
(2014) 07 AHC CK 0151
In the Allahabad High Court
Case No : Writ-B No. 39133 of 2014

Saurabh Gupta

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41(1)(a), 53, 9B

Citation : (2014) 124 RD 582

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : H.M.B. Sinha, Advocate for the Appellant; Ray Sahab Yadav and Surendra K. Yadav, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Anjani Kumar Mishra, J.—These three writ petitions, namely, instant writ petition, and 39180 of 2014 and 39186 of 2014 have all being filed against the same impugned order dated 3.7.2014. I have, therefore, heard them together and, am passing a common order in all the three writ petitions. Heard Shri H.M.B. Sinha, learned Counsel for the petitioner learned Standing Counsel for the State respondents, Shri Ray Sahab Yadav, who has filed caveat in all the three writ petitions on behalf of Mithilesh Kumar and Shri Anand Yadav, who appears for the Gaon Sabha. The Gaon Sabha has made a party in writ petition Nos. 39186 of 2014 and 39180 of 2014.

2. Mithilesh Kumar is not a party in these writ petitions and it has been stated by the learned Counsel for the caveator that Mithilesh Kumar is a resident of the village and the appellate order was passed as his instance. Learned Counsel for the caveator has further stated that his client had not been heard prior to passing in the impugned order.

3. These writ petitions arise out of proceedings u/s 9B of the U.P. Consolidation of Holdings Act. It appears that certain plots which were recorded as Bunjar,

Marghat and Pahar were valued and included in the chak of the petitioner. Consequently by an order passed by the Settlement Officer, Consolidation these plots, namely plot Nos. 780, 781 and 782 were excluded from consolidation operations. Consequential revision filed by the petitioner was allowed to extent of 22 decimal over which the petitioner is said to have raised constructions. This order was passed by the Deputy Director of Consolidation on 15.10.2003.

4. It appears that thereafter a restoration application was filed along with delay condonation application. The Deputy Director of Consolidation by the impugned order dated 3.7.2014 has condoned the delay in filing this application and has fixed a date for hearing the parties on merits after recalling the order dated 15.10.2003. It is this order which is impugned in this writ petition.

5. Learned Counsel for the petitioner has submitted that in view of section 53 of the U.P. Consolidation of Holdings Act, the Limitation Act is applicable to the proceedings under the Act. He has further submitted that in view of section 41(1) (a) of the Act, applications are liable to be supported by affidavits. Relying on these provisions he has further submitted that the delay condonation applications that were filed and which have been allowed were not supported by any affidavit. He, therefore, submitted that the impugned orders are liable to be set aside on this ground alone.

6. Shri Anand Yadav, learned Counsel for the Gaon Sabha on the other hand referred to the impugned order wherein it has been recorded in paragraph 3 (page 52 of the paper book) that the submission of the Gram Pradhan have been made on the basis of an affidavit that has been filed. In view of what has been recorded in the impugned order, the question as to whether an affidavit was actually filed in support of the recall and delay condonation applications or not becomes a disputed question of fact.

7. Learned Counsel for the petitioner has further relied upon several decisions in support of his contentions. The foremost decision relied upon is AIR 1961 Allahabad 595. The relevant portion whereof is quoted below:

"The present Second Appeal was thus presented in accordance with the rules on 4.4.1960, i.e. after the expiry of the period of limitation. The filing of the copy of the Trial Court's judgment has not been dispensed with, with the result that no action can be taken on the memorandum of appeal unless an application u/s 5 of the Limitation Act accompanied by an affidavit is made and the delay in presentation is concerned."

8. Some other authorities have also been cited. However, this Court is of the opinion that it is not relevant to refer to all the judgments that have been cited.

9. However, upon a consideration of rival submissions and a perusal of the record as also the judgments cited by the learned Counsel for the petitioner, it is clear that the objections that are being raised are purely technical in nature. Since the delay in filing the restorations have been condoned and a date has been fixed for

hearing of the parties on the merits, this Court is not inclined to entertain this writ petition on the basis of technicalities.

10. Interest of justice would be served in case the petitioner is granted liberty to raise all questions that are being raised by means of the instant writ petition, in case, occasion arises for him to challenge the order that is to be passed after hearing the parties on merits.

11. At this stage, the learned Counsel for the petitioner has raised the objection that the question of the delay having been wrongly condoned would be final, in case, the writ petition is not entertained at this stage, since this issue is not being decided by me, the apprehension of the Counsel for the petitioner is unfounded. However, it is specifically provided that this issue shall remain open for the petitioner to be raised afresh in case, he is required to challenge the final order to be passed by the Deputy Director of Consolidation after hearing parties on merits. Subject to the aforesaid observations, this writ petition is disposed of at this stage.