
(2003) 05 AHC CK 0184
In the Allahabad High Court
Case No : C.M.W.P. No. 20449 of 2003

Ram Chandar

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Citation : (2003) 4 AWC 3003 : (2003) 95 RD 97

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; A.K. Singh and A.P. Singh, Anuj Kumar, Additional S.C. and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Sankatha Rai, learned counsel for the petitioner and Sri A.K. Singh learned counsel appearing for the respondent No. 4.

2. By this writ petition the petitioner has prayed for quashing the order dated 29.4.2003, passed by the Deputy Director of Consolidation, Azamgarh and the order dated 21.3.2003, passed by the Assistant Settlement Officer of Consolidation, Azamgarh.

3. Brief facts giving rise to this writ petition are :

"The respondent No. 4 filed a time barred appeal u/s II (1) of the U. P. Consolidation of Holdings Act against the order dated 5.4.1986, passed by the Consolidation Officer u/s 9A (2) of the said Act. Along with appeal affidavit of the Pradhan of the Gaon Sabha was also filed. Benefit u/s 5 of the Limitation Act was also claimed and it was prayed that the delay in filing the appeal be condoned. In appeal it was stated that plot Nos. 521 area 245 Karis was recorded as pond in

basic year records and was also recorded as pond in Khatauni of 1307 F. It was specifically pleaded in paragraph 2 of the appeal that neither any case was registered as Case No. 934 nor it was ever decided by the Court and the objection is ante-dated and the order shown to have been passed, was not passed by the Presiding Officer nor it containing the signatures of the Presiding Officer. It was further stated that the aforesaid order was ex-parte. In paragraph 6 it was stated that entire proceedings were antedated and fictitious. In paragraph 7 of the appeal it was stated that the order dated 5.4.1986 was shown to have been incorporated in the records after nine years. It was stated that after coming to know about the above facts the appellant informed the said facts to the District Government advocate and an application was also filed before the Collector u/s 33/39 of the U. P. Land Revenue Act but the Collector took the view that with regard to legality and validity of the order dated 5.4.1986 proceedings u/s 33/39 of the U. P. Land Revenue Act are not maintainable. It was stated that the order has been passed for filing the appeal by the Incharge Gaon Sabha/Collector. These facts were verified on affidavit on basis of which benefit u/s 5 of the Limitation Act, was claimed. An objection was filed by the petitioner before the Assistant Settlement Officer of Consolidation in which it was stated that the appeal is barred by 16 years and hence no case has been made out for grant of benefit u/s 5 of the Limitation Act. It was further stated that the proceedings u/s 33/39 were held in the Court of Collector in which the Pradhan herself appeared on 29.6.2002, hence it cannot be stated that she had no knowledge. The Assistant Settlement Officer of Consolidation by order dated 21.3.2003, gave the benefit u/s 5 of the Limitation Act in the appeal and condoned the delay in filing the appeal. The Assistant Settlement Officer of Consolidation fixed the appeal for hearing. Against the said order dated 21.3.2003 the petitioner filed a revision u/s 48 of the said Act which revision has been dismissed by the Deputy Director of Consolidation on 29.4.2003. The Deputy Director of Consolidation took the view that the appellate court has only granted benefit u/s 5 of the Limitation Act which does not affect the right of the petitioner. He further observed that on question of limitation of Courts have to adopt liberal view. The Deputy Director of Consolidation with the aforesaid observations refused to interfere with the order of the Assistant Settlement Officer of Consolidation. Against these two orders the writ petition has been filed by the petitioner."

4. Sri Sankatha Rai, learned counsel for the petitioner contended that the error has been committed by the courts below in condoning the delay in filing the application u/s 5 of the Limitation Act. It has been contended that there was no sufficient ground for condoning the delay of 16 years. He further contended that before the Consolidation Officer. Pradhan also appeared and it cannot be believed that subsequent Pradhan did not known about the order. Sri Rai further contended that the consolidation authorities while deciding question of limitation had no jurisdiction to consider the merits of the case, Sri Rai further contended that the land in dispute was grove of the petitioner. Learned counsel for the petitioner referred to entries of 1272 F and claimed that it was recorded in the

name of the ancestor Ramanand Lal, who was in possession. The learned counsel for the petitioner has further contended that several documents including comparable table of 1307 F. was filed before the Consolidation Officer, who rightly upheld the petitioner as grove holder, Counsel for the petitioner also placed reliance on various judgments of this Court, namely, P.K. Ram Chandran v. State of Kerala and Anr. 1998 RD 18 ; Girja Shanker and Anr. v. Deputy Director of Consolidation, Bhadoi and Ors. 1996 AWC 1018 ; Ram Charan v. Ziladhikari Deputy Director of Consolidation, Banda and Ors. 1995 RD 102 and Ram Kali Devi (Smt) Vs. Manager, Punjab National Bank, Shamshabad and Others, . Sri A.K. Singh learned counsel appearing for the respondents refuting the submissions of the counsel for the petitioner contended that sufficient cause was shown for condonation of delay and the Assistant Settlement Officer of Consolidation rightly condoned the delay in filing the appeal. The counsel for the respondents submitted that the land was recorded as pokhari (pond) in basic year entry and order of Consolidation Officer said to have been passed was ex-parte to the gaon sabha. He further contended that the consolidation courts are under duty to protect the properties of the gaon sabha and no error was committed by the Assistant Settlement Officer of Consolidation in condoning the delay. He has placed reliance on the judgment of the Apex Court in N. Balakrishnan v. M. Krishnamurthy 1999 (1) AWC 15 : 1998 RD 607 ; Ram Murat (D.) By L.Rs. and Anr. v. Deputy Director of Consolidation and Ors. 2000 (4) AWC 2704 : 2000 RD 531 AmbikaPrasad v. Commissioner Jhansi Division, Jhansi and Ors. 1994 (1) AWC 602 : 1994 ALR 503 and Praveen Begum (Smt.) v. XVth Additional District Judge, Agra and Anr. 2000 RD 693.

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

6. The first submission of counsel for the petitioner is that no sufficient cause shown by the respondents for allowing the application u/s 5 of the Limitation Act. For considering the aforesaid submission it is necessary to look into the allegations made in appeal and the cause shown for delay before the appellate court. A copy of grounds of appeal has been filed as Annexure-6 to the writ petition. Benefit u/s 5 of the Limitation Act has been claimed in the memo of appeal itself and the relevant facts for claiming benefit u/s 5 of the Limitation Act are contained in the memo of appeal. An affidavit has been filed by the respondent in support of the memo of appeal verifying the contents thereof. In the affidavit also benefit u/s 5 of the Limitation Act has been claimed. In paragraph 2 of the memo of appeal it has been claimed that neither the Case No. 934 was ever instituted nor proceeded in the Court nor decided by the Court. It is claimed that objection is ante-dated and the order is rendered by some unknown person which also do not contain the signatures of the Presiding Officer. The allegation in paragraph 5 is that the proceedings are ante-dated and fictitious. In paragraph 7 it has been stated that although the order is alleged to have been passed on 5.4.1986 but it has been incorporated in the records after nine years. Alternatively in paragraph 7 it has been stated that in case any

proceedings was done in collusion of Ex-Pradhan there is no binding of such proceedings on the appellant. In paragraph 8 it has been stated that after coming to know an objection under Sections 33/39 of the U. P. Land Revenue Act was filed before the Collector for correcting the entry which application was held not maintainable. For challenging the validity and propriety of the alleged Case No. 934 decided on 5.4.1986 it has been stated that thereafter an application was moved before the Incharge Gaon Sabha/Collector who issued direction for filing the appeal and thereafter the appeal has been filed. The facts as narrated in the appeal clearly shows that the case of the appellant is that the order dated 5.4.1986 was ex-parte to gaon sabha and the amaldaramad of which was made after nine years. Copy of the order of the Consolidation Officer said to have been passed on 5.4.1986 has been filed as Annexure-5 to the writ petition. The said order does not disclose that the order was passed after contest or the State of Uttar Pradesh, who was arrayed as respondent was served. The order shows that the Pradhan appeared as a witness in favour of the petitioner. In the writ petition, it has been stated that the objection filed by the petitioner was also barred by time. On the facts as disclosed in the memo of appeal the Assistant Settlement Officer of Consolidation exercising his discretion granted the benefit of Section 5 of the Limitation Act. The Assistant Settlement Officer of Consolidation in his order has noted in detail the facts given in the memo of appeal for explaining the delay. The Assistant Settlement Officer of Consolidation has accepted the facts stated in the affidavit for giving benefit u/s 5 of the Limitation Act. It is true that the order of the Assistant Settlement Officer of Consolidation does not give elaborate finding but the order discloses that the Assistant Settlement Officer of Consolidation has taken into consideration all the relevant facts stated in the appeal as noted above. The principles for exercise of discretion in condoning the delay u/s 5 of the Limitation Act are well established. In Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , the Apex Court observed in paragraph 4 which is extracted below :

"(4) The wording of the second proviso is similar to the provisions of Section 5 of the Indian Limitation Act. In Krishna v. Chathappan ILR (1890) Mad 269, the Madras High Court indicated in the following passage how the discretion u/s 5 should be exercised :

"We think that Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood the words sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

This decision received the approval of this Court in Dinabandhu Sahub v. Jadumoni Mangaraj 1955 1 SCR 140 : AIR 1954 SC 411 Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., . The words "sufficient cause" in the second proviso to Section 20 (2) should receive a similar liberal construction."

7. The Apex Court in the aforesaid judgment laid down that sufficient cause should receive a liberal construction. It was further laid down in the said judgment that the High Court will not review, the discretion but it may interfere if the exercise of discretion is capricious or perverse or ultra vires. The Apex Court in the said judgment also laid down that the High Court will not interfere merely because it may take a different view of the facts in exercise of the discretion differently. Following observations were made by the Apex Court in paragraph 6 of the judgment :

"6. Having regard to all the circumstances of the case, the employees were not guilty of inaction or negligence and the entire delay in presenting the application was due to their honest though mistaken belief that the relief of overtime wages would be granted to them through the intervention of the inspectors and their superior officers. It is not shown that in condoning the delay the authority acted arbitrarily or capriciously or in excess of its jurisdiction or that it committed any error apparent on the face of the record. In the application u/s 20 (2), some of the employees claimed overtime wages for periods prior to January 1, 1961. The authority declined to condone the delay in respect of claims for the period prior to January 1, 1961. On a careful consideration of the relevant materials the authority condoned the delay in respect of claims subsequent to January 1, 1961 only. The Court cannot interfere merely because it might take a different view of the facts and exercise the discretion differently. It is not shown that the impugned order led to grave miscarriage of justice. The High Court refused to interfere under Article 227. We think that this is not a fit case for interference by us under Article 136."

8. The counsel for the petitioner has placed reliance on the judgment of the Apex Court in P.K. Ram Chandran v. State of Kerala and Anr. 1998 RD 18 in which case the High Court has condoned the delay in filing appeal which was set aside by the Apex Court. From the judgment of the Apex Court in P.K. Ram Chandran's case, it is clear that the Apex Court noted in the judgment the explanation given by the petitioner and held that no explanation much less the reasonable or satisfactory explanation has been offered by the State for condonation of delay. Following observation was made by the Apex Court in the judgment :

"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."

9. In the present case, the explanation given by the respondent as noted above is satisfactory and the exercise of discretion by the Assistant Settlement Officer of Consolidation in condoning the delay, cannot be said to be arbitrary, capricious, or ultra vires. Explanation given for condonation has been noted by the Assistant Settlement Officer of Consolidation in his judgment and he having found then satisfactory, no case has been made out for interference under Article 226 of Constitution by this Court.

10. In the judgment of this Court in *Girja Shanker and Anr. v. Deputy Director of Consolidation, Bhadoi and Ors.* 1996 AWC 1018, no finding was recorded by the Settlement Officer of Consolidation that the reason is sufficient. Since there was no finding the matter was remanded to the Assistant Settlement Officer of Consolidation for again deciding the application u/s 5 of the Limitation Act by the Assistant Settlement Officer of Consolidation, in the present case the Assistant Settlement Officer of Consolidation has found the reason given in the affidavit sufficient for condonation of delay, the Deputy Director of Consolidation has also refused to interfere in the order of the Assistant Settlement Officer of Consolidation. In this view of matter the aforesaid judgment do not help the petitioner in the present case.

11. In *Ram Charan's case (supra)* this Court has laid down that the mere fact that the rights of the parties are to be determined in the consolidation proceedings and if such rights are not decided, the parties shall be affected itself is not a ground to allow the application which is filed u/s 5 of the Limitation Act. This Court held that the authorities have to consider the explanation offered by the applicant and the affidavit filed in support of such application. In *Ram Charan's case (supra)* this Court ultimately observed in paragraphs 12 and 13 which are noted below :

"12. In the present case, however, looking into the facts of the case it would not be appropriate to remand the case for deciding the application u/s 5 of the Limitation Act. The proceedings are pending since the year 1976. The objection filed by respondents was dismissed on 30.7.1986. The contention of the respondents is that the parties have entered into compromise. This Court is slow in interfering with the orders condoning the delay under Article 226 of the Constitution of India,

13. In *Smt. Ram Thakur v. Deputy Director of Consolidation and Ors.* 1975 RD 271, it was held that the High Court should not interfere, under Article 226 of Constitution of India, in the exercise of discretion in condoning the delay by the Consolidation Authorities. Similar view was expressed in *Ram Chand and Anr. v. Deputy Director of Consolidation and Ors.* 1984 RD 258."

12. In the present case, the Assistant Settlement Officer of Consolidation has not allowed the said application ultimately on the ground that the rights of the parties should be determined in the consolidation proceedings on merits rather the Assistant Settlement Officer of Consolidation found the affidavit and the reasons given therein sufficient for condonation of delay. In *Ram Charan's case (supra)* the Court refused to interfere with the order of the Assistant Settlement Officer of Consolidation condoning the delay. Learned counsel for the petitioner has also relied on the judgment of the Apex Court in *Ram Kali Devi (Smt.) v. Manager. Punjab National Bank, Shamshabad and Ors.* JT 1998 (8) SCC 529, in which the Apex Court observed that the merits of the case cannot be looked at without condoning the delay. The ratio laid down by the Apex Court in the said judgment is well established. In the present case, the Assistant Settlement

Officer of Consolidation has not considered the merits of the case nor the condonation has been allowed relying on the merits of the claim of the respondent No. 2. The Assistant Settlement Officer of Consolidation has fixed a date for hearing of the appeal on merits. The judgment of this Court in Ram Kali Devi's case has no application on the facts of this case.

13. The judgment of N. Balakrishnan v. M. Krishnapurthy 1999 (1) AWC 15 : 1998 RD 607, relied upon by the counsel for the respondents to support his contention. The Apex Court in the said judgment has laid down the principles which are to govern the exercise of discretion while considering the application u/s 5 of the Limitation Act. The following was laid down by the Apex Court in the aforesaid case :

"A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari and Others, and The State of West Bengal Vs. The Administrator, Howrah Municipality and Others,

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning the delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guidance that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.

In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its description and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction."

14. In view of what has been said above, it is clear that no such error was committed by the Assistant Settlement Officer of Consolidation in exercise of his discretion by condoning the delay in filing the appeal which may warrant interference by this Court under Article 226 of Constitution of India. It has also not been shown that any great injustice has been done to the petitioner by condoning the delay in filing the appeal. Petitioner will have an opportunity to have his say on merits of the claim before the Assistant Settlement Officer of Consolidation. In facts and circumstances of this case I do not find it a fit case

for interference under Article 226 of Constitution of India.

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