(2014) 03 AHC CK 0092

In the Allahabad High Court

Case No : Writ B No. 15248 of 2014

Wasim Raza Khan — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Citation : (2014) 4 ADJ 148 : (2014) 4 AWC 4085 : (2014) 123 RD 107

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Subhash Singh Yadav, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Heard Sri Yogesh Kumar Singh along with Sri Subhash Singh Yadav, learned Counsel for the petitioner and learned Standing Counsel for the State respondents. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 15.7.2013 passed by the Additional Commissioner(Judicial II) Varanasi Division Varanasi in Revision No. 231 of 2013 (Imran Ansari v. Tasrifun and others) and order dated 26.9.2013 passed by the learned Member Board of Revenue in Revision No. 2668/ LR/2012-13 (Tasrifun Nisha and others v. Imran Ansari and others).

2. Vide order dated 15.7.2013, the Additional Commissioner has allowed the revision by setting aside the order dated 30.4.2010 passed by the Sub-Divisional Officer in a proceeding u/s 33/39 of U.P. Land Revenue Act, 1901 (in short ''the Act'')- Whereas by the subsequent order dated 26.9.2013, petitioner''s revision has been dismissed with the finding that there is no illegality in the order passed by the learned Additional Commissioner.

While assailing the impugned orders, learned Counsel for the petitioner contends that the Revision No. 231 of 2013 was filed against the order dated 30.4.2010 and the said revision was barred by time. The learned Additional Commissioner has allowed the revision at the admission stage without condoning the delay and without issuing notice to the petitioner and the learned Member Board of Revenue has committed manifest error of law in not interfering with the order dated 15.7.2013 saying that the order was passed on merit,

3. The contention of learned Counsel for the petitioner is that once the statute provides period of limitation and also provides that if any person approaches the Court after expiry of period of limitation, he can get the benefit of section 5 of Limitation Act. In that eventuality, if at the time of filing of revision, there was no application for condonation of delay, only course for the Revisional Court was to dismiss the revision as barred by time and in no case, he could proceed with the matter to decide the case on merit, unless an application is filed for condonation of delay and the delay is condoned after due notice to the parties concerned.

4. The view taken by me finds support from the decision of the Apex Court in Noharlal Verma v. District Cooperative Central Batik Ltd. Jagdalpur (2008) 14 SCC 445 where the Apex Court has held as under:--

32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation a Court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of section 3 of the Limitation Act, 1963 reads as under:

3. Bar of Limitation.--(1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not be set up as a defence.

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in the absence of such plea by the defendant, respondent or opponent, the Court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.

5. In V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and another 2005 (4) SCC 613 following observation has been made by the Apex Court:

20. The mandate of section 3 of the Limitation Act is that it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a Court has no choice but to dismiss

the same even if the defendant intentionally has not raised the plea of limitation.

6. In the case of Sneh Gupta v. Devi Sarup and others (2004) 6 SCC 194 in paragraph 70, the Apex Court has held that in absence of any application for condonation of delay, the Court has no jurisdiction in terms of section 3, Limitation Act, 1963 to entertain the application filed for setting aside of decree after expiry of period of limitation.

7. In Ragho Singh v. Mohan Singh, 2000 (91) RD 684(SC) the Apex Court has held as under:--

We have heard learned Counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application u/s 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs.

8. The same view has been reiterated by this Court in Parbhu and Another Vs. Deputy Director of Consolidation, Ghazipur and Others, , wherein this Court has observed as under:--

In view of foregoing discussions, the controversy can be summarized as under:--

(i) When the statute provides limitation for approaching the Court and a person approaches the Court after the expiry of the period of limitation, then he has to approach the Court along with an application u/s 5 of the Limitation Act praying extension of period of limitation or to condone the delay in approaching the Court.

(ii) Once the application u/s 5 of the Limitation Act is filed and unless the delay is condoned, no order can be passed on merit.

(iii) The delay cannot be condoned without having the version of other side and for that, other side is required to be noticed and heard.

9. On being confronted that what is the period of limitation, learned Counsel for the petitioner contends that the period of limitation is three years, which has also been endorsed by the learned Standing Counsel.

10. Since the revision was filed in July, 2013 and the period of three years has expired in April, 2013, therefore the revision was barred by time and the first Revisional Court has erred in allowing the revision without condoning the delay. Learned Counsel for the petitioner may be right in his submissions but in the revision, the order dated 30.4.2010 passed by the Sub-Divisional Officer was under challenge, which is reproduced hereinunder:--

11. The order dated 30.4.2010 was passed on the report of the Naib Tehsildar, Western Mohammadabad, District Ghazipur for recording the name of the petitioner over the land in dispute. The Sub-Divisional Officer without applying his mind and without addressing himself on the contents of the report and without there being any notice to the other side, has accepted the report.

Since the order has been passed in a proceeding u/s 33/39 of the Act, it was incumbent upon the Sub-Divisional Officer to issue notice to the affected parties and only thereafter, he could pass the order. Otherwise also, the order impugned is cryptic one as it do not contain any reason for accepting the report.

12. The Apex Court in Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others, , has observed as under:--

27.....The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. [Vide: State of Orissa Vs. Dhaniram Luhar, , State of Rajasthan Vs. Sohan Lal and Others, Vishnu Dev Sharma Vs. State of U.P. and Others, , Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others, , State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, , U.P.S.R.T.C. Vs. Jagdish Prasad Gupta, Ram Phal Vs. The State of Haryana and Others, , State of Himachal Pradesh Vs. Sh. Sada Ram and Another, and The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others,).

13. In view of the aforesaid legal position, if the order dated 15.7.2013 is interfered with and quashed, another illegal order dated 30.4.2010 would revive. It is settled that if by quashing of an illegal order, another illegality revives in that eventuality, the Court should not interfere with such orders under the writ jurisdiction.

14. The view taken by me finds support from the judgments of the Apex Court in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, , Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, , Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others, , Chandra Singh Vs. State of Rajasthan and Another, , S.D.S. Shipping Pvt. Ltd. v. Jay Container Services Co. Pvt. Ltd. and others 2003 (4) Supreme 44, State of Uttranchal through Collector, Dehradun and Another Vs. Ajit Singh Bhola and Another, , and State of Orissa and Another Vs. Mamata Mohanty, .

15. This Court has reiterated the same view in Smt. Shanti and Another Vs.

Board of Revenue Lko. and Others, .

16. In view of foregoing discussions, I am not inclined to interfere with the impugned orders. The writ petition is dismissed.

17. However, in the last, learned Counsel for the petitioner contended that a direction may be issued to the Sub-Divisional Officer to pass appropriate order in proceeding on merit after hearing both the sides expeditiously. I find substance in the submission of learned Counsel for the petitioners. Therefore, the Sub-Divisional Officer, Mohammadabad, District Ghazipur, is directed to conclude the proceedings in accordance with law after hearing all concerned, expeditiously but not later than ten months from the date of receipt of certified copy of the order of this Court.

