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(1964) 10 AHC CK 0036

In the Allahabad High Court

Case No : Sp. A. No. 518 of 1964

Sukhraj and Another — APPELLANT

Vs

Ramnath and Others — RESPONDENT

Date of Decision : 08-10-1964

Acts Referred:
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 53B

Citation : (1965) 35 AWR 58

Hon'ble Judges : Desai, C.J;Pathak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Desai, C.J.—This is an appeal from a judgment of our brother G.C. Mathur, refusing to quash by certiorari an order passed by a Deputy Director, refusing to revise an order passed by a Settlement Officer, dismissing an appeal preferred u/s 21(2) of the Consolidation of Holdings Act, as barred by time. Respondent No. 4 filed an objection against a statement of proposals as permitted by Section 20 and it was disposed of by a Consolidation Officer on 24-1-1963. The Appellants were not cited as parties to the objection, no notice was given to them and they were not heard before it was disposed of. The order passed by the Consolidation Officer is not very intelligible, but it has not been interpreted to involve an alteration in the chak of the Appellants. Section 21(1) lays down:

All objections....shall, as soon as may be after the expiry of the period of limitation prescribed therefor....be submitted by him to the Consolidation Officer, who shall dispose of the same....in the manner hereinafter provided, after notice to the parties concerned and the Consolidation Committee.

Sub-section (2) of Section 21 lays down:

Any person aggrieved by the order of the Consolidation Officer under Sub-section (1) may, within 21 days of the date of the order, file an appeal before the

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Settlement Officer, Consolidation....

An appeal from the Consolidation Officer''s order dated 24-1-1963 was filed before a Settlement Officer, on 20.4.1963 i.e. more than 21 days after the date of the order of the Consolidation Officer. The Statement of Proposals was confirmed on 17.3.1963. The Settlement Officer dismissed the appeal as barred by time. Section 22(1) provides:

Any....appeal Under Sub-section (2)....of Section 21, may be admitted by the.... Settlement Officer, Consolidation.... after the period of limitation prescribed therefor under this Act if....the Appellant satisfied the authority concerned that material injustice is likely to be caused to him if the.... appeal is not admitted; anything contained in the Indian Limitation Act, 1908 or any other Law for the time being in force to the contrary notwithstanding.

This is subject to the proviso contained in Sub-section (3) (ii) of Section 22 that no appeal shall be admitted under Sub-section (1) after the statement of proposals has been confirmed u/s 23. The Settlement Officer observed that since the appeal had been filed before him after the confirmation of the statement of proposals, it could not be entertained by him u/s 22. Section 53-B lays down that:

The provisions of Section 5 of the Limitation Act....shall apply to the appeals....under this Act.

Under Section 5 of the Limitation Act an appeal can be admitted after the expiry of the period of limitation prescribed therefor if there was sufficient cause for its not having been filed before the expiry. The Settlement Officer did not say anything in his order about the existence or absence of sufficient cause for the Appellants not filing the appeal before the expiry of the period of limitation. He did not refer to the provisions of Section 5 of the Limitation Act and Section 53 B of the Consolidation of Holdings Act in his order. It also does not appear that the Appellants contended before him that the appeal was not barred by time at all, because the notice of the alteration in the statement of proposals made on the Respondents'' objection had been served upon them on 16-1-1963, and that that date was to be deemed to be the date of the order passed by the Consolidation Officer. u/s 54 of the Act the State Government has the power to make rules for the purposes of carrying into effect the provisions of the Act and in particular, rules providing for the procedure and the manner relating to the preparation and publication of the statement of proposals and the confirmation thereof. Among the rules made by the State Government in exercise of this power is Rule 49 Sub-rule (1), to the effect that an Assistant Consolidation Officer receiving an objection u/s 20 should endorse a report on the points raised in it and forward the report to the Consolidation Officer after fixing a date on which the latter would visit the village for its disposal, that intimation of it should be given to the objector and the opposite parties, if any, that information with regard to the date should also be published in the village and that on the date fixed for the purpose

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the Consolidation Officer should visit the village, hear the parties, make a local inspection in the presence of the parties, the Consolidation Committee and as many tenure holders of the village as possible, and then decide the objection giving reasons for his decision. Sub-rule 2 is to the effect that when a Consolidation Officer rejects an objection, he should cause a notice of the rejection to be served on the tenure holder and when he accepts an objection and finds it necessary to make any alteration in a statement of proposals, he should cause a revised extract in CH Form 24 to be served on the tenure holders concerned and that, "the objection under Sub-section (1) of Section 21 shall not be deemed to be disposed of until the aforesaid notice rejecting the objection or, as the case may be, the revised extract has been served on the tenure holders concerned." It was not contended before the Settlement Officer on the basis of these provisions of Rule 49 that because the revised extract was served upon the Appellants on 16.4.1963, that would be deemed to be the date of the order of the Consolidation Officer and that, accordingly, the appeal filed by them on 20.4.1963 was within time.

2. The Appellants applied to the Deputy Director to revise the Settlement Officer''s order. One contention advanced before him was that even if the appeal could not be entertained by the Settlement Officer by virtue of the provisions of Section 22, he could entertain it by virtue of the provisions of Sections 22 and 53-B read with Section 5 of the Limitation Act. The Deputy Director rejected this contention holding that even u/s 5 of the Limitation Act the appeal could not be entertained after the confirmation of the statement of proposals u/s 23. For this he relied upon the proviso contained in Section 22(3) that no appeal filed after the expiry of the period of limitation could be entertained on the ground of material injustice caused by the order appealed from after the confirmation of the statement of proposals. It does not appear to have been contended before him that Section 53-B gives an additional right to a Settlement Officer to entertain a time-barred appeal and is not subject to the proviso contained in Section 22(3)(ii) and that there was sufficient cause within the meaning of Section 5 of the Limitation Act because of the fact that the revised extract from the statement of proposals had been served upon the Appellants only four days before they filed the appeal. He dismissed the revision application and the Appellants applied for certiorari for the quashing of his and the Settlement Officer''s orders. Our learned brother relused certiorari because he saw no error in the orders. He endorsed the view of the Deputy Director that even if the appeal was governed by Section 53-B it could not be entertained on account of the provisions of Section 22(3)(ii).

3. The provisions contained in Section 53-B and in Section 22(1) are cumulative and not in the alternative. u/s 53 B, a time-barred appeal can be entertained on the ground that there was sufficient cause for its not having been filed before the expiry of the period of limitation; whereas u/s 22(1) a time-barred appeal can be entertained on the ground that otherwise material injustice would result to the Appellant. A person, whose app-al u/s 21(2) has become time-barred has two

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alternative remedies one is to invoke the benefit of Section 5 of Limitation Act through Section 53-B and the other is to invoke the benefit of Section 22 (1); which benefit should be invoked, depends upon on what ground he seeks it. If he seeks it on the ground that he had sufficient cause for not filing the appeal before the expiry of the peril d of limitation, he can seek the benefit of Section 53-B; if he seeks it on the ground that material injustice caused to him by the order of the Consolidation Officer, he can seek it u/s 22. If he seeks the benefit u/ s 53 B, it is not necessary for him to show to the Settlement Officer that material injustice was likely to be caused to him, if the appeal was not admitted and, similarly, if he seeks the benefit of Section 22(1), it is not necessary for him to show that there was sufficient cause for not filing the appeal before the expiry of the period of limitation. Thus, if an appeal has become barred by time and there was no sufficient cause for its not being filed before the expiry of the period of limitation, it can be entertained by the Settlement Officer only u/s 22(1) provided that he is satisfied that material injustice was likely to be caused to the Appellant if the appeal was not admitted and that the statement of proposals had not been confirmed. It is not clear which benefit was invoked by the Appellants in this case. They could not possibly invoke the benefit of Section 22(1) because of the fact that the statement of proposals having been confirmed on 17.3.1963, the Settlement Officer could not entertain their appeal on 20.4.1963. The Settlement Officer and the Deputy Director both acted illegally in combining parts of the provisions of Sections 53-B and 22(1) and in holding that the benefit of Section 53 B cannot be granted after the confirmation of the statement of proposals. It is only the benefit of Section 22(1) that is barred if the statement of proposals is confirmed; there is no such bar in Section 53 B and if a sufficient cause is made out within the meaning of Section 5 of the Limitation Act, the appeal must be entertained. It is only the provision of Section 22(1) that is subject to the condition that the statement of proposals has not been confirmed in the meanwhile. The Appellants, however, failed to make out a case of sufficient cause before the Settlement Officer and the Deputy Director, and, therefore, were not entitled to the benefit of Section 53-B. They did not explain why they did not file the appeal within 21 days from 24.1.1963, nor did they contend that the fact that the revised extract was served upon them so late as on 16.4.1963 constituted sufficient cause. If it constituted sufficient cause, they should have pleaded it before the Settlement Officer and, in any case, before the Deputy Director, and when they failed to plead it, they could not seek certiorari for the quashing of their orders by pleading it for the first time before our learned brother. They could not have their orders quashed on a ground taken for the first time in a petition for certiorari. On what date the revised extract was served upon them was a question of fact and it was also a question of fact whether the appeal filed on 20.4.1963 could be said to have been filed within reasonable time from that date. Therefore, those questions had to be raised before the Settlement Officer and the Deputy Director and could not be raised for the first time before our learned brother. It was only before our learned brother that it was said that the revised extract was served on 16.4.1963. There was,

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therefore, nothing manifestly erroneous in the Settlement Officer''s and the Deputy Director''s refusing to the Appellants that benefit of Section 53-B.

4. The Appellants pleaded before us, in the alternative, that their appeal was not barred by time at all. Their contention was that on account of the provisions contained in Sub-rule (1) of Rule 49, the objection must be deemed to have been disposed of by the Consolidation Officer on 16.4.1963, the date on which the revised extract was served upon them. It is not understood why the Government provided the legal fiction in Sub-rule (2) that an objection shall not be deemed to be disposed of until the revised extract has been served on the tenure holders concerned. The only reference to the disposal of an objection is in Section 21(1), laying down that the Consolidation Officer "shall dispose of the same...." and Sub-rule (1) of Rule 49 to the effect that the Consolidation Officer should visit the village "for the disposal of the objections." The legal fiction was certainly not needed for the purpose of extending the meaning of the word "disposal" in either of these two provisions. There was no scope for extending the meaning of the word "disposed" used in Section 21(1) and nothing was to be gained by giving it the extended meaning. An objection can be disposed of only in two ways: (1) by rejection and (2) by being allowed and by altering the statement of proposals. It is only after an objection has been disposed of that the question would arise of serving upon the tenure holders concerned a notice rejecting the objection or a revised extract from the statement of proposals. It is impossible to say that an objection is disposed of, that a notice rejecting it or a revised extract from the statement of proposals is served upon the tenure holders and that the objection is deemed to be disposed of when it is done. It is meaningless to say that an act is deemed to be done when something required to be done after it has been done, is done. In any case, no useful purpose was to be served by the Government''s giving the word "disposed''''' used in Section 21(1) an extended meaning. Similarly, nothing was to be gained by giving the word "disposal" used in Sub-rule (1) such an extended meaning. Clearly, "disposal" there means decision of the objection either by rejecting it or by amending the statement of proposals. The Consolidation Officer did not have to visit the village just for serving upon the tenure holders a notice rejecting the objection or a revised extract from the statement of proposals. Moreover, a Consolidation Officer who visited the village after deciding the objection, but before the date of service of the notice of rejection or a revised extract, could not be deemed to have visited the village for the disposal of the objection. It could not have been the intention of the Government to give such an absurd meaning to the provision contained in Sub-rule (1) by enacting the legal fiction. When the phrase "disposed of" has not been used in any other provision, the legal fiction enacted in Sub-rule (2) does not serve any useful purpose.

5. The right of appeal given under Sub-section (2) of Section 21 is against an order of a Consolidation Officer passed u/s 21(1) and has to be exercised within 21 days of the date of that order; the words used in Sub-section (2) are very clear and the period of 21 days has to be computed from the date of the order by

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which the Appellant is aggrieved and against which he appeals. What is meant by ''order'' in this provision is the decision of the Consolidation Officer on the objection, whether rejecting it or amending the statement of proposals. There is no order passed by him within the meaning of Sub-section (2) when a notice of the rejection of the objection or a revised extract of the statement of proposals is served upon the tenure holders. The service of these documents upon them cannot possibly be interpreted to mean the passing of an order within the meaning of Sub-section (2). They are the acts to be done after an order has been passed and in consequence of it. A tenure holder is aggrieved by the decision and not by the service of a notice rejecting the objection or of a revised extract from the statement of proposals. Clearly, the date of the decision of the Consolidation Officer is the date from which the period of 21 days is to be computed; there is nothing in Section 21(2) to suggest that it is to be computed from any other date. Rule 49 has been made by the Government only to carry out the purposes of the Act and the Government had no power to make a rule which has the effect of varying the meaning of the words used in the Act. Words of Sub-section (2) are plain and the meaning to be given to them cannot be varied by the Government through its rule making power. What is the meaning of Sub-section (2) has to be decided on consideration of the language used in it and not on the consideration of the rule made by the Govt. Therefore, merely because of the legal fiction enacted by the Government in Sub-rule (2), it cannot be said that what is meant in Sub-section (2) by the words "of the date of the order" is the date on which a notice of rejection of the objection or a reviled extract from the statement of proposals is served on the tenure holders.

6. We, therefore, see no substance in the contention advanced by Sri S.K. Verma that the appeal filed by the Appellants before the Settlement Officer was within time.

7. There is nothing manifestly erroneous in the orders passed by the Settlement Officer and the Deputy Director and we dismiss this special appeal summarily. Appeal dismissed.

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