
(2015) 04 AHC CK 0284
In the Allahabad High Court
Case No : W.P. No. 435 of 2002

Shiv Kumar

APPELLANT

Vs

Dy. Director of Consolidation, Bahraich and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 4, 4(2), 48, 49

Citation : (2015) 112 ALR 706 : (2015) 129 RD 629

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : J.S. Misra and Vimal Mishra, for the Appellant; B.L. Misra and J.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Vimal Mishra, learned Counsel for the petitioner, learned Standing Counsel for opposite parties No. 1 to 3, Sri B.L. Mishra, and Sri J.K. Sinha, learned Counsel for contesting respondents and perused the record. Facts, in brief, of the present case are that aggrieved by the order dated 31.7.1996 passed by Settlement Officer Consolidation, Bahraich/Shrawasti, petitioner filed a revision on 3.11.2000 under section 48 of the U.P. Consolidation and Holdings Act. By means of order dated 29.5.2001 Deputy Director of Consolidation, Bahraich/Shrawasti dismissed the revision on the ground of limitation. Aggrieved by the said facts, petitioner has filed the present writ petition.

2. Sri B.L. Misra, learned Counsel for the contesting respondents on the basis of questioner submits that in respect to the land in dispute under section 6(i) a notification No. 1483/G - under section 6(i) /2013-2014(iv) has been published in Official Gazette on 3.4.2014, the same is taken on record. Thus, after hearing learned Counsel for the parties and going through the record, the first and foremost fact to be decided in the present case is that the petitioner has

challenged the order dated 31.7.1996 passed by Settlement Officer Consolidation, Bahraich by way of revision before opposite party No. 1 on 3.11.2000, taking into consideration the said fact whether the action on the part of opposite party No. 1 dismissing the revision of the petitioner on the ground of delay is correct or not.

3. After going through the record and taking into consideration the reasons given by opposite party No. 1/Deputy Director of Consolidation, Bahraich/Shrawasti while rejecting the revision is perfectly valid in view of the law as laid down by this Court in the case of Union of India (UOI) and Others Vs. Tarsem Singh, , after relying on the earlier judgment passed in the case of Shiv Dass Vs. Union of India (UOI) and Others, , the Hon"ble Apex Court in Paragraph 6 has held as under:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustice, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

In the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, the Apex Court held as under:

"We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for consideration. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim Courts should desist from directing consideration of such claims. (See Naresh Kumar Vs. Department of Atomic Energy and Others, ."

4. Recently, in the case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, , in para No. 24 held as under:

"Para 24. "In City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors."

5. Again, Hon'ble the Apex Court in the case of State of Orissa and another v. Mamata Mohanty, , (2011) 3 SCC 436 in respect to matter in delay and laches in filing writ petition under Article 226 of the Constitution of India in Paragraph Nos. 53 and 54 held as under:

"Para 53. "Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the Court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some explained reason granted the relief w.e.f. 1.6.1986, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

Para 54. "This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time (See Rup Diamonds v. Union of India). , (1989) 2 SCC 356."

6. So far as the arguments advanced by learned Counsel for the petitioner that a notification under section 6(i) of the U.P. Consolidation and Holdings Act has been issued thereby withdrawing the notification under section 4 of the Act, so the revision liable to be dismissed, has got no force in the matter in issue in view of the law as laid down by this Court in the case of Madan Shah and others v. Deputy Director of Consolidation, Aligarh, Camp Mathura and others , 2007 (102) RD 809, in which in para 4 this Court has held as under:

"While sub-section (1) of section 6 deals with the power of the State Government to cancel the notification under section 4 at any time sub-section (2) to section 6 deals with the effect a notification under section 6(1) would have upon the consolidation proceedings. It provides that the area shall cease to be under consolidation operations with effect from the date of the cancellation but this is subject to any final orders relating to correction of land records. The question which arises is whether the order passed by the Dy. Director of Consolidation in a revision arising out of an objection under section 9 is a final order relating to

correction of land records. The words "orders relating to correction of land records" as used in section 6(2) are wide and would also cover orders passed in title disputes under section 9-A because these orders can direct change of basic year entries. It is therefore necessary to examine the relevant provisions of the Consolidation of Holdings Act which confer finality upon orders passed in the consolidations proceedings. An order passed under section 9-A deciding objection relating to title is appealable under section 11. Sub-section (1) of section 11 provides that the order of the Settlement Officer Consolidation except as otherwise provided shall be final. A revision lies against the order of the Settlement Officer Consolidation to the Dy. Director of Consolidation under section 48 of the Act. It is thus clear that unless a revision is filed the order of the Settlement Officer Consolidation passed under sub-section (1) of section 11 shall be final. If a revision is filed the order of the Dy. Director of Consolidation shall be final. The effect of the notification under sub-section (1) of section 6 envisaged in Sub-section (2) is that the consolidation operations shall cease in the village subject to the decision of the appeal or where a revision has been preferred to the order in the revision. If the legislature intended that all orders passed before issuance of the notification under section 6 be set at naught it would not have specified in sub-section (2) that the consolidation operations shall cease in the area from the date of cancellation nor made the ceasure subject to final orders relating to correction of records passed before the date of the notification. When a notification under section 4(2) is published proceedings for correction of records and a suit or proceeding in respect of declaration of rights or interest in any land shall on an order being passed by the Court where it is pending stand abated. The effect of the 2nd proviso of sub-section 2 of section 5 is that on the issuance of notification under sub-section (1) of section 6 an order of abatement shall stand vacated and the proceedings will revive. Reading this proviso with section 6(2) it appears that the revival of the proceedings contemplated is in cases where final orders have not been passed. In cases where final orders have been passed sub-section (2) of section 6 it self provides that the ceasure of the consolidation operations will be subject to such final orders. Sub-sections (1) and (2) of section 6 and the Second proviso of sub-section (2) of section 5 have to be read together to determine this effect. Thus to read it is clear that it is only where final orders relating to correction of land records have not been passed that the proceedings of pending suit in which the order of abatement had been passed shall stand revived. In cases where a final order relating to correction of land records has been passed the final order would be affected by notification under section 6(1) and provisions of section 49 of the Consolidation of Holdings Act would become applicable. The decision in *Jiwan Singh's* case is distinguishable. The question there involved was about the stage when a notification under section 6(1) can be issued and not about the effect the notification would have upon final orders in the title proceedings. That apart a writ petition is not a continuity of the consolidation proceedings. The ceasure of the consolidation operations therefore does not affect the maintainability of the writ petition against a final order in a title dispute and such a petition does not

become infructuous on issuance of the notification under section 6 . The order of the Dy. Director of Consolidation in the revision had been passed long before the issuance of the notification under sub-section (1) of section 6 of the Act. Issuance of the notification under sub-section (1) therefore has no effect upon the fate of the writ petition."

For the foregoing reasons, the writ petition is dismissed on the ground of delay. Petition Dismissed.