
(2014) 03 AHC CK 0214
In the Allahabad High Court
Case No : Writ-B No. 17933 of 2014

Shanaz Begum

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52, 9A

Citation : (2014) 123 RD 322

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : R.K. Pandey, Advocate for the Appellant

Judgement

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Ram Surat Ram (Maurya), J.—Heard Sri R.K. Pandey for the petitioner. The writ petition has been filed against the order of Consolidation Officer dated 11.10.2012 condoning the delay in filing the objection under section 9-A of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") and the order of Deputy Director of Consolidation dated 28.10.2013 dismissing the revision of the petitioner.

2. Akbari Begum, respondent-3, filed an objection under section 9-A of the Act along with a delay condonation application for recording her name over plot Nos. 112, 113 kha and 114 kha, total area 1.51 acre situated in village Maidakheda, pargana Khutar, tehsil Puwayan, district Shahjahanpur. In the objection as well as in the affidavit and the application for condonation of delay, it has been stated that the land in dispute was earlier the properties of Shiv Dayal, son of Pooran, who executed a sale deed dated 11.12.1973 in favour of Zakir Hussain, husband of respondent-3. Zakir Husain also filed an application for mutation of his name in tehsil but during this period Zakir Husain died. Respondent-3 being an illiterate widow woman could not know about the proceeding taken by her husband. It is only when she made enquiry from Consolidation Lekhpal then she came to know

that neither the name of her husband nor her name was recorded over the land in dispute although she is continuously in possession over it.

3. On the notice being issued, the petitioner filed an objection as well as counter affidavit to the delay condonation application. The petitioner in the counter affidavit has merely stated that the name of Zakir Husain has not been mutated over the land in dispute. However, the fact that Zakir Husain died after execution of the sale deed dated 11.12.1973, has not been denied. It has been further stated that the land in dispute was sold by Shiv Dayal to the petitioner on 4.7.1987 and on the basis of the aforesaid sale deed the petitioner is in possession over the land in dispute and her name was mutated over it. The delay condonation application was heard by the Consolidation Officer, who by order dated 11.10.2012 held that the objection was filed on 18.12.2007 along with the delay condonation application whereas the village was notified under section 52 of the Act on 10.6.2008 as such the objection was maintainable. Satisfying upon the allegations made in the delay condonation application, the delay was condoned. The petitioner filed a revision from the aforesaid order, which has been dismissed by the Deputy Director of Consolidation by order dated 28.10.2013. Hence, this writ petition has been filed.

4. The Counsel for the petitioner submits that the Consolidation Officer has not recorded any reason for condoning the inordinate delay in filing the objection. The petitioner has raised this point before the Deputy Director of Consolidation but he has illegally failed to examine the point raised by the petitioner. The sale deed is dated 11.12.1973 while the objection was filed on 18.12.2007 i.e. the delay being of more than 35 years, was not liable to be condoned.

5. I have considered the arguments of the Counsel for the petitioner and examined the record.

6. It is not denied that Zakir Husain, husband of respondent-3 died after 11.12.1973. Respondent-3 is a rustic illiterate woman and has stated that she could not know about the fact that name of her husband was not recorded in the record although she throughout remained in possession over the land in dispute. It is only when she made enquiry from the Consolidation Lekhpal then she came to know about the fact that the name was not recorded. The Consolidation Officer was satisfied with the allegations made by respondent-3 and condoned the delay.

7. The Supreme Court in *Shanti Prasad Gupta v. Deputy Director of Consolidation, Camp at Meerut and others* 1984 RD 382, has held that the matter relating to condonation of delay is the matter relating to discretion of the original Court. Once the discretion has been exercised by the original Court either condoning the delay or refusing to condone the delay then the higher Courts have no jurisdiction to interfere in the discretion so exercised unless it is found that the discretion has been wrongly exercised.

8. Thus, in view of the law laid down by the Supreme Court that it is not required

by this Court to interfere in the matter relating to condonation of delay. So far as the merit is concerned, the petitioner has every opportunity to contest the case and satisfy the Court regarding merit of the case and at this stage no prejudice has been caused to the petitioner. The writ petition has no merit it is dismissed.