
(2008) 09 AHC CK 0079
In the Allahabad High Court

Mahavir Singh

APPELLANT

Vs

State of Uttar Pradesh, Additional Commissioner, Moradabad
Division and K.K. Gupta, Additional Commissioner
(Administration)

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 1 AWC 694 : (2008) 105 RD 599

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—This writ petition has been filed in the nature of certiorari quashing the impugned order dated 30.7.1996 passed in Appeal No. 4 of 1995-96.

2. The facts arising out of the present writ petition are that a notice u/s 10(2) of U.P. Imposition of Ceiling on Land Holding Act was issued to petitioner Mahavir Singh. In view of the aforesaid notice, an area of 16.57 acres was proposed as surplus. An objection was filed on behalf of petitioner claiming therein that his son is major, as such, he is entitled for two additional hectares of surplus land. It was also alleged in the objection filed on behalf of petitioner that petitioner has transferred the land and the transferees are in actual physical possession of the land in dispute. The prescribed authority vide its order dated 30.6.1976 confirmed the notice and declared the land mentioned in the notice u/s 10(2) of the Act. Aggrieved by the aforesaid order, petitioner filed an appeal u/s 13 of the Act. The said appeal too was dismissed vide its judgement and order dated 5.8.1978. Petitioner aggrieved by the aforesaid order, preferred Writ Petition No. 9362 of 1978, which was dismissed on 6.11.1978.

3. Sri Satyendra Pal Singh, moved an application for recalling of the order by prescribed authority as well as by Appellate Authority. The said application was

rejected on 12.3.1979. An appeal was filed that too was dismissed. A writ petition was filed as Writ Petition No. 12972 of 1981, the same was dismissed and against the said order, SLP was filed before Hon"ble Supreme Court, which was also dismissed on 1.11.1984. It appears that an application was moved by Naib Tehsildar for further proceeding in the matter on 25.11.1988. The prescribed authority on the basis of the aforesaid fact issued notice to petitioner. Petitioner filed an objection on the ground that villages have been notified under the Consolidation of Holding Act and due to consolidation, the area of petitioner has been substantially reduced. Sri Samar Pal Singh and the son of petitioner Mahavir Singh filed an objection u/s 11(2) of the Act inter-alia on the ground that holding recorded in the name of Mahavir Singh, petitioner was sheer khudkast of Sri Sawant Singh and after his death, interest was devolve upon Ram Bux Singh after death of Ram Bux Singh, interest was devolve upon Phulia and Lakhan Singh and after death of Lakhan Singh, interest was devolve upon Mahavir Singh and the objector Samar Pal Singh was born in the family of Mahavir Singh before the abolition of Zamindari, as such, objector is entitled for 1/2 share in the Seer and Khudkast land recorded in the name of Mahavir Singh and the said land has illegally been clubbed in the holding of petitioner. Prescribed authority vide its order dated 31.3.1995 allowed the objection of Samar Pal Singh and rejected the objection of petitioner regarding reduction of area during consolidation. Petitioner against the part of the order passed by prescribed authority filed an appeal, which was got dismissed for non-prosecution and a review application was filed by petitioner before prescribed authority regarding the claim of reduction in area in consolidation.

4. The said review application was allowed on 26.12.1995, State filed an appeal on 12.6.1995 u/s 12 and aforesaid appeal was allowed by the lower Appellate Court vide its judgement and order dated 30.7.1996.

5. It has been submitted by learned Counsel for petitioner that while deciding the appeal, the lower Appellate Court in para 6 of the judgement made un-called observation regarding the judgement dated 31.3.1995, through which a relief was granted to Samar Pal Singh and the Appellate Court has directed for filing the appeal against order dated 31.3.1995. Sri K.K. Gupta, Commissioner, wrote a letter dated 31.7.1996 to the Commissioner, Moradabad Mandal, Moradabad for filing an appeal against the order dated 31.3.1995, through which the objections of Sri Samar Pal Singh was allowed. Another letter dated 8.8.1996 was written by Commissioner to District Magistrate, Bijnor for filing an appeal against the order dated 31.3.1995 along with an application u/s 5 of the Limitation Act. An appeal was filed against the order dated 31.3.1995 by the State along with an application for condonation of delay. The notice was served upon Mahavir Singh and the Appellate Court decided the appeal against the order dated 31.3.1995 and 26.12.1995. It has been brought to the notice of the Court that against the order in Appeal No. 7 of 1995-96 decided on 28.2.1997, Sri Samar Pal Singh has also filed a Writ Petition No. 12767 of 1997.

6. It has been submitted by Sri Anil Sharma, learned Counsel for the petitioner that it is settled position in law that before taking decision of surplus land, if the area of tenure holder is reduced during consolidation operation, tenure holder is entitled for the benefit of reduced area under the Ceiling Act. Further submission has been made that Appellate Authority has acted in a very illegal manner directing concerned authority to file an appeal against the judgement by which Samar Pal Singh has been given benefit by Prescribed Authority regarding his rights as Seer Khudkast land.

7. Learned Counsel for petitioner has placed reliance upon various judgements of this Court as well as Apex Court. The finding recorded to this effect that as writ petition filed by petitioner has already been dismissed by this Court on 30.6.1998 and judgement has become final, therefore, if during the consolidation operation area of tenure holder has been reduced then he is not entitled for relief. After rejection of claim of petitioner by prescribed authority regarding benefit of reduction of area, a review petition was filed and prescribed authority was of the opinion that as substantial area of petitioner has been reduced during consolidation, therefore, petitioner is entitled for relief and has allowed the review application.

8. A finding to this effect recorded by Appellate Authority that as earlier proceeding has been decided on merits, therefore, prescribed authority has wrongly given benefit by way of review application. Further submission has been made by learned Counsel for petitioner that no cogent reason was explained in Section 5 application, as such, Appellate Authority was having no jurisdiction to condone the delay and to pass the order on merits. Reliance has been placed upon the judgement of Apex Court reported in P.K. Ramachandran Vs. State of Kerala and Another, and reliance has been placed upon paras 5, and 6 of said judgement. The same are being reproduced below:

5. This can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub-Judge, Kollam on 30-10-1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General and in accordance with their opinion, it was decided that there was no scope for filing the appeal but later on, despite the opinion referred to above, the appeal was filed as late as on 18-1-1996 without disclosing why it was being filed. The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent-State for condonation of the inordinate delay of 565 days.

6. Law of limitation may harshly affect 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. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

9. Another judgement relied upon by learned Counsel for petitioner in (1993) 2 Supreme Court Cases, 185 Salil Dutta v. T.M. and M.C. Private Ltd. and reliance has been placed upon para 8 of the said judgement. The same is being reproduced below:

8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. Maybe not. But one thing is clear -they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

Another judgement relied upon by learned Counsel for petitioner in Writ Petition No. 36517 of 1996 State of U.P. and Ors. v. Sardar Trilochan Singh Sobati decided on 6.8.2008. Placing reliance upon aforesaid judgement, learned Counsel for respondents submits that this Court has held that as the copy of the order was obtained in the month of January, 1975, therefore, the State was well aware of the order in January, 1995 itself and took its own time for filing an appeal in the month of October, 1995. The Court has given an opinion that Court below has rightly come to the conclusion that State took an inordinate time to file the appeal and also that the State did not disclose in its application for condonation

of delay, as required under the law, as such, the writ petition was dismissed.

10. Further learned Counsel for petitioner has placed reliance upon two judgements of the Apex Court reported in 1996 (2) SCALE, S.P., Thakur Deen v. District Judge Banda. In support of aforesaid contention, learned Counsel for petitioner submits that if during consolidation proceeding, area of a tenure holder has been reduced, the Apex court has held that if area has been reduced then tenure holder is entitled to get benefit in ceiling proceeding and that has to be considered as fresh. Another judgement relied upon by learned Counsel for petitioner in Appeal No. 1706 of 1998 decided on 20.3.1998 Shiv Rai and Ors. v. State of U.P. and others. The Apex Court relying upon Thakur Deen's judgement has set aside the order passed by High Court and has remitted back to competent authority to decide it regarding rejection of area during consolidation. Further reliance has been placed upon by learned Counsel for petitioner upon a judgement of this Court reported in 2007 (9) ADJ, 271 Gajendra Pratap Singh v. State of U.P. and Ors. and 2007 (10) ADJ, 279 Gyanendra Kumar v. State of U.P. and Ors.. In view of the aforesaid fact learned Counsel for petitioner submits that orders passed by respondents is bad in law.

11. A counter affidavit has been filed on behalf of respondents stating that prescribed authority as well as Appellate Authority after due consideration of claim of petitioner has declared 16.47 acres of land as surplus as petitioner after a lapse of five years of finalisation of proceeding has filed an application for amendment in the earlier objection on the ground that during consolidation proceeding in the village, area of petitioner has been reduced and petitioner's son Sri Samar Pal Singh also filed an objection that land in dispute is Sheer Khudkast, therefore, he is also entitled for 1/2 share in the sheer Khudkast land. Learned Standing Counsel submits that in earlier objection, such objection was never taken.

12. As objection of Samar Pal Singh was allowed by prescribed authority, the State of U.P. preferred an appeal before respondent No. 2 and the Appellate Court after perusal of document and material on record allowed the appeal filed by State of U.P. vide its judgement and order dated 31.3.1996. As the review application filed by petitioner was illegally allowed, as such, State of U.P. has also preferred an appeal and the said appeal was also allowed. In the earlier proceeding, petitioner's land was declared 16.17 acres, as such, tehsildar filed an application on 25.11.1998 for taking possession of surplus land. In that proceeding petitioner was not entitled for any benefit and the order passed by prescribed authority was illegal and without jurisdiction, as such, appeal has been allowed. There is no illegality in the order. The writ petition is devoid of merits and is hereby dismissed.

13. I have considered the submissions made on behalf of parties and have perused the record.

14. From the record it is clear that in earlier proceeding 16.57 acres of land was

declared surplus. The claim of petitioner regarding benefit of his major son was not accepted by authorities below. When Naib Tehsildar filed an application for the purposes of taking possession, petitioner filed an objection stating therein that during this period as village in question was notified u/s 4 of Consolidation of Holding Act and in that proceeding, area of petitioner has substantially been reduced, therefore, that may be considered. Prescribed Authority has not accepted the claim of petitioner. In the meantime, one of the son of petitioner has also filed. an objection u/s 11(2) of the Act claiming benefit that as it was an ancestral property and petitioner was born prior to 1952, therefore, he is entitled to benefit of Sheer Khudkast and prescribed authority has considered the same and has given benefit to son of petitioner. Admittedly, against that order no appeal was filed by State in time. The claim of petitioner was rejected regarding giving benefit to petitioner of reduction in area by prescribed authority initially. The appeal filed by petitioner was got dismissed as not pressed and petitioner filed a review application and review application was allowed and petitioner was given benefit of reduction of area during consolidation.

15. State filed an appeal against the order giving benefit to petitioner regarding reduction of area but no appeal was filed against the order, it was passed in favour of petitioner on 31.3.1995. It was only on instigation of letters sent by Commissioner, appeal was filed beyond time without disclosing proper reasons of delay and Appellate Authority has allowed the same.

16. From the perusal of record and the order passed by Appellate Authority it appears that Sri K.K. Gupta, Additional Commissioner was personally interested in the matter and has directed collector as well as other authorities to file an appeal. From perusal of record, it also appears that no cogent reason has been disclosed for not filing appeal within time. The Apex Court has held that if before taking surplus land from tenure holder if the holding of person concerned has reduced during consolidation operation, then tenure holder is entitled to benefit.

17. In such situation, the Apex Court has directed authorities below to consider and decide the same, therefore, view taken by Appellate authority that no benefit can be given to petitioner if area has been reduced during consolidation operation, is not correct. In Gyanendra Kumar's case (Supra) it has been held in para 7 of said judgement that while determining the ceiling limit, the authorities has to take into consideration the fact that if during the consolidation the area is reduced, the same has to be taken into consideration by ceiling authorities.

18. As similar questions and facts are involved in both writ petitions as such both writ petitions are being decided by a common judgement. The leading case is Writ Petition No. 36366 of 1996. As regards, finding recorded by Appellate Authority giving reasons of condonation of delay, facts stated by respondents when petitioner has obtained the order dated 31.3.1995 by concealing certain facts and State has no knowledge regarding the decision. From the record it is clear that both objections filed by petitioner, i.e. one regarding benefit to his son Samar Pal Singh and other regarding reduction of area during consolidation was

pending before same prescribed authority and the order was passed on 31.3.1995 in favour of Satendra Pal Singh giving him benefit.

19. As regards petitioner's objection for giving benefit during consolidation proceeding, that was rejected and review application was allowed after hearing both the parties. From the order passed by Appellate Authority, it is clear that appeal was filed only on direction issued by Appellate Authority. The Appellate Authority while considering the claim has not taken into consideration the provisions of law that State- respondent has to explain the cogent reason regarding filing the appeal beyond time, as such, the order passed by Appellate Authority, in my opinion, cannot be sustained in view of settled principle of law.

20. In view of aforesaid fact, in my opinion, finding to this effect by Appellate Authority that petitioner is not entitled to benefit of reduced area during consolidation, appears to be illegal and as such, order passed by Appellate Authority cannot be sustained. The writ petition is allowed. The order dated 30.7.1996 passed in Appeal No. 4 of 1995-96 and order dated 28.2.1997 (Annexure 18 to the writ petition) in Writ Petition No. 12769 of 1997 (Mahavir Singh v. State of U.P. and Ors.) are hereby quashed and matter is remanded back to Appellate Authority to decide the same on merits in view of observations made above.

No order as to costs.