

(1991) 09 AHC CK 0073

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1930 of 1977

Krishna Kant and Another

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9, 9(1), 9(2)

Citation : (1992) 1 AWC 94 : (1992) RD 114

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Namwar Singh, for the Appellant; Triveni Shanker, R.N. Singh and S.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—This petition has been filed challenging the orders of the consolidation officer and Deputy Director of Consolidation by which objection of Petitioners u/s 9 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) has been rejected as time barred.

2. Facts of the case are that Petitioners filed objection u/s 9 claiming rights in the disputed land on 31-12-1976. They claimed that in Khata No. 106 they have share to the extent of 5.50 and their name should be recorded over the same. As there was delay in filing objection, an application u/s 5 of the Limitation Act, supported by an affidavit was also filed. In para 6 of the affidavit, it was stated by Petitioners that about the wrong entry in the revenue papers they could only know on 28-12-1976 when they were informed that their name is not recorded in the revenue papers in the current year. Then the Petitioners made an inspection and have filed objection. Delay in filing objection is not deliberate. Consolidation Officer, however, by order dated 23-6-1977 refused to condone the delay. Reasons stated by the consolidation officer in his order dated 23-6-1977 are that no dispute was raised at the time of field to field Partial There has been no

litigation after 1957 and the dispute has been raised at the stage of allotment of chaks. Time barred objection has been filed for harassment of the other side. From the order it appears that it was part of argument of the Respondents which was accepted and inoperative part the objection has been rejected. Aggrieved by the order of the consolidation officer, Petitioners filed revision No. 2855 u/s 48 of the U.P. Consolidation of Holdings Act. Revision has been dismissed on 12-8-1977. Aggrieved by these orders this petition has been filed.

3. I have heard Shri Namwar Singh, learned Counsel for the Petitioners, and Shri S.N. Singh, learned Counsel appearing for Respondents. Shri Namwar Singh has submitted that the affidavits filed by the Petitioners were uncontroverted as no counter affidavit was filed by Respondents and the authorities have committed an error in rejecting the affidavits.

4. Second submission of learned Counsel for Petitioners is that publication u/s 9 of the Act took place on 11-8-1976 and the objection was filed by Petitioners on 31-12-1976. Thus the delay was a little more than four months. The Dy. Director of Consolidation, however, has wrongly observed that the delay is of 20 years. He has illegally taken into account the fact that name of Petitioners was not recorded in the revenue papers since 1363-65 Fasli, i.e. for 20 years. The relevant period for consideration was from the date of the publication u/s 9. Shri Namwar Singh has relied on *Jamuna Narayan Verma v. District Judge Lucknow* 1979 AWC 437, wherein it has been said that normally affidavit filed by a person authorised by a party, if remains uncontroverted, should be accepted, unless there is something on record to disbelieve the averment made in such affidavit. The second case cited by Shri Namwar Singh is : *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, . He has also relied on a case *Ram Narain v. D.D.C.* 1990 RD 21, (Hindi Section).

5. Shri S.N. Singh, on the other hand, has submitted that both the authorities have recorded finding that Petitioners filed objection after such long time only to harass the Respondents. There was no explanation as to why the entries were not challenged before the consolidation as their names were missing from the record from 1957. Shri S.N. Singh has further submitted that this Court cannot interfere with the discretion exercised by the authorities one way or the other and the orders are concluded by findings of fact. Shri S.N. Singh has placed reliance on *Khaili v. State of U.P.* 1981 SCC (Supplement) 73 *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, and *Venkat Ram Singh v. D.D.C. Mirzapur* 1983 AWC 781. Shri Singh also relied on three unreported judgments of this Court : *Lalla Singh v. D.D.C.* (Writ Petition No. 89 of 1980 decided on 11-8-1980) *Bharosa Sineh v. D.D.C. and Ors.* (Writ Petition No. 7786 of 1979 decided on 8-8-1980). *Sarju Prasad v. D.D.C.* (Writ Petition No. 961 of 1977 decided on 22-10-1980) and *Sukhu v. D.D.C.* (Writ Petition No. 11696 of 1975 decided on 13-1-1981). Lastly, Shri Singh has placed reliance on *Gauri Shankar v. Dy. Director of Consolidation* 1980 RD 250.

6. I have considered the contentions advanced by the learned Counsel for

parties. In my opinion, the authorities below committed error apparent on the face of the record by refusing to condone the delay. The relevant period for consolidation before the authorities was after publication of notification u/s 9 of the U.P. Consolidation of Holdings Act. Sub-section (2) of Section 9 says:

(2) Any person to whom a notice under Sub-section (1) has been sent, or any other interested person may, within 21 days of the receipt of notice, or of the publication under Sub-section (1), as the case may be, file, before, the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished there from, or in the Statement of Principles, or the need for partition.

7. From a perusal of Sub-section (2) of Section 9 it is clear that from the date of the publication of notification u/s 9, the period of limitation provided is 21 days for filing objection against the notice. The Petitioners have stated in para 3 of the writ petition that publication u/s 9 took place on 11-8-1976. Thus the period of 21 days ought to have been computed from this date. The objection filed on 31-12-1976 was thus filed beyond time only by four months and 20 days. The Deputy Director, however, while passing the order has said much about the period before consolidation, instead of considering the explanation of Petitioners for the period after 11-8-1976 when they could not file objection. In consolidation the rights and claims are decided finally. Hon Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , while considering the phrase "sufficient cause" has laid down certain guidelines for condoning the delay or refusing to condone the delay. The guidelines stated by Hon"ble Supreme Court are being quoted below:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing

injustice and is expected to do so.

8. If the guidelines stated above are taken into consideration, the orders passed by the consolidation officer and the Deputy Director of Consolidation are clearly illegal and arbitrary. As the Petitioners' names were not recorded in revenue papers, they filed the objection. From the objection filed on behalf of the Respondents it is also clear that Petitioners are not stranger to the family or to the property and they could have a claim in the property in dispute. It was not an objection filed by some person having no claim at all. It has been admitted that the father of Petitioners and father of Respondents were real brothers and property at one time belonged to the joint Hindu family. The Respondents' case is that partition had taken place. The Consolidation Officer and the Dy. Director of Consolidation in fact pre-judged the issue and have observed that the objection has been filed by the Petitioners to harass the Petitioners. There is no basis for this finding of both the authorities below. The possibility of success in the claim could not be made basis for refusing to condone or for condoning the delay. At the most it could be seen whether the claim made is such which is barred under some law or the same is wholly vexatious or baseless. In the facts and circumstances of the present case, there is no such possibility. Petitioners may or may not ultimately succeed but their claim was not such which could be thrown out at the very threshold.

9. Another aspect of the case is that the affidavit filed by the Petitioners remained uncontroverted. This Court as well as the Apex Court have expressed opinion in many cases that uncontroverted affidavits should be accepted unless there is something on record itself to show that the averments made there in are incorrect or false. The Consolidation Officer and the Dy. Director of Consolidation both have not referred to any such fact from the record on which basis it could be said that the averment of the Petitioners, that they could get knowledge about the mistake in the record, on 28-12-1976, was incorrect. They have said it to be incorrect on the basis of entries existing prior to consolidation which was the cause of action for Petitioners. Thus on this aspect also both the authorities have committed manifest illegality.

10. I have considered the cases cited by Shri S.N. Singh. There is no dispute about the legal position that this Court should not ordinarily interfere with the discretion exercised by the authorities in condoning or in refusing to condone delay, but in the facts and circumstances of the case, in my opinion, as the authorities have committed manifest illegality, it is a fit case for interference. The cases cited by the learned Counsel for Respondents are distinguishable and cannot be applied in the facts of the present case.

11. Now, since this writ petition is pending in this Court since 1979, and about 14 years have passed as objection was filed in 1976, after such a long time, I do not think it proper to remand the case for consideration of the question of delay again. The delay shall stand condoned and the consolidation officer shall decide the objection filed by Petitioners on merits. After hearing both the parties in

accordance with law at the earliest, if possible, within six months from the date a certified copy of this order is filed before him. Both the learned Counsel for parties have stated that their parties shall cooperate in deciding the objection within the time fixed by this Court.

12. For the reasons stated above, this writ petition is allowed. Orders of the Consolidation Officer dated 23-6-1977, Annexure B to the writ petition, and order of the Dy. Director dated 12-8-1977, Annexure "C" to the writ petition, are hereby quashed. Parties are relegated to the stage of consolidation officer who shall decide the objection of the Petitioners on merits in accordance with law as directed above. There will be no order as to costs.