

(2019) 03 UK CK 0038
In the Uttarakhand High Court
Case No : Special Appeal No. 91 Of 2019

Diwan Singh & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0038

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : P.C. Maulekhi, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Application seeking condonation of delay of 102 days is not opposed by Sri B.S. Parihar, learned Standing Counsel, and the delay is, therefore, condoned. Delay condonation application (CLMA 1216/2019) stands disposed of.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition No. 2698 of 2018 dated 7.9.2018. The appellant herein filed the writ petition seeking a writ of certiorari to quash the entry dated 10.6.1970, of village Mehra Gaon Chak Aanu, Patti Paschhimi Chah Khata, Tehsil and District Nainital, made by the revenue employees in the Khatauni of Fasli Year 1376-1380 of Khata No. 110; a writ of mandamus commanding the respondents to give the same valuable bhumidhari suitable agricultural land measuring 15 Nali, 3 Mutthi in village Mehra Gaon Chak Aanu, Patti Paschhimi Chah Khata, Tehsil and District Nainital or in its vicinity in lieu of Khet No. 553 and 563 of the said village acquired by the respondents or to give damages and compensation as per the present value of the said land.

3. The appellant-writ petitioner's case, in short, is that, based on a forged and fabricated entry made in the revenue records on 10.6.1970, compensation under

the Uttar Pradesh Zamindari Abolition and Land Reforms Act was paid to a third party; and though the said land belonged to the petitioner's father, he was not paid any compensation by the Government only because of this fabricated entry dated 10.6.1970. In the order under appeal, the learned Single Judge observed that the erroneous entries allegedly made in the revenue records, pertained to the late seventies, nearly 40 years ago; the petitioner had come up with a case that, on a representation having been made to the Tehsildar in 2018, the Tehsildar had observed that, since these entries were extremely old, they could not be disturbed as the matter was extremely belated; and the Court should not come to the rescue of those who sleep over their rights. The writ petition was dismissed.

4. Sri P.C. Maulekhi, learned Counsel for the appellant-writ petitioner, would draw our attention to the averments in the writ affidavit that, in 1970, the petitioner's father was suffering from eye disease for the past five years; he could not recover and ultimately became completely blind; he could not move anywhere; he was not in a position to inspect the records or to pursue the matter, regarding revenue entries, before any authority or competent Court of law; he ultimately expired; his mother was an illiterate housewife, and was cultivating the land during her lifetime; and, in 1970, one Sri Prem Singh took advantage of the situation; false and fabricated wrong entries were made in his name in the revenue records on 10.6.1970; the petitioner was getting education and seeking job in the year 1970; he was out of the district; he was selected in the Army Medical Core, and remained posted in Lucknow, Darjeeling, Rudraprayag, Bareilly, Gujarat, Poona, Nagaland, etc. as well as in Sri Lanka; he retired in 1995 from Jammu and Kashmir and, therefore, had no knowledge regarding the revenue entries, regarding the land in question.

5. The entry, which the petitioner claims is forged, is dated 10.6.1970, and relates to a period nearly half a century ago. The explanation for the inordinate delay, in invoking the jurisdiction of this Court, is firstly that the petitioner's father had an eye problem from 1965, and he eventually became blind, as a result of which he was not in a position to verify the entries; and, secondly, that the petitioner was away from his village, and remained employed elsewhere till his retirement in the year 1995. Even if the delay is computed from 1995, the year in which the petitioner retired from service, the delay in invoking the jurisdiction of this Court is of nearly a quarter of a century (more than 23 years). The petitioner claims to have submitted a representation in 1997. Mere submission of a representation would not suffice to overcome inordinate delay and laches. Even otherwise, the delay from the date of his alleged representation in 1997 is also of more than two decades.

6. The Supreme Court in *State of M.P. Vs. Nandlal Jaiswal*: (1986) 4 SCC 566 observed:

".....Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the

High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction....."

(emphasis supplied)

7. As observed, by the Supreme Court in *State of M.P. Vs. Nandlal Jaiswal*, this Court would not come to the aid of the indolent and the lethargic. The learned Single Judge has rightly refused to interfere on the ground of inordinate delay and laches. Interference in an intra-Court appeal would be justified only if the order under appeal suffers from a patent illegality. Exercise of discretion, by the learned Single Judge, not to entertain the writ petition on the ground of inordinate delay and laches, does not suffer from any such infirmity. The appeal fails and is, accordingly, dismissed. However, in the circumstances, without costs.