
(1984) 09 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 1237 of 1979

Ram Baran

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Limitation Rules, 1963 — Rule 111

Citation : (1984) AWC 503 Supp

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : H.S. Sahai, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Misra, J.—In this writ petition the dispute relates to plot Nos. 3396/1 and 4263/2 recorded in Khata No. 349 in the name of forest department. An objection was filed by the Petitioner claiming that he is Sirdar of the said plots in dispute and is in possession over the same. It has further been averred in para 7 of the writ petition that the name of the Petitioner was recorded in Clause 12 in Khatauni 1356 Fasli with a duration of two years and that in Khatauni 1359 Fasli with a duration of five years. It has further been averred that in Khatauni 1360 Pasli the name of the Petitioner was recorded as Adhivasi and consequently in Khatauni 1362 Fails the Petitioner has been recorded as Sirdar by an order passed by the Compensation Officer on Z, A. Form No. 101 and since then the Petitioner's name was being recorded as Sirdar on the said plots. All of a sudden without any order of the competent authority, the name of the Petitioner was omitted from Khatauni 1366 to 1368 Fasli. It has been averred that in said Khatauni the name of the forest department is also not recorded on the said plots. In para 8 of the writ petition it has been averred that in the gazette notification filed on behalf of the forest department, the plots in dispute are not mentioned indicating them to have vested in the forest department. However,

the case of the forest department, opposite party No. 2, is that in the boundaries mentioned in the notification the disputed plots fall within the boundaries "indicated in the notification, and, as such, these plots belong to the forest department.

2. The Consolidation Officer, after taking evidence of the parties, allowed the objection filed by the Petitioner vide order dated 30th October, 1975 and directed the plots in dispute to be recorded as Sirdar in the name of the Petitioner who was found to be in possession. The forest department went up in appeal against that order, but the appeal was dismissed vide order dated 1st November, 1976 and the order passed by the Consolidation Officer was confirmed. Still feeling aggrieved, by that order, the forest department filed revision, which has been allowed by the impugned order dated 19-2-1979 passed by the Deputy Director of Consolidation, Ronda. The case has been remanded to the Settlement Officer, Consolidation for deciding it on merits after making spot inspection. This order dated 19-2-1979 passed by the Deputy Director of Consolidation has been challenged in this writ petition.

3. In para 12 of the writ petition it has been averred that the revision filed by opposite party No. 2 was highly belated and deserved to be rejected as time barred. It has been mentioned that opposite party No. 2 had applied for the copy of the judgment and order passed by the Settlement Officer, Consolidation on 5-12-1976, that is, after the expiry of thirty days limitation prescribed for filing revision. The copy was prepared and pasted on notice board on 30-12-1976. However, the revision was filed on 2-2-1977, that is, after the expiry of thirty days even from the date of receipt of the copy. It has further been averred in the writ petition that No. application for condonation of delay u/s 5 of the Limitation Act was moved by the forest department nor any affidavit was filed explaining delay in filing the revision. Even No. prayer was made seeking condonation of delay in the memo of the revision itself. Referring to these facts learned counsel for the Petitioner urged that the Deputy Director of Consolidation acted illegally and with substantial irregularity in exercise of jurisdiction in deciding the revision on merits without looking to the question of limitation and condoning the delay which was raised by the Petitioner before him. In the counter affidavit the aforesaid facts stated with regard to the obtaining of certified copy of the order passed by the Settlement Officer, Consolidation, have not been denied. It has, however, been mentioned that since the order passed by the Deputy Director of Consolidation dated 19-2-1979 is silent on the point of bar of limitation, and, as such, this is indicative of the fact that the point of bar of limitation was not raised before the Deputy Director of Consolidation. It has been urged in para 18 of the counter affidavit that in these circumstances this plea that the revision was time barred and the Deputy Director of Consolidation should have dismissed it as such cannot be raised for the first time in writ petition under Article 226 of the Constitution. It has been asserted on behalf of opposite party No. 2 that since this plea of limitation was not raised before the Deputy Director of Consolidation, and, as such, the remand order passed by him, after considering the case on

merits, cannot be interfered with.

4. Having gone through the averments contained in the writ petition as well as in the counter affidavit I find much substance in what has been urged on behalf of the learned counsel for the petitioner.

5. It is well settled that any person approaching any authority beyond time has to satisfy it by giving cogent reasons for his absence or the cause due to which he was prevented from filing appeal or revision in time. The concept of sufficient cause is well known. It is true that Section 5 of the Limitation Act has to be construed liberally, but it cannot be given a go by otherwise the court of law shall cease to be court of law and shall become courts where instead of law the will of the authority shall prevail--See Ram Sunder Singh v. Ram Mohan Singh 1981 ALJ 423. In Parsidh Narain Rai v. Dy. Director of Consolidation 1979 ALJ 764 K.P. Singh, J. observed that when a remedy of party is barred by lapse of time, the other party gets valuable right and that right can be negated only when sufficient cause has been shown in preferring the delayed revision petition. It was further observed that it could not be presumed that the delay in preferring revision was condoned when the revision was allowed on merits by the Deputy Director of Consolidation.

6. In the present case I find that the Deputy Director of Consolidation has not at all applied its mind to the question of limitation and has allowed the revision by the impugned order. It has been urged on behalf of the opposite party No. 2 that since this question of limitation was not raised before the Deputy Director of Consolidation, and, as such, it cannot be permitted to be raised for the first time in this writ petition. I am unable to agree with this contention.

7, The plea of limitation and res-judicata are the plea relating to jurisdiction of court and the plea of want of jurisdiction can be raised and decided by the court even if the same was not raised before the courts below and has been urged for the first time in second appeal if that question can be decided on the basis of the material already on record. (See Ram Chandra v. Muneshwar 1961 ALJ 991).

8 It is No. doubt correct to say that the mere fact that the order is without jurisdiction or that there is error apparent on the basis of the record in the exercise of jurisdiction is not sufficient to issue a writ. In addition it has to be established that the order has resulted in manifest injustice. It is, therefore open to the High Court to refuse to issue a writ if it feels that substantial justice has been done in the case and the Petitioner is not pre-judged in any manner whatsoever. It is however, equally well settled concept that when an appeal or revision becomes time barred, a valuable right accrues to the opposite party in whose favour the orders have been rendered by the courts below. That right cannot be interfered with by the appellate court or revisional court without first considering the question of limitation and if delay in preferring appeal or revision is found to be sufficiently explained, it can be condoned. The concept of sufficient cause is well known. The court should adhere to that concept while considering

the question of limitation and in condoning the delay. The court would not get jurisdiction to interfere with the orders passed by the court below without first condoning the delay and if without condoning the delay the jurisdiction is exercised in deciding the appeal or revision on merits, the order thus passed would stand vitiated in law.

9. It is also well settled that the court has to see whether it can entertain the appeal or revision and exercise jurisdiction to hear it on merits. Reference be made to Section 3 of the Limitation Act which clearly provides that subject to the provisions contained in SECTIONS 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

10. The Deputy Director of Consolidation had, therefore, to see whether the revision, which was filed by opposite party No. 2, was filed within prescribed limitation or not. The limitation prescribed for filing revision under Rule 111 is thirty days. In the present case the application for copy was moved by opposite party on 5-12-1976. The Settlement Officer, Consolidation had passed order on 1-11-1976. It is thus, evident that the opposite party No. 2 had applied for the copy after expiry of thirty days from the date of passing of the order by the Settlement Officer, Consolidation. It has been averred in para 12, which fact has not been denied, that opposite party No. 2 had received this copy on 30-12-1976 while the revision was filed on 2-2-1977. This delay was also not explained. It is, therefore, evident that the revision was filed beyond the prescribed period of thirty days and the Deputy Director of Consolidation should have examined the question of delay in filing the revision which was necessary for him to do in view of the provisions contained in Section 3 of the Limitation Act The Deputy Director of Consolidation, therefore, could exercise jurisdiction, in bearing the revision on merits only after considering the question of limitation and condoning the delay Thus, he acted illegally and with material irregularity and without jurisdiction in proceeding to decide the revision on merits. When an order is per se without jurisdiction, the same cannot be sustained merely on the ground that the Petitioner has not been prejudiced as the order was passed on merits after hearing the parties. An order which suffers from error of want of jurisdiction or with substantial irregularity in exercise of jurisdiction it cannot be sustained merely on the ground that it could not be shown to have caused any sufferance or prejudice to the party, against whom order is said to have been rendered by the authorities after hearing the parties on merits. In my opinion, the resultant prejudice would be inherent in an order which suffers from apparent error of want of jurisdiction or from patent error of substantial irregularity in exercise of jurisdiction and it would fail on this ground alone even without further showing that it cannot be sustained even on merits.

11. No. doubt it may be correct that even without a formal application for condoning the delay the revision court can proceed to consider that question on merit and condone the delay after sufficient cause appears to have been shown

in not filing the revision within the prescribed limitation. In the present case, however, the Deputy Director of Consolidation has not at all considered this question and has proceeded to decide the revision on merits. Since nothing has been said with regard to the question of delay in filing the revision, it cannot be assumed that the Deputy Director of Consolidation impliedly condoned the delay while proceeding to hear and decide the revision on merits. The expression "sufficient cause" should No. doubt receive a liberal construction so as to advance substantial justice when No. negligence or inaction or want of bona fide is imputable to a party. But this expression cannot be so construed merely on asking for it without showing some bona fide sufficient cause. The question of condonation of delay should be decided on the basis of grounds shown for the delay in filing the revision by the concerned party. And this question has got to be determined first while deciding the revision on merits. It may, however, be clarified that to roe it does not appear imperative to pass separate order condoning delay and that question may itself be dealt with and determined in that very judgment and order by which the revision is decided on merits. Such a composite order, in my opinion, would neither be void nor illegal merely on the ground of being a composite order.

12. The learned State Counsel has urged that since this question was apparently not raised before the Deputy Director of Consolidation, and, as such, the Deputy Director of Consolidation has not recorded any finding on the question of condonation of delay. He, thus, urged that the opposite parties may be permitted to show cause before the Deputy Director of Consolidation as to why the revision could not be preferred within limitation in the event the case is sent back to the Deputy Director of Consolidation after quashing the impugned order. He further urged that since in these proceedings right and title of the parties in the disputed land are to be finally determined by the consolidation authorities, and as such, a liberal view has to be taken for condoning the delay in filing the revision especially when the Deputy Director of Consolidation had summoned the record of the courts below while exercising revisional jurisdiction.

13. Having considered the arguments raised by the learned counsel for the parties and in view of what has been said above I find that the impugned order passed by the Deputy Director of Consolidation cannot be sustained and deserves to be quashed as he has not considered the question of delay in filing the revision. He could not proceed to decide the revision on merits without first dealing with this question of condonation of delay (See Parsidh Narain Rai v. Deputy Director of Consolidation Azamgarh 1979 ALJ 764 . The question whether the delay should or should not be condoned will now be considered by the Deputy Director of Consolidation and the opposite party No. 2 will be allowed to file an application seeking condonation of delay. This would be permitted because the objection with regard to limitation was not raised by the office of the Deputy Director of Consolidation nor the Deputy Director of Consolidation had himself proceeded to consider this vital question while proceeding to decide the revision on merits. Hon"ble Supreme Court in Udai Bhan Gupta Vs. Hari Shankar Bansal

and Others, observed that:

Whenever an appeal or a revision petition is filed in the Registry of the High Court, the defects have to be pointed out and if the revision petition filed by the appellant is barred by limitation, the Registry ought to point out the defect which would prompt the appellant to seek condonation of delay. (Emphasis supplied)

14. In this view of the matter it appears necessary that the office should have pointed to the revisionist that the revision is time barred so as to enable the revisionist to move application for condonation of delay. Since this has not been done, and, as such, the revisionist opposite party No. 2 would now be afforded an opportunity to move an application seeking condonation of delay. The Deputy Director of Consolidation would then proceed to decide that application on merits and if delay is condoned the revision would then be decided on merits. I do not express any opinion on said questions and they are left open for the Deputy Director of Consolidation to be decided.

15. In the result the writ petition succeeds and is hereby allowed and the impugned order dated 19-2-1979 passed by the Deputy Director of Consolidation, Gonad, is hereby quashed and he is directed to restore the revision to its original number and decide it in accordance with law and in the light of observations made above.

16. No. orders as to costs.