusal of paragraphs 5 and 6, it can safely be said that even after de-notification u/s 52 of the Act appeal or revision, along with application seeking condonation of delay in filing the same, is maintainable.

10. In view of this appeal or revision preferred by the petitioner were maintainable, however, both were wrongly dismissed. Since, learned Appellate Court once pleased to condone the delay in filing the appeal, it was not open to the Appellate Court or Revisional court to dismiss the appeal or revision on the ground that appeal / revision was filed after 11 years from the judgment of consolidation officer.

11. Having heard learned Counsel for the parties this Court is of the view that once delay in filing the appeal was condoned, appeal should have been decided on merit and not to be dismissed on the ground of delay.

12. For the reasons stated above, impugned orders cannot be sustained, hence, writ petition is allowed. Impugned judgment dated 07.03.2008 passed by Deputy Director of Consolidation, Haridwar and judgment dated 03.10.2006 passed by Settlement Officer, Consolidation are quashed. Settlement Officer, Consolidation, Haridwar is directed to hear and decide the appeal afresh on merit after giving opportunity of being heard to both the parties. Both the parties shall appear before learned Appellate Court on 18.11.2009. No order to costs.