
(2011) 02 AHC CK 0383
In the Allahabad High Court
Case No : C.M.W.P. No. 21436 of 1998

Ram Ji and Others

APPELLANT

Vs

Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Forest Act, 1927 — Section 20, 4, 6

Citation : (2011) 3 AWC 2989 : (2011) 112 RD 633

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the Petitioners and learned Standing Counsel for Respondents.

2. Through this writ petition order dated 31.8.1989 passed by Forest Settlement Officer, Pipri, Sonebhadra, order dated 19.8.1991 passed by appellate court in misc. appeal No. 3564 of 1989 and order dated 3.1.1998 passed by appellate court on review petition have been challenged. Copy of order dated 31.8.1989 is annexed as Annexure-2 to the writ petition. The Petitioners had filed claim petition before Forest Settlement Officer (F.S.O.) in respect of four plots total area 31 bigha 16 biswas situate in village Kuldumari u/s 6 of Forest Act pursuant to the liberty granted by the Supreme Court through the order which is reported in Banwasi Seva Ashram Vs. State of U.P. and Others, Under para 10(2) certain directions were issued. Direction -I from the said para is quoted below:

I. Within six weeks from 1-12-1986, demarcating pillars shall be raised by the Forest Officers of the State Government identifying the lands covered by the notification u/s 4 of the Act. The fact that a notification has been made u/s 4 of the Act and demarcating pillars have been raised in the locality to clearly identify the property subjected to the notification shall be widely publicised by beat of drums in all the villages and surrounding areas concerned. Copies of notice

printed in Hindi in abundant number will be circulated through the Gram Sabhas giving reasonable specifications of the lands which are covered by the notification. Sufficient number of Inquiry Booths would be set up within the notified area so as to enable the people of the area likely to be affected by the notification to get the information as to whether their lands are affected by the notification, so as to enable them to decide whether any claim need be filed. The Gram Sabhas shall give wide publicity to the matter at their level. Demarcation, as indicated above, shall be completed by 15-1-1987. Within three months there from, claims as contemplated u/s 6(c) shall be received as provided by the statute.

3. The entire land in dispute along-with other land had been included in notification u/s 4, Forest Act. Petitioners claimed their possession since before twenty years. At the time of inspection recent possession of the Petitioners was found which was mentioned in proforma-9. F.S.O. held in the said order that Petitioners could not prove that their possession was since before 1385 fasli and that the land in dispute contained jungle trees. By virtue of Section 131-A which was added in U.P. Zamindari Abolition & Land Reforms Act in the year 1986 only those persons could acquire right whose possession was there since 1385 fasli (1.7.1977 to 30.6.1978) or before. First para of the said section is quoted below:

131-A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.--Subject to the provisions of Section 132 and section 133A, every person in cultivatory possession of any land, vested in a Gaon Sabha u/s 117 or belonging to the State Government, in the portion of district Mirzapur south of Kaimur range, other than the land notified u/s 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with nontransferable rights of such land

(proviso not relevant)

(30.6.1978 is last date of 1385 Fasli)

4. Accordingly, the F.S.O. declined the plea taken by the Petitioners. Against the said order Petitioners did not file any Appeal. However, pursuant to the order of the Supreme Court reported in Banwasi Seva Ashram (supra) condition No. III, the matter was suo-motu considered in appeal which was registered as Misc. Appeal No. 3564 of 1989. Condition 10(2) III is quoted below:

III. After the Forest Settlement Officer has done the needful under the provisions of the Act, the findings with the requisite papers shall be placed before the Additional District Judge of the area even though no appeal is filed and the same shall be scrutinized as if an appeal has been taken against the order of the authority and the order of the Additional District Judge passed therein shall be taken to be the order contemplated under the Act.

5. Appeal was dismissed on 19.8.1991 holding that according to proforma-9 the land in dispute was jungle and Petitioners were not cultivating the same.

6. Against the said order Petitioners filed review petition along with delay condo nation application on 3.1.1998 i.e. after more than six years. In para-4 of the affidavit filed in support of delay condo nation application it was stated that Petitioners came to know about the order of the appellate court on 31.8.1997 when officers of the Forest department reached at the spot for digging a ditch. Thereafter, it was mentioned that due to paucity of funds Petitioners could not apply for obtaining the copy of the appellate court order and after arranging the money application for obtaining certified copy was filed on 12.11.1997. Copy was provided on 21.11.1997. However, on 21.7.1998 the deponent of the affidavit i.e. Ram Ji - Petitioner No. 1 fell ill (from arthritis and sciatica). Accordingly, after about one month i.e. on 25.12.1997 he met his counsel and therefore on the re-opening day of the civil court after winter vacation application and review petition were filed on 3.1.1998. On the margin of the delay condo nation application (Annexure-5 to the writ petition), learned Additional District Judge passed the order that according to the medical report Petitioner became fit on 20.12.1997, accordingly, appeal should have been filed on 2.1.1998 which was the opening day of the Court after winter vacation of 1997 hence delay condo nation application was rejected on 3.1.1998. Thereafter on 3.1.1998 itself review petition was also dismissed as barred by time.

7. The appeal could be got filed by any pairokar. Moreover there are seven Petitioners. The other six could file the appeal well in time. Last but not the least, theory of arranging money for obtaining copy is not believable as negligible amount is required for obtaining copy.

8. Against the order dated 31.8.1989 Petitioners did not file any appeal. It was only on the direction of the Supreme Court that suo motu appeal was entertained by learned A.D.J.

9. Accordingly, even though in the order dated 3.1.1998, learned A.D.J, has mentioned that the delay was of only one day however, I am of the opinion that there was inordinate delay in filing review petition.

10. Even otherwise, learned Counsel for the Petitioners has not been able to point out any error in the order of F.S.O. dated 31.8.1989. The only argument raised by the learned Counsel for the Petitioners was that review petition was dismissed only for one day's delay.

11. Accordingly, there is no merit in the writ petition hence it is dismissed.