

(2016) 05 AHC CK 0347
In the Allahabad High Court
Case No : C.M.W.P. No. 43824 of 2013

Naya Bans Saraswati Sahkari Grah Nirman Samiti Ltd. APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 5 AllWC 4878 : (2016) 119 ALR 212 : (2016) 133 RD 765

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Dr. H.N. Tripathi, Advocate, for the Petitioner; Shivam Yadav, C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.— Heard Dr. H.N. Tripathi, learned counsel for the petitioner, learned Standing Counsel for the State respondents and Sri Shivam Yadav, learned counsel appearing for the respondent no. 2.

2. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 1.7.2013 passed by the VI Additional District Judge, Gautam Budh Nagar in Misc. Case No. 89 of 2001 in Land Acquisition Reference No. 279/84 (Naya Bans Saraswati Sahkari Grah Nirman Samiti Ltd. Ghaziabad v. Bhuriya wife of Mohar Singh) by which the petitioner's application dated 11.3.2013 filed under Section 5 of Limitation Act in support of the restoration application seeking recall of the order dated 15.11.1990 has been rejected.

3. The facts giving rise to this case are that the Collector Gautam Budh Nagar, while exercising the power vested in him under Section 18 of the Land Acquisition Act, has referred the matter to the District Judge, which was numbered as Land Acquisition Reference No. 279/84 (Naya Bans Saraswati Sahkari Grah Nirman Samiti Ltd. Ghaziabad v. Bhuriya wife of Mohar Singh). This

reference was dismissed in default on 15.11.1990 by the Additional District Judge, Gautam Budh Nagar. The petitioner, herein, has filed restoration application on 17.8.1994. The aforesaid application was dismissed in default on 2.2.2001. The petitioner, herein, has filed another restoration application on 15.3.2001 seeking recall of the order dated 2.2.2001. The said application was also rejected by the court concerned on 20.9.2002.

4. Aggrieved by the order dated 20.9.2002, the petitioner, herein has filed Writ-C No. 3782 of 2003 (Naya Bans Saraswati Grah Nirman Samiti Ltd. v. Sri Harsaroop and others) which was allowed by setting aside the order dated 20.9.2002 vide judgement and order dated 18.12.2012 with the direction to the reference court to decide the restoration application filed by the petitioner. Since the application was filed on 17.8.1994 seeking recall of the order dated 15.11.1990, the application was obviously barred by time, therefore, the petitioner has filed an application seeking condonation of delay, which has been rejected by the impugned order.

5. Sri Tripathi, who appears for the petitioner, submits that there was sufficient reason for not filing the restoration application after the reference was dismissed in default on 15.11.1990 coupled with the fact that the counsel who had been appearing in the reference has not informed the order of dismissal in default but the court below has erred in dismissing the application without addressing itself on the merit of the reference.

6. Refuting the submissions of learned counsel for the petitioner, learned Standing Counsel as well as Sri Shivam Yadav, who appears for the respondent no. 2, submitted that non-information of the counsel to the client is one part of the matter but what has been done by the party, nowhere has been explained in the application. In their submissions, the petitioner is not an illiterate person but he is the secretary of the Society having P.HD. degree as reflect from his name, therefore it was incumbent upon him to inquire about the progress of the reference. It has also been submitted that it was not first default, the petitioner has also chosen not to appear in the year 2001 too and got the restoration application dismissed in default. The submission has been made that in case, the impugned order is set aside and the court below is directed to hear the reference on merit and in case, the reference is allowed, and amount of compensation is enhanced, in that eventuality, the state exchequer would be burdened with the interest which may be of the last 32 years. In their submissions, the impugned order does not suffer from any error of law and the writ petition deserves to be dismissed.

7. Sri Tripathi, in response thereto, has submitted that there was sufficient explanation for not filing the restoration application well within time but the court below has not looked into the gravity of the matter and rejected the application of the petitioner as barred by time. In the submissions of Sri Tripathi, the effect of allowing the restoration application would be decision on merit of the reference. Taking shelter of the judgment of the Apex Court in the case of

Khazan Singh (dead) by LRS v. Union of India, 2002 (1) Laws (SC) 38, Sri Tripathi submitted that the civil court has no jurisdiction to dismiss the reference in default and it was incumbent upon the court concerned to hear the reference on merit and answer the same even in absence of the parties. The legal proposition in this regard could not be disputed by learned counsel for the respondents by placing another view taken by Hon"ble the Apex Court.

8. The Apex Court in the case of Khazan Singh (dead) (supra) has observed as under :-

"The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

9. Otherwise also, Hon"ble the Apex Court in number of cases has held that while deciding the application filed under Section 5 of Limitation Act, the court should take liberal view. It has also been held in number of cases that while considering the delay condonation application, the court must see the merit of the case also as the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

10. The length of delay is also not very much material if there is a substance on merit. It has also been held that if there had been some slackness on the part of applicant and that has caused inconvenience to the other side that can be compensated in terms of money and the delay can be condoned instead of closing the door of justice for ever. Reference may be had to the judgments of the Apex Court in Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. (JT 1987 (1) SC 537 : 1987 (2) SCR 387), State of Bihar and others v. Kameshwar Prasad Singh and others JT 2000 (5) 389, Noharlal Verma v. District Cooperative Central Bank Ltd. Jagdalpur, 2008 14 SCC 445, V.M. Salgaocara and Bros. v. Board of Trustees of Port of Mormugao and Another 2005 (4) SCC 613, Sneha Gupta v. Devi Sarup and Others 2009 (6) SCC 194 and Ragho Singh v. Mohan Singh 2001 (9) SCC 717, Jeet Narain and Another v. Govind Prasad and Others (2010) 3 ADJ SC 470 as well as of this Court in Smt. Prem Wati and Another v. Smt. Munni Devi alias Minakshi and Another 2009 (2) AWC 1099, Ramesh and another v. Collector Jalaun and others, 2013 (7) ADJ 376 and Mukesh and another v. Additional D.M. (F and R) Mathura and others 2015 (8) ADJ 73.

11. In view of the law laid down by the Apex Court on the matter of the delay condonation application as well as on merit of the restoration application, I am of the view that the court below has erred in rejecting the petitioner's application

as barred by time. However simultaneously the slow move of the petitioner in lingering the matter while filing the first restoration application after the period of four years cannot be brushed aside, therefore the delay is condoned with the condition that in case, the reference is allowed and the amount of compensation is enhanced, the state exchequer will not be burdened by directing it to pay interest on the aforesaid amount. I am also of the view that once the delay condonation application is allowed, the matter has to be remitted before the Additional District Judge to decide the restoration application but that would be a futile exercise as looking into the law laid down by the Apex Court in the case of Khazan Singh (dead) (supra), the restoration application has to be allowed.

12. In the result, writ petition succeeds and is allowed. The impugned order dated 1.7.2013 passed by the VI Additional District Judge, Gautam Budh Nagar in Misc. Case No. 89 of 2001 in Land Acquisition Reference No. 279/84 (Naya Bans Saraswati Sahkari Grah Nirman Samiti Ltd. Ghaziabad v. Bhuriya wife of Mohar Singh) is hereby quashed. The delay in filing the restoration application is condoned. The delay condonation application as well as the restoration application seeking recall of the order dated 15.11.1990 are allowed. The order dated 15.11.1990 is recalled. The Reference No. 279/84 (Naya Bans Saraswati Sahkari Grah Nirman Samiti Ltd. Ghaziabad v. Bhuriya wife of Mohar Singh) is restored to its original number. The VI Additional District Judge, Gautam Budh Nagar, or any other judge assigned by the learned District Judge, is directed to decide the reference on merit expeditiously preferably within a period of six months from the date of filing of the certified copy of the order of this Court even in absence of the counsel for the parties in view of the law laid down by the Apex Court in the case of Khazan Singh (dead) supra.