
(2003) 08 AHC CK 0168
In the Allahabad High Court
Case No : C.M.W.P. No. 28029 of 2003

Laxmi Kant

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1)

Citation : (2003) 6 AWC 4666 : (2003) 95 RD 374

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : M.P. Sinha, for the Appellant; Sudhakar Pandey and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri M.P. Sinha, counsel for the Petitioner and Sri Sudhakar Pandey learned Counsel appearing for the contesting Respondents.

2. By this writ petition, the Petitioner has prayed for quashing the order dated 11th March, 2003 passed by Deputy Director of Consolidation and the order dated 17th January, 2001 passed by Settlement Officer of Consolidation.

3. Brief facts of the case as given in the writ petition are; consolidation operation started in the village. An order was passed by Assistant Consolidation Officer on the basis of compromise regarding share of the parties on 2nd October, 1988. An appeal was filed against the said order by the contesting Respondents u/s 11 (1) of U.P. Consolidation of Holdings Act, application was also filed u/s 5 of Indian Limitation Act by the Appellants praying for condonation of delay in filing the appeal. Objection was filed by the Petitioner stating that appeal is barred by time and should be rejected. The Settlement Officer of Consolidation by order dated 17th January, 2001 condoned the delay in filing the appeal, set-aside the order of Consolidation Officer and remanded the case to Consolidation Officer for

deciding the case after giving opportunity to the parties to lead evidence. Against the said order dated 17th January, 2001, revision was filed by the Petitioner which has been dismissed by Deputy Director of Consolidation vide his order dated 11th March, 2003.

4. The counsel for the Petitioner challenging the order of Settlement Officer of Consolidation contended that Settlement Officer of Consolidation having not condoned the delay in filing the appeal, has no jurisdiction to decide the appeal on merits. It was contended that Settlement Officer of Consolidation could not have even considered the question of delay at the time of hearing of appeal on merit. Reliance was placed by counsel for the Petitioner on judgment of this Court in Smt. Munaki Devi and Anr. v. Deputy Director of Consolidation, Azamgarh and others, 1990 RD 243.

5. Learned Counsel appearing for the contesting Respondents contended that Settlement Officer of Consolidation did not commit any error in deciding the question of delay as well as appeal on merit by composite order. It was further contended that Settlement Officer of Consolidation condoned the delay in filing the appeal and thereafter allowed the appeal on merit.

6. I have considered the submissions of counsel for the parties and perused the record.

7. From the perusal of the order of the Settlement Officer of Consolidation dated 17th January, 2001, it is clear that Settlement Officer of Consolidation has specifically given the benefit of Section 5 of Limitation Act in appeal. Delay having been condoned by Settlement Officer of Consolidation in filing the appeal, no error has been committed by Settlement Officer of Consolidation in deciding the appeal on merits. The judgment of this Court in Munaki Devi's case (supra), do not lay down any proposition that application u/s 5 of the Limitation Act cannot be decided while hearing the appeal, it has only been observed that appeal shall be disposed of on merits only when Section 5 application is allowed. This Court has considered the aforesaid Munaki Devi's case (supra) in a recent judgment in Abdul Karim Vs. Deputy Director of Consolidation and Others, ,and taken the view that no error was committed by appellate authority in considering the question of limitation as well as merits together. Following was laid down by this Court in paragraph 7 of the aforesaid judgment:

7. So far as the submission of learned Counsel for the Petitioner that the application u/s 5 of Limitation Act should have been decided by the appellate authority first before proceeding on merits and the appeal was not to be entertained as it was not accompanied by an application u/s 5 of Limitation Act, also merits dismissal. A perusal of the memo of appeal which has been filed by the opposite party which has been brought on record as Annexure-5 to the writ petition clearly indicates that in the memo of appeal itself, explanation has been offered for filing appeal after Director of Education-notification and a specific prayer at several places besides in the prayer clause has been made that the

appeal be allowed after giving benefit of Section 5 of Limitation Act and thus the submission that no separate application has been filed in this respect, being too technical on the facts, cannot be accepted. The other submission that the appellate authority was required to decide the question of delay condonation first, also cannot be accepted as the Deputy Director of Consolidation has clearly directed that the appellate authority will decide the question of limitation as well as merits together after hearing the parties. In the event, appellate authority finds that the appeal is barred by time and there is no proper explanation, then there may not be any question of adjudication on merits and, therefore, there appears to be no harm if the appellate authority is permitted to hear the arguments on both aspects together, i.e., the question of limitation as well as merits. The aforesaid exercise will save the time of the Court as well as of both parties. The appellate authority can only proceed on merits when the delay in filing appeal is condoned and thus in the event, the judgment of the appellate authority goes against the Petitioner on both issues, i.e., on merits and the limitation, it will be open for him to challenge the same before the revisional authority on both counts. On the facts, this Court finds that in the event the authority is directed to decide only the question of limitation first then in view of the decision either way, it will lead to multiplicity of proceedings, i.e., taking the matter to the higher forum which may not be in the ends of justice.

8. Another judgment of this Court which has taken the same view is *Sajjan Kumar v. Deputy Director of Consolidation, Muzaffarnagar and others*, 1998 RD 118. It was held by this Court in paragraph 4 of the said judgment:

4. There is, however, no bar that the authority concerned cannot hear the arguments on the application filed for condonation of delay as well as on the merit of the case. In case the delay is not to be condoned the authority concerned may reject the application. If however, the authority concerned finds that the application for condonation is to be allowed, it can decide the case on merit.

9. In view of the aforesaid discussion, it is clear that no error has been committed by the Settlement Officer of Consolidation in deciding both questions of condonation of delay as well as on merit. The matter having only been remanded to Consolidation Officer, the Petitioner will have opportunity to lead his evidence and will have his say on merits. The impugned orders do not call for any interference in exercise of jurisdiction under Article 226 of the Constitution of India.

10. The writ petition lacks merit and is summarily rejected.