
(2009) 03 UK CK 0002
In the Uttarakhand High Court

Om Prakash

APPELLANT

Vs

Addl. District Magistrate/Collector and Others

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 03 UK CK 0002

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.

(Restoration Application No. 131/2009 with delay condonation application No. 1725 of 2009)

1. Heard learned Counsel for the parties on restoration application as well as delay condonation application.
2. This writ petition was dismissed for want of prosecution on 29-7-2008. There is delay of about six months in filing the restoration application. The restoration application is accompanied by an application u/s 5 of the Limitation Act, supported by an affidavit, for condoning the delay in moving the restoration application.
3. Delay in filing the restoration application has been sufficiently explained in the affidavit. Delay is condoned. Delay condonation application No. 1725 of 2009 stands allowed.
4. Accordingly, the restoration application is allowed. The dismissal order, dated 29-7-2008, is recalled and the writ petition stands restored to its original number.
5. Heard learned Counsel for the parties and perused the record.
6. The writ petition is admitted.

7. This writ petition has been filed for the the following reliefs:

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 26.8.1993 by the respondent No. 1 and the judgment and orders dated 26.4.1993 and 20.11.1992 passed by the respondent No. 2 (contained in Annexures IV & III respectively).

ii) Issue any other writ, order or direction which this Hon''ble Court may deem just and proper in the circumstances of the case.

iii) Award the costs of this petition to the petitioner.

8. Relevant facts, giving rise to the present petition, according to the petitioner, in brief, are that proceedings u/s 122-B of the U.P.Zamindari Abolition and Land Reforms Act, (for short the Act) were initiated against the petitioner pursuant to a notice issued in Form 49-Ka containing illegal details. The petitioner contested the case by filing objection to the effect that the notice itself is illegal and that the petitioner has not encroached upon any Gaon Sabha property. The Government had settled the land with the petitioner.

9. The petitioner is having his old Abadi on a part of the land in question since before the enforcement of the Act. According to the petitioner the land stands settled with the petitioner and the proceedings are not maintainable. The amount of damages sought to be realized from the petitioner as mentioned in the notice Form 49 Ka (copy Annexure No. 1) is unwarranted. The petitioner has also alleged that the respondent No. 2 illegally proceeded to pass an ex-parte order behind the petitioner without any notice to him before passing ex-parte order dated 20-11-1992 and no opportunity of hearing was given to the petitioner to contest the proceeding. The petitioner thereafter moved an application to set aside ex parte order on 14-12-1992, which was allowed on payment of costs. According to the petitioner, he paid a sum of Rs. 40/- to the Reader of the Court under a bona fide belief, but the same had not been deposited towards costs. On 17-2-1993, the order allowing the restoration application was recalled there being no prayer to that effect from the side of Gaon Sabha and implementation of order dated 27-11-1992 was directed. As such, the order dated 17-2-1993 is alleged to be violative of principles of natural justice.

10. The petitioner again filed restoration application 15-4-1993, which too was rejected vide order dated 26-4-1993. The petitioner challenged the order dated 26-4-1993 in Revision No. 206 of 1993, Om Prakash v. Land Management Committee before the Collector, Haridwar. The Collector dismissed the revision of the petitioner along with six other revisions including Revision No. 207 of 1993, Kishan v. Land Management Committee by a common order datged 26-8-1993. Hence this writ petition.

11. In the course of arguments, learned Counsel for the petitioner has submitted that the controversy involved in the present writ petition is squarely covered by the order dated 31-7-2008 passed by this Court in Writ Petition (M/S) No. 4758

of 2001 Karam Chand v. Additional District Magistrate/Collector Hardwar and others. Learned Counsel for the petitioner further pointed out that this Court has already allowed the Writ Petition (M/S) No. 4742 of 2001 Kishan (since deceased) v. District Magistrate/Collector Hardwar and two others vide order dated December 31, 2008, which was preferred on similar facts. He further urged that the present writ petition may be allowed in terms of the order dated 31-7-2008.

12. Learned Brief Holder appearing for the respondents has fairly conceded these facts. I have perused the orders under reference passed by this Court. In my view the controversy involved in the present writ petition is squarely covered by the order dated 31-7-2008 passed by this Court in W.P.M.S. No. 4758 of 2001, therefore, this writ petition deserves to be allowed in terms of that order.

13. Accordingly, the writ petition is allowed in terms of the order dated 31-7-2008 passed by this Court in Writ Petition No. 4758 (M/S) of 2001, Karam Chand v. Additional District Magistrate/Collector Hardwar and Ors. The impugned orders are set aside. The case is remanded to the trial court, which shall decide the case on merits after giving opportunity of hearing to both the parties, preferably within a period of three months from the date of production of certified copy of this order. If the petitioners appear before the trial court within one month from today, the eviction shall be stayed for four months. Costs easy.