
(2012) 11 AHC CK 0082
In the Allahabad High Court
Case No : Writ B. No. 59524 of 2012

Virendra Kumar

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2012) 11 AHC CK 0082

Hon'ble Judges : Ran Vijai Singh, J

Final Decision : Disposed Of

Judgement

Ran Vijai Singh, J.

Heard Sri Rajesh Kushwaha, learned counsel for the petitioner, learned Standing Counsel appearing for the State respondents and Sri A.K.

Umrao, holding brief of Sri M.N. Singh, learned counsel for the Gaon Sabha.

It is contended that on the instance of the petitioner, an objection was filed under section 9A (2) of the U.P. Consolidation of Holdings Act, 1953

(hereinafter referred to as, "the Act") before the Consolidation Officer for reserving the plot no. 194 as abadi. On the aforesaid land, petitioner's

house, shop, etc. was existing. The said application was allowed on 2.9.1983.

Challenging the aforesaid order, an appeal was filed by respondent nos. 4 and 5 on 18.5.2010, without impleading the petitioner as necessary

party. The Settlement Officer of Consolidation has condoned the delay and set aside the order dated 2.9.1983 vide order dated 11.1.2011.

The petitioner herein has filed an application, after coming to know of the order dated 11.1.2011 passed by the Settlement Officer of

Consolidation, for recall of the aforesaid order. The recall application was dismissed as not maintainable, holding that the petitioner is not a

necessary party in the appeal. The petitioner has filed revision, in which initially an interim order was granted for maintaining status quo, but later

on, petitioner's stay application was rejected, without deciding the revision on merit.

The contention of the petitioner is that he was and is still a necessary party to the proceeding, as the order dated 2.9.1983 was passed on the

instance of the petitioner, therefore, the appeal itself was not maintainable, without impleading the petitioner as respondent. Learned counsel for the

petitioner has also submitted that inordinate delay has been condoned without there being proper explanation furnished by the respondents and that

too, without affording an opportunity of hearing. He has further contended that for condoning the delay, the principles, as applicable under Order

41 Rule 3 A of the Code of Civil Procedure, should have been followed by the Settlement Officer of Consolidation.

On the legal premises, I find substance in the submissions of learned counsel for the petitioner and the writ petition requires final disposal. For that,

respondent nos. 4 and 5 have to be noticed, but inviting counter affidavits will delay the disposal of the revision, therefore, with the consent of the

learned counsel for the representing parties, the writ petition is taken up for final disposal, reserving the rights of respondent nos. 4 and 5 to file

recall application in case they feel aggrieved by the order, which is going to be passed today.

It is contended that the order dated 2.9.1983 was passed by the Consolidation Officer, Singramau in case no. 9448 under section 9A(2) of the

Act instituted by the petitioner and respondent nos. 4 and 5 have filed appeal in the year 2010, against the said order. In this appeal, the petitioner

was not impleaded as a respondent and only the State was impleaded as respondent. The Settlement Officer of Consolidation has condoned the

delay and allowed the appeal, holding that the order dated 2.9.1983 is without jurisdiction. The petitioner's recall application was rejected on the

ground that the petitioner was not a necessary party.

It is settled law that whenever any appeal is filed against an order passed by any subordinate court, the parties to the proceeding, in which order

was passed, have to be impleaded as respondent and they are the necessary parties to the proceeding. In fact, in the absence of necessary parties,

the appeal should have been dismissed, but the Settlement Officer of Consolidation has not done so, which has caused serious prejudice to the

petitioner as it is on the petitioner's instance, the abadi was left, considering the existence of the petitioner's house and shop over plot no. 194.

So far as the condonation of delay is concerned, here also, the Settlement Officer of Consolidation has prima facie erred in condoning such

inordinate delay without there being any notice and opportunity. The petitioner's restoration application was rejected, treating the petitioner as not

necessary party. This view taken by the Settlement Officer of Consolidation is also prima facie unsustainable in the eye of law.

So far as the rejection of the stay application by the Deputy Director of Consolidation is concerned, this also appears to be unsustainable in the eye

of law for the simple reason that the purpose of granting interim protection is to save the party from immediate prejudice.

Prima facie, it appears that there is a case for grant of interim order, on the ground that the petitioner's house and shop was existing in the plot no.

194, therefore, the petitioner has a prima facie case for grant of interim relief till the disposal of the revision, but the revisional court has erred in

rejecting the petitioner's stay application.

Taking note of that, the impugned order dated 3.11.2012 passed by the Deputy Director of Consolidation in revision no. 3428 of 2012 (Virendra

Kumar Vs. Prem Bharat and Others), rejecting the petitioner's application for interim relief is hereby quashed. The Deputy Director of

Consolidation is directed to decide the revision itself within a period of three months from the date of receipt of certified copy of the order of this

Court without granting any unnecessary adjournments to the parties without being influenced by any of the observations made by the Court in this

order.

The parties are also directed to cooperate with the proceedings and in case of noncooperation, the Deputy Director of Consolidation is at liberty

to proceed ex parte against any of the parties. Till the disposal of the revision, status quo as on date of filing of revision be maintained.

With the aforesaid observation/direction, this writ petition is disposed of.