
(1968) 01 AHC CK 0009
In the Allahabad High Court
Case No : Special Appeal No. 91 of 1966

Chandrika

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 18-01-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 20

Citation : (1968) 38 AWR 326

Hon'ble Judges : V.G. Oak, C.J;U.S. Srivastava, J

Bench : Division Bench

Advocate : C.B. Tewari, for the Appellant; Hargur Charan Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

U.S. Srivastava, J.—This appeal arises out of a consolidation matter and is directed against an order of a learned single Judge of this Court by which he allowed a petition under Article 226 of the Constitution and quashed orders of the consolidation authorities contained in Annexures 4 and 10 attached to the writ petition and directed that the revisions in proceedings u/s 12 of the UP Consolidation of Holdings Act which were dismissed by order contained in Annexure 4 be restored to their original numbers and disposed of in accordance with law. Facts which gave rise to the petition may briefly be stated. Respondent No. 7 to this appeal, Swami Dutt, who was the Petitioner in the writ petition, filed two objections u/s 12 of the UP Consolidation of Holdings Act in respect of four plots mentioned in the writ petition situate in Village Bhainsai Koel, Pargana Hadha, Tahsil and district Unnao. These objections were allowed and he was held to be the sirdar of the said plots. The Appellant in this appeal, Chandrika, who was Respondent No. 7 in the writ petition, thereupon filed appeals which were allowed by an order dt. 12-1-1953. Swami Dutt then preferred two appeals before the District Deputy Director of Consolidation, Unnao, who treated them as revisions u/s 48 of the UP Consolidation of Holdings Act (unamended) and he set

aside the orders passed by the Consolidation Officer and the Settlement Officer Consolidation by his order dated 18-7-1963 and held that as publication u/s 20 of the above Act had been made before the order of the Consolidation Officer, therefore, the proceedings u/s 12 were to be stayed automatically. Swami Dutt then preferred objection u/s 20 of the UP Consolidation of Holdings Act (unamended) in respect of the above plots claiming to be the sirdar. This objection was eventually dismissed by the Consolidation Officer on 8-1-1964. He thereupon preferred appeal against the aforesaid order but that also was dismissed by the Settlement Officer Consolidation on 14-4-1954. He then took the matter in revision but the revision also failed on 12-6-1964. He then applied before the Deputy Director of Consolidation for reopening the proceedings u/s 12 of the UP Consolidation of Holdings Act which was stayed on 18-7-1963. While this application was still pending he came to this Court on 16-9-1964, with the writ petition mentioned above. Eventually this application was also rejected on 29-9-1964. He thereupon amended the writ petition in question. The learned Single Judge allowed the said writ petition by following the decision of this Court in Ram Bharosey Lal v. Deputy Director of Consolidation Uttar Pradesh at Fatehpur 1964 AWR 424 and held that the order of the Deputy Director of Consolidation staying the proceedings was wrong. The present special appeal is directed against this order of the learned single judge.

2. The Learned Counsel for the Appellant has conceded that the order of the learned single Judge is not incorrect on merits. He, however, assails the order of the learned single Judge on two grounds. Firstly, he points out that the learned single Judge has gone wrong in entertaining the petition and granting relief to Swami Dutt because the petition was belated. In this connection he points out that the impugned order was passed on 18-7-1963 and the writ petition was filed on 16-9-1964. There was thus about ten months delay in riling the petition. Secondly, he contends that in view of the findings of the consolidation authorities in proceedings u/s 20, which decided the matter in favour of the Appellant, the learned single Judge should have refused to grant any relief to the Petitioner because it was not only unnecessary but had become futile. We are unable to accept either of the two contentions.

3. So far as the question of delay in filing the writ petition is concerned it is true that the relief in a petition Under Article 226 being in the discretion of the Court the conduct of the Petitioner is one of the factors which has to be taken into consideration. Nevertheless, as no period of limitation is fixed relief cannot be refused to the Petitioner merely on the ground of delay unless the delay is inordinate and on a consideration of the facts and circumstances of the case is unjustified and inexcusable. Thus, merely delay cannot entail the loss of a right and the denial of relief on the mere ground of delay will in fact be denying justice unless the delay is wholly unexplained. In the instant case we find from the allegation made in the petition that the Petitioner came to know much after the impugned order had been passed that proceedings u/s 12 could not be stayed automatically. He has also stated in the petition that he was not aware of the

correct position and he had been running before different courts and authorities as advised by his counsel and as also ordered by different Courts. In these circumstances, we cannot say that the Petitioner was guilty of undue laches in coming to the Court nor can we record a finding that there was total absence of diligence on his part which may disentitle him to relief because of his coming to the Court a little late.

4. The second point urged is equally without force. It is true that this Court is normally reluctant to grant a relief which is not an effective one but in the instant case we cannot say that after the case goes back to the appropriate authorities as directed by the learned single Judge what the decision will be. The question still is whether the decision given by the consolidation authorities in proceedings u/s 20 will operate as res judicata or not in the decision of the objections u/s 12. It cannot be said that the learned single Judge has granted a relief which is futile or unnecessary. In these circumstances, we feel that the order of the learned single Judge suffers from no legal infirmity. As such there is no force in this special appeal. It accordingly fails and is hereby dismissed with costs.