

(1990) 03 AHC CK 0052

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14233 of 1986

Kuber

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 19-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

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

Citation : (1990) 1 AWC 661 : (1990) RD 211

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; S.R. Singh and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Singh, J.—The present writ petition is directed against an order of the Deputy Director of Consolidation Azamgarh, dated 16-8-1986.

2. The opposite parties No. 3 to 5 filed a time barred objection u/s 9-A(2) of the Consolidation of Holdings Act accompanied by an application u/s 5 of Limitation Act. The Consolidation Officer by an order dated 7-4-1986 has allowed the said application on payment of Rs. 15/- as cost. The order of the Consolidation Officer though is not a very happily worded but there was application of mind so far as the question of condonation of delay is concerned. Against that order the Petitioner filed a revision before the Deputy Director of Consolidation. He has upheld the order of the Consolidation Officer and directed the parties to appear before the Consolidation Officer to lead their respective evidence so that the case may be decided in accordance with the law.

3. Heard Sri. S.N. Singh, counsel for the Petitioner and Sri. S.R. Singh, counsel for the Respondents No. 3 to 5.

4. The only contention raised by the counsel for the Petitioner was that there was no application of mind by the Consolidation Officer on the question of condonation of delay. According to him, the Consolidation Officer should have recorded a clear finding on the delay of each and every day. The delay of each and every day has to be explained by the party concerned and the same has to be considered by the Consolidation Officer while disposing of the application u/s 5 Limitation Act.

5. In support of his contention, the counsel for the Petitioner has relied upon a decision reported in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , and has specifically referred to paragraph 12 of the said judgment wherein it has been held that:

It is however necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be drawn ; the application for condoning has to be dismissed on that ground alone.

6. In the instant case the Consolidation Officer has applied his mind and after considering the merits of the application u/s 5 of Limitation Act has condoned the delay. This authority has no application to the facts of the present case.

7. He has also referred to a decision reported in Bharosa v. Deputy Director of Consolidation, Deoria 1981 All LJ 176. The facts of that case are different from the present one inasmuch as in that case the restoration application was not accompanied by an application u/s 5 Limitation Act whereas in the instant case the objection of the Respondents was accompanied by such an application.

8. The learned Counsel for the Respondents relied upon a decision reported in Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad, , in which it has been held that:

A court of appeal would not interfere with the exercise of discretion by the court below, if the discretion has been exercised in good faith, after giving due weight to relevant matters and without being swayed by irrelevant matters. If two views are possible on the question, then also the court of appeal would not interfere even though it may exercise discretion differently were the case to come initially before it. The exercise of discretion should manifestly be wrong.

9. The counsel for the Petitioner has not pointed out any substantial error of exercise of discretion in the order of Consolidation Officer.

10. Moreover, so far as the question of condonation is concerned, it is discretionary in the nature and nothing has been shown to me that this discretion is based on any extraneous consideration. While exercising its inherent powers Under Article 226 of the Constitution, this Court cannot investigate into facts.

11. In the result, I find no merit in the writ petition and accordingly it is dismissed in limine.

12. The Consolidation Officer is directed to dispose of the matter within a period of two months from the date of presentation of a certified copy of this order.

13. A certified copy of this order may be issued to the counsel for the parties on payment of usual charges within one week.