

(1981) 11 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3358 of 1978

State of U.P.

APPELLANT

Vs

Prescribed Authority, Kiccha (Rudrapur) Nainital and Others

RESPONDENT

Date of Decision : 13-11-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 6

Citation : AIR 1982 All 151

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : M.S. Negi, for the Appellant; P.K. Misra and V.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition is by the State of U. P. against the judgment of Shri D. P. Varshni, Civil Judge, Nainital, dt. 21-2-1977 whereby the appeals preferred by the tenure-holder and his transferees were dealt with.

2. A notice u/s. 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) was served upon the opposite party No. 2 Mohammad Sharwat Yar Khan in the present writ petition who contested the notice and claimed exclusion of land sold by him and by his divorced wife. It was also alleged that unirrigated land has been shown as irrigated one and it had also been asserted that land sold by sale deeds prior to 24-1-1971 was wrongly held as the tenancy of the tenure-holder on 8-6-1973 and various other pleas were taken.

3. The prescribed authority through its judgment dt. 22-5-1976 declared 43.65 hectares of irrigated land as surplus area of the tenure-holder as is evident from Annexure 1 attached with the writ petition. Thereafter the tenure-holder as well as the transferees preferred appeals which were dealt with by the appellate authority through its judgment dt. 21-2-1977. Against the judgment of the

appellate authority the tenure-holder had come in writ to this Court and had also gone to the Supreme Court but the judgment of the appellate authority has been confirmed.

4. It appears that the State of U. P., has filed the present writ petition on 7-4-1978 against the judgment of the appellate authority dt. 21-2-1977. Before me the learned counsel for the opposite party has raised a preliminary objection that the writ petition is much belated and the explanation given by the petitioner is not correct, hence the writ petition should be dismissed.

5. The learned counsel for the petitioner has contended that in the circumstances of the present case satisfactory explanation has been given for condonation of delay and once the writ petition has been admitted, the writ petition cannot be dismissed on the ground of delay and ladies. It has also been submitted that in view of the rulings of this Court as well as the Supreme Court, liberal view should be taken on the question of limitation and the writ petition should not be dismissed. Lastly, it has been contended that the appellate authority has patently erred in ignoring certain sale deeds executed prior to 24-1-1971 on the basis of Government orders, hence the impugned judgment is patently erroneous and the writ petition should not be thrown on technical grounds.

6. In reply, the learned counsel for the opposite parties has submitted that the appellate authority has correctly taken into account the Government Order in excluding the land sold by the tenure-holder before 24-1-1971. The learned counsel for the opposite party has placed reliance upon the ruling reported in 1967 ALJ 551 Kesar Sugar Works Ltd. v. State of U. p. and has emphasized that the Government Orders should be taken as concessions or admissions and on that ground the impugned judgment should not be interfered with. It has also been re-emphasized that the explanation given by the petitioner "was incorrect as the petitioner had set up an incorrect theory for condonation of delay as the petitioner had filed a counter affidavit in the writ petition filed by the contesting opposite party and the petitioner had known much earlier about the order of the appellate authority and could have filed the writ petition within reasonable time, but the petitioner did not choose to do so. Since now the view of this Court has been expressed in reported rulings that the genuineness of the sale deeds prior to 24-1-1971 can also be examined by the ceiling authorities, the petitioner has filed the present writ petition with incorrect explanation. Moreover, each day's delay has not been explained and the petitioner cannot stand on a different footing that an individual litigant hence the writ petition should be dismissed in the present case on the ground of limitation alone. It has also been emphasized that when the writ petition was admitted that did not mean that the opposite party cannot contest the claim of the petitioner on the ground of limitation. The question of limitation stands in the way of the petitioner and it should be accepted and the writ petition should be dismissed.

7. In reply to the preliminary objection raised on behalf of the contesting opposite party regarding the question of limitation, the learned counsel for the

petitioner has placed reliance upon the ruling reported in Nav Rattanmal and Others Vs. The State of Rajasthan, . The learned counsel for the petitioner has emphasized the following observation in para 10 of the aforesaid Ruling :--

".....First, we have the fact that in the case of the Government if a claim becomes barred by limitation the loss falls on the public, i. e. on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of Government machinery it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued --Government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as red-tape that there is delay in the functioning of government offices....."

8. In this connection it would be necessary to mention a ruling reported in Union of India Vs. Kundan (Deceased), . paragraphs 19 and 20 of the aforesaid ruling run as below :--

"19. In The Union of India Vs. Rameshwar Nath and Another, the bench relied on Union of India (UOI) Vs. Ram Charan and Others, where the Supreme Court said :

"The expression "sufficient cause" is not to be liberally construed either because the party in default was the Government or because the question arose in connection with the impleading of the legal representatives of the deceased respondent. The court should not readily accept whatever is alleged to explain away the default. The delay in making the application should not be for reasons which indicate the negligence in the party making the application in not taking certain steps which he could have and should have taken. The Court has to be satisfied that there were certain valid reasons for the applicant not knowing the death within a reasonable time. The bare statement of the applicant is not enough."

"20. In Union of India (UOI) Vs. Ram Charan and Others, , the Supreme Court had laid down certain guidelines for determining what is "sufficient cause" for the purpose of Rule 9 of Order 22. It was observed that it would be futile to lay down precisely as to what considerations would constitute sufficient cause within the meaning of the rule but that it can be said that delay should not be for reasons which indicate negligence on the part of the party in not taking the necessary steps which he could have and should have taken, and that what would be such necessary steps would depend On the facts and circumstances of the particular case."

9. In view of the above extracts it is clear that there is no hard and fast rule that

if the Government is a party to a litigation the question of limitation must be construed liberally and the laches on the part of the Government should not be taken note of seriously specially when their Lordships of the Supreme Court in the case of the year 1964 mentioned supra have observed as below AIR 1964 SC 219 :--

"There is no question of construing the expression "sufficient cause" liberally either because the party in default is the Government or because the question arises in connection with impleading of the legal representative of the deceased respondent."

10. The determination of the question of laches depends upon the facts and circumstances involved in a particular case. I am not prepared to accept the contention of the learned counsel for the petitioner that since the petitioner is State of U. P. the delay in filing the writ petition should not stand in the way of hearing the writ petition on merits. It is noteworthy that the petitioner in paragraph 6 of the writ petition has stated that after the delivery of the judgment by the Civil Judge on 21-2-1977 the file of the relevant case was misplaced and as soon as the file was recovered after getting instructions from the Government machinery the writ petition has been filed without undue delay. In paragraph 3 of the supplementary counter-affidavit by Mohammad Ahmad, the allegations regarding condonation of delay on the part of the petitioner have been controverted and the main contention on behalf of the opposite party is that in their writ petition a counter-affidavit had been filed on 27-7-1977 and the State had come to know about the impugned order in the present writ petition dt. 21-2-1977 at least on that date, hence the explanations given by the petitioner in the present writ petition is incorrect and should not be accepted. In supplementary rejoinder affidavit filed by Chintamani Joshi the allegations made in paras 3A to 5 of the supplementary counter-affidavit have not been denied. In paras 8 and 9 explanations have been given justifying the condonation of delay in filing the writ petition but in the present case I am not satisfied that the explanations given by the petitioner for filing the writ petition is correct. Since the petitioner, has not approached this Court with correct explanation for condonation of delay, I think that the writ petition should be dismissed on the ground of laches and delay. The allegations in paragraph 8 of the supplementary rejoinder affidavit to the effect that the counter affidavit in the writ petition was filed by the concerned authority without obtaining any permission from the State Government and it was wrong to allege that the State Government had full knowledge of the filing of the counter-affidavit on 27-7-1977 do not appeal to me. In the writ petition of the contesting opposite party, a standing counsel of this Court must have filed the counter affidavit on the instructions received and another counsel of the State of U. P. which has filed the present writ petition must have received instructions to file the present writ petition. If one of the agents of the State of U. P. had knowledge about the impugned order the knowledge can be impugned to the State of U. P. itself. If for any reason the State of U. P. did not know the impugned order earlier as alleged in the present

writ petition it should have given proper explanation in the writ petition itself regarding the fact that a counter-affidavit in the writ petition of the contesting opposite party was filed under particular circumstances. Since the petitioner has not come with correct stand, I think that the discretionary power of this Court under Article 226 of the Constitution should not be exercised at the instance of the petitioner. Due to wrong stand taken by the petitioner in the writ petition. I am not at all prepared to condone the laches in the present case. Had the petitioner explained the circumstances in which the counter-affidavit was filed in the writ petition of the contesting opposite party and that circumstances had escaped the notice of the petitioner due to some reason, I would have condoned the delay but making wrong allegations in the writ petition at the first instance has compelled me to reject the writ petition on the ground of laches and delay.

11. As regards the contention of the learned counsel for the petitioner or that once the writ petition has been admitted, it should not be thrown out on the ground of delay or laches, the learned counsel for the petitioner has placed reliance upon the ruling of this Court reported in *General Manager, U.P. Govt. Roadways, Bareilly Region and Another Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others*, wherein a learned single Judge of this Court has made the following observation in paragraph 5 :

"On behalf of the contesting opposite party a preliminary objection was raised that these writ petitions are barred by limitation. This preliminary objection is however, devoid of any force for the simple reason that no limitation for filing writ petition is prescribed by any law. It is only discretionary with the Court not to entertain a writ petition on the ground of the laches, if the petitioner approaches the Court after an undue delay of the passing of the impugned order. In the present case the Bench while admitting the writ petitions was satisfied that the delay had been explained and that there were no laches on the part of the petitioners. Hence, this objection is no more open to the contesting opposite party at this stage."

12. The above mentioned ruling is distinguishable and inapplicable to the facts and circumstances of the present case. In the present case I do not find that the single Judge while admitting the writ petition had condoned the delay as the writ petition was admitted without any observation regarding the question of limitation. Moreover, by mere admission of a writ petition the right of the opposite party to raise the question of limitation and laches is not taken away. The contesting opposite party can press its objection regarding laches and limitation and that question can be examined and determined at the stage of final hearing of the writ petition. In the pre-sent case, as mentioned above, I have come to the conclusion that the petitioner did not give correct explanation for condonation of delay and it had come to know about the impugned order on the date when a counter-affidavit was filed on behalf of the petitioner in the writ petition of the contesting opposite party, I think that the present writ petition is highly belated and deserves to be dismissed on that ground. In the present case

I am not prepared to accept the contention of the learned counsel for the petitioner that as the writ petition had been admitted it should not be thrown on the ground of laches and delay.

13. On merits the only question involved in the present writ petition is whether the Appellate Authority was justified in excluding the land sold by the tenure holder prior to 24-1-1971 while determining the ceiling area of the tenure holder on the basis of a G. O. No. 3548/76-1-5 (13) 72, Revenue Department Lucknow dt. 1-7-1976 issued by Shri Athar Hussain Commissioner by Secretary, U. P. Government to the Secretary, Board of Revenue U. P. Lucknow. This question has been dealt with by the Appellate Authority in paras, 15 and 16 of the impugned judgment. I have my own doubts whether the Appellate Authority could ignore the sale deeds executed by the tenure holder prior to 24-1-1971 taking shelter behind the above mentioned G. O. In 1967 A LJ 551 Ke-sar Sugar Works Ltd. v. State of U. P. (at page 555 last paragraph) a learned single Judge of this Court has made the following observation :--

"On this question the petitioner has urged that the Prescribed Authority had granted exemptions to the extent of one acre of land for every ten poultry birds and two acres of land for every head of cattle on the basis of departmental instructions issued by the Government. If that is so the Prescribed Authority could legitimately take such instructions into account. The Act has been enacted so as to find surplus land of a tenure-holder, which vests in the State. The State is the beneficiary of the surplus land. In determining surplus land the lands mentioned in Section 6 are disregarded or exempted. The exemptions are, therefore, at the expense of State. If the State Government makes a concession in respect of the determination of the exemptible area u/s 6, the Prescribed Authority could legitimately take into account such concessions. These concessions may be made in the evidence adduced in this respect or may take the shape of departmental instructions. If there are clear departmental instructions on this point, the Prescribed Authority could legitimately base its finding on them"

(Emphasis is mine).

14. In view of the above observations of the learned single Judge of this Court even if I may be of a contrary view I am not prepared to hold that the Appellate Authority has patently erred in taking into account the G. O. while determining the ceiling area held by the tenure holder. In the circumstances of the present case, the contention of the learned counsel for the petitioner that the Appellate Authority has patently erred in basing its judgment upon a G. O. cannot be accepted as correct. The mistake if any on the part of the Appellate Authority cannot be characterised as patent one. Thus, the petitioner is not entitled to issue of writ of certiorari even on merits, though in view of the area sold and considerations therefore mentioned in the various sale deeds I am not prepared to hold that the sale deeds were valid transactions in the eye of law.

15. In the result, the writ petition rails and is dismissed. Parties are directed to bear their own costs.