

(2005) 03 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50666 of 1999

Harihar Misra

APPELLANT

Vs

Deputy Director of Consolidation/Additional District
Magistrate (Finance and Revenue) and Others

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2005) 2 AWC 1111 : (2005) 98 RD 534 : (2005) 1 RD 534

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : R.C. Singh, for the Appellant; Narsingh Dixit and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, petitioner has challenged the judgment of the Deputy Director of Consolidation and that of the Consolidation Officer dated 15.11.1999 and 30.9.1997 annexure No. 15 and 13 respectively.

2. For disposal of the matter facts in brief will suffice. The dispute relates to the property left by Ram Nirkhan. It is said that Ram Nirkhan had a daughter namely Mst. Srimati who was married with petitioner and Ram Nirkhan had no other issue. After obtaining the permission to alienate the land by way of Will deed in favour of his daughter and son-in-law from the S.D.O. on 1.6.1949 he executed a registered gift deed dated 27.6.1949 in their favour. It is said that on the basis of the aforesaid gift deed name of the petitioner and his wife Mst. Srimati was recorded in proceedings u/s 34 of the Land Revenue Act by order of the Tehsildar dated 6.1.1951. It is said that village came under consolidation operation in the year 1969 upon which Kalpnath and Triveni i.e. respondent no. 3 and father of respondent no. 4 to 7 filed two separate objections which came to be dismissed by order of the Consolidation Officer dated 18.5.1970 and 7.3.1972. It is said that separate chaks were carved out in the name of the petitioner and his wife

and delivery of possession took place on 20.4.1974. It is thereafter, after about 20 years, on 7.3.1990 fresh objection was filed by Kalpnath and Triveni upon which petitioner on coming to know filed his objection pointing about dismissal of their claim long ago. It is thereafter the respondents filed recall application on 24.2.1992 in respect of the order of the Consolidation Officer dated 18.5.1970 and 7.3.1972. The claim is that without any notice and opportunity to the petitioner Consolidation Officer by order dated 8.12.1993 set aside the earlier orders. On coming to know, petitioner filed an application on 16.12.1993 to set aside the order dated 8.12.1993 which has been rejected by the Consolidation Officer by order dated 30.9.1997 (annexure No. 13) and revision filed by the petitioner was also dismissed by the Deputy Director of Consolidation dated 15.11.1999 (annexure No. 15 to the writ petition) and thus these orders are under challenge in this petition.

3. Parties counsel have been heard at length.

4. Submission of the learned counsel for the petitioner is that Consolidation Officer in allowing application of the respondents by order dated 8.12.1993 without recording any finding about sufficiency of cause has committed an error and in any view of the matter as that order was ex-parte the recall application which was promptly filed on 16.12.1993 was liable to be allowed and matter was to be decided after an opportunity to the petitioner. Submission is that Deputy Director of Consolidation also in a cursory and sketchy manner without dealing the matter in issue in proper perspective has dismissed the revision. Submission is that so far setting aside the ex-parte order in the matter condonation of delay it can be said that liberal view is to be taken but at the same time the orders cannot be passed on mere asking of the applicant unless there is sufficient cause and cogent grounds. Submission is that on the facts passing of the impugned orders can be termed to be an arbitrary exercise. In support of the submission that without there being sufficient cause the delay is not to be condoned by considering the matter in casual manner, reliance has been placed on a decision given in the case of Kedar and Ors. v. Assistant Director of Consolidation reported in 1987 (2) AWC 1385, and the decision given in the case of P.K. Ramachandran Vs. State of Kerala and Another,

5. In response to the aforesaid submission, counsel for the respondent submits that Consolidation Officer by considering the matter in detail has rightly condoned the delay and entertained the proceedings on the merits which has been affirmed by the revisional court and, therefore, no exception can be taken to it. It is submitted that by the impugned orders justice has been done, therefore, no interference is to be made. In support of the submission that against the orders condoning the delay higher courts are not to interfere, reliance has been placed on a decision given in the case of Shanti Prasad Gupta v. Deputy Director of Consolidation reported in 1984 RD 382.

6. In view of the aforesaid submission as has come from both side the court has examined the matter. The question which appears to be examined by this Court

is that what is the scope of this Court to interfere in the orders by which the delay in lodging the proceedings is condoned and parties have been permitted to get their rights tried on the merits.

7. At the very outset it can be observed that for the point in issue no fix criteria can be held which can be applied in each and every case either for and against. Facts of each case has to be examined for taking the view either way. It is not to be repeated that in recent past the view and the trend of the Apex Court and of this Court has been that matter of condonation of delay has to receive liberal consideration. The reason is that by condoning the delay the aggrieved party cannot be said to have suffered prejudice as the matter has not been finalised finally, as condonation of delay and setting aside an order has the feature of reopening of the things and permitting the parties to get their rights decided again afresh but at the same time it cannot be said as a matter of rule that as and when there is question of condoning delay the higher courts are to shut their eyes about lapses, negligence, lack of bonafide of the applicant of has been dealt in casual manner and delay has been condoned. Of course the higher courts are not to go into the detailed findings if has been recorded by the court below referring rival pleadings and the evidence, if any, as going into sufficiency of cause and then interfering in the discretion so exercised by the concerned court may be said to be not proper but at the same time the order of the court below by which either the delay has been condoned or it has not been condoned must appear to be based on a consideration of rival pleading, affidavit, and evidence, if any, as the higher court on challenge of the matter have to look about the exercise of the court below and is to be satisfied at least to the extent that exercise is not arbitrary, perverse or whimsical. The order of the court below must show that he has applied his mind to the rival contention. The grounds so taken by the parties and there must be a reason for its believe or disbelieve. Unless required consideration is in the order of the court below, it may not be possible for higher court to form its opinion as forming of opinion either way will certainly lead the examination of the affidavits, evidence, if any, and then again the question will be that which version will be believed which in exercise of writ jurisdiction may not be justified. Thus the order of the court below in respect to condonation of delay or not has to be a reasoned order touching with the grounds so taken by the parties. Lower court is not required to write a lengthy judgment in the matter like disposal of the claim of the parties on merits but at least a brief details has to be there so as to satisfy this Court about the bonafide in the exercise and application of the mind by the court below. If lower court condones long delay in lodging the proceedings without any reference to the explanation so given by the party and without there being any finding to accept the same as the valuable right which accrued to other side is to be taken away, the order being arbitrary, without application of mind may be interfered by this Court. At the same time if delay in filing the proceeding if is not condoned and although explanation is believable than it is to lead injustice to concerned party and, therefore, it is on these considerations disposal of delay condonation issue

is to be finalised.

8. Observation of the Apex Court in respect to the aforesaid discussion, as made in the case of P. K. Ram Chandran (Supra) will be useful to be noticed here:

"It would be noticed from a perusal of the impugned order (supra) that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is essential pre-requisite to condonation of delay.

.....

Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained."

9. Similarly this Court, in the case of Kedar and others (Supra), in para No. 5 of the judgment has made the following observation :

"5. The sufficiency of the cause and reality of the cause are two different things, In case where the court is called upon to adjudicate upon the sufficiency of the cause it may take liberal view in the matter and that is what the authorities cited by the learned counsel for the petitioners lay down but where the court is called upon to adjudicate upon the truthfulness of the cause the authorities cited by the learned counsel for the petitioners may be of no avail. Here the Assistant Director of Consolidation declined to condone the delay on the ground that the cause shown on behalf of the petitioners was not believable and in doing so he did not commit any error."

10. So far the decision given in the case of Shanti Prasad Gupta (Supra) by the Apex Court as referred by the learned counsel for the respondent suffice it to say that discretion of the lower court if (SIC)(SIC) is not to be interfered with.

11. So far the case in hand is concerned it is claimed by the petitioner that on the basis of the registered gift deed dated 27.6.1949 his name was mutated by order dated 6.11.1951 and that was continuing. Petitioner also claims that opposite parties filed objection u/s 9-A (2) of the U.P. C. H. Act in the year 1969-70 which was dismissed on 18.5.1970 and 7.3.1972. It is thereafter after about 20 years the application to recall has been filed by the opposite party. Admittedly that application has been allowed on 8.12.1993 in absence of the petitioner. The order of the Consolidation Officer only states that file was placed, counsel for the applicant is present and opposite parties are not present it. Matter ex-parte proceeded. It is offered that recall application dated 24.2.1992 is allowed," It is not to be emphasized again and again that even if the matter is to proceed ex-parte it is not the correct thing for any court to accept the claim of the party who is present as a matter course without any examination. Even ex parte judgments are to contain the brief summary of facts, evidence of the party

and brief reasons to accept them. If the ex-parte order is only on the restoration/recall Matter then it has to refer to the grounds so taken by the party and the reasons to believe/disbelieve besides the truthfulness of the grounds so taken. On record it appears that the order of the Consolidation Officer which has been annexed is noted on the order sheet, therefore, whether it is a complete order or not is not to be gone into as the petitioner has not challenged this order. The challenge is only the order of the Consolidation Officer dated 30.9.1997 by which his restoration was rejected and the order of the Deputy Director of Consolidation by which revision was dismissed. On a perusal of the order of the Consolidation Officer dated 30.9.1997 it is clear that Consolidation Officer has not given any attention to the ground so taken by the petitioner for his absence. Admittedly the order dated 8.12.1993 was passed in absence of the petitioner and as there was triable issue that whether opposite party had knowledge of the order dated 18.5.1970 and 7.3.1972 as the recall application was filed after about 20 years, by finding out the fact about delivery of possession, the matter was liable to be examined in presence of the parties, in the light of the arguments and details in this respect. On a perusal of the judgment of the two courts it is clear that none of them have applied their mind to the explanation so given by the opposite party for recall of the matter and the explanation so given by the petitioner for the same treatment and they have decided the matter in a cursory and sketchy manner without recording required findings on the issue. It is a matter of consideration by the Consolidation Officer after giving opportunity to both parties that whether on the facts claim of the opposite parties is to be accepted by condoning the delay or not. The explanation so given by the opposite party in his recall application dated 24.2.1992 is that no objection was filed on their behalf in the year 1969-70 and some imposter putting their thumb impression or signature appears to have filed objection and by playing fraud on the court got an order in that respect. It is this version which is to be believed/disbelieved. Consolidation Officer appears to have not even noticed the aforesaid explanation and he by pointing out some irregularity in the earlier order of the Consolidation Officer has allowed the application of the opposite party. Needless to say that although liberal view is to be taken, in the matter, but as there was existing order of the Consolidation Officer of the year 1970-72, the Consolidation Officer was required to take more care to examine the facts that whether the objection as claimed was filed by the opposite party, in fact was filed by them or a fraud was played on the court as claimed, and it is in this light the conclusion has to come. Thus on the facts it is clear that Consolidation Officer has not considered the explanation so given by the opposite party and there is no finding on that score and thus the exercise is not in conformity with the required consideration.

12. At this stage it will be necessary to mention that this court may not be misunderstood to have taken the view that in the writ jurisdiction the court has to go into sufficiency of cause and in the correctness of the findings of fact as recorded by the courts below. It is in those cases where the explanation so given by the party have not has been noticed, and no finding has been recorded to

believe or disbelieve it, this Court has no option but to call upon the court below to undertake fresh exercise by passing appropriate order.

13. So far the case in hand is concerned, as the explanation given by the opposite party has not been even noticed and no findings has been recorded to accept them, the Court has no option but to send the matter back to the Consolidation Officer to reconsider and decide the application of the petitioner dated 16.12.1993 after giving an opportunity of hearing to both parties and if so required by permitting to lead their respective evidence for which not more than two dates may be given. It is made clear that as the matter is quite old Consolidation Officer will not allow any unwarranted adjournment to either of the parties unless it is required for very compelling reasons and he will try to decide the proceedings with all expedition preferably within a period of six months from the date of receipt of certified copy of this order from either of the parties.

14. For the reasons recorded above, this petition succeeds and is allowed. Impugned judgment of the Deputy Director of Consolidation and that of Consolidation Officer dated 15.11.1999 and 30.9.1997 are hereby quashed. Matter is sent back to the Consolidation Officer to decide the proceedings in the light of the observations as made in this order.