

(1972) 01 AHC CK 0020

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 1684 of 1970

Gaon Sabha Village Khurhat

APPELLANT

Vs

Dy. Director of Consolidation,
U.P. Lucknow Camp. at Varanasi
and Others

RESPONDENT

Date of Decision: Jan. 31, 1972

Acts Referred:

- Limitation Act, 1963 - Section 12, 12(2), 29, 29(2), 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11, 53B

Citation: AIR 1972 All 261 : (1972) 42 AWR 158

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: Sankatha Rai and Rajeshwari Pd, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.B. Misra, J.

This is a petition under Article 226 of the Constitution. The dispute between the parties relates to plot No. 227, area 4.1 acres.

2. The Gaon Sabha in its objection claimed the plots as its own on the ground that the said plot was the land of public utility while the contesting respondents claimed sirdari rights on the basis of adverse possession.

3. The Consolidation Officer dismissed the objection by his order dated 31st March. 1969, and directed the entry in the basic year to continue. The Gaon Sabha and some others filed an appeal before the Settlement Officer. (Consolidation) on 23rd April. 1969. A copy of the order of the Consolidation Officer was not filed along with

the memo of appeal, although an application for obtaining the certified copy of the order of the Consolidation Officer dated 31st March, 1969, had been made on 5th April, 1969, and the same was obtained on 8th April, 1969. The certified copy of the judgment of the Consolidation Officer was, however, filed at the time of hearing of the appeal. No application for condonation of delay was filed on behalf of the appellants. The Settlement Officer (Consolidation), however, allowed the appeal by his order dated 8th August, 1969. Payas, respondent No. 9, and others filed a revision before the Dy. Director of Consolidation which was allowed by the Dy. Director of Consolidation by his order dated 3-1-1970. The Dy. Director of Consolidation took the view that the appeal filed on behalf of the Gaon Sabha and others was barred by limitation and no application for condonation of delay having been filed before the Settlement Officer (Consolidation) the appeal could not have been entertained and should have been dismissed on the ground of limitation alone and in this view of the matter, he found the order of the Settlement Officer (Consolidation) as with (without?) jurisdiction. He further held that even if it be assumed that the Settlement Officer (Consolidation) had impliedly condoned the delay, although there was no application for the condonation of the delay and no specific order to that effect, he found no justification for condonation of delay. He accordingly, set aside the order of the settlement Officer (Consolidation) and restored the order of the Consolidation Officer. There were certain other pleas taken by the revisionists before the Deputy Director of Consolidation, but the Deputy Director of Consolidation did not think it necessary to decide those points as he allowed the revision on the question of limitation alone. The Gaon Sabha feeling aggrieved has now filed the present petition to challenge the order of the Deputy Director of Consolidation.

4. The sole question for consideration in this case is whether the appeal was barred by limitation and, if so, whether there was any justification for the condonation of delay.

5. Section 11 of the U. P. Consolidation of Holdings Act prescribes a limitation of 21 days for filing an appeal against the order of the Consolidation Officer. The Consolidation Officer disposed of the objection by his order dated 31st March, 1969. As stated earlier, an application for obtaining the certified copy of the order of the Consolidation Officer was filed on 5th April, 1969, and the same was obtained on 8th April, 1969. Computing the period of limitation from the date of the order of the Consolidation Officer, the appeal could have been filed up to 21st April, 1969. The appeal was, however, filed on 23rd April, 1969. The first question is, therefore, whether the period taken in obtaining the certified copy of the order of the Consolidation Officer should or should not be excluded. If that period can be excluded then the appeal filed on 23rd April, 1969, would be well within time.

6. It is, however, contended by Shri Krishna Pal Singh, counsel for the contesting respondents, that as the certified copy of the order of the Consolidation Officer was

not filed along with the memo of appeal, there was no question of excluding the said period. In view of the recent decision of this Court as well as of the Supreme Court, the period taken in obtaining the certified copy of the order appealed against will have to be excluded even if the same was not either filed along with the memo of appeal or even was not required to be filed along with the memo of appeal. It is because the appellants will have first to read the impugned judgment or order before filing the appeal and, for that purpose, certified copy of the impugned order was necessary. Without reading the judgment or the order, the appellants could not file the appeal. Thus, the period taken in obtaining the certified COPV of the order of the Consolidation Officer would be excluded even if it was not filed or even not required to be filed along with the memo of appeal, provided Section 12 of the Limitation Act applies to the case. In *Jiibhov N. Surty v. T. S. Chettyar Firm. AIR 1928 PC 103* and Addl. Collector of Customs, Calcutta and Another Vs. Best and Co., the same proposition of law was laid down.

7. Section 12 of the Limitation Act provides that in computing the period of limitation for an appeal, the time requisite for obtaining a copy of the decree or order appealed from shall be excluded. This leads me to consider whether Section 12 of the Limitation Act is applicable to proceedings under the U. P. Consolidation of Holdings Act. If Section 12 of the Limitation Act is attracted, obviously, the period taken in obtaining the certified copy of the order of the Consolidation Officer will have to be excluded while computing the prescribed period of limitation for filing an appeal.

8. It has been contended for the contesting respondents that U. P. Consolidation of Holdings Act is a special Act and is a complete code in itself and the limitation for filing objections, appeals and revisions has been provided under the Act itself. Therefore, the provisions of the Limitation Act should not be imported unless it has been made applicable by the U. P. Consolidation of Holdings Act. Section 29 of the Limitation Act in so far as it is material for this case provides as follows:--

"29 (1)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

(3)

(4)"

9. A bare reading of this section makes it clear that even if a special Act provides special limitation different from the one prescribed by the Schedule of the Limitation Act, the provisions of Section 3 of the Limitation Act would apply. Likewise, the provisions contained in Sections 4 to 24 (inclusive) would apply in so far as and to the extent to which they are not expressly excluded by such special or local law. In the absence of any express exclusion in the U. P. Consolidation of Holdings Act, the provisions of Sections 4 to 24 of the Limitation Act would apply which would include Section 12(2) of the Limitation Act. It has got to be examined whether there has been any express exclusion of Section 12(2) of the Limitation Act by U. P. Consolidation of Holdings Act.

10. Sri Sankatha Rai, appearing for the petitioner, contended that there is no express exclusion of Section 12(2) of the Limitation Act by any provision of the U. P. Consolidation of Holdings Act while Sri Krishna Pal Singh, appearing for the contesting respondents, contended that there is an express exclusion of all the provisions from Sections 4 to 24 of the Limitation Act. except Section 5 of the said Act inasmuch as the provisions of Section 5 of the Limitation Act, 1963 were made applicable to the applications, appeals, revisions and other proceedings under the U. P. Consolidation of Holdings Act or the Rules made thereunder by Rule 52-B of the U. P. Consolidation of Holdings Rules. This Rule was added by Section 46 of the Uttar Pradesh Amendment Act No. 38 of 1953 and when Section 5 alone out of so many sections of the Limitation Act was made applicable to the proceedings under the U. P. Consolidation of Holdings Act. it obviously meant that the other, provisions of Sections 4 to 24, except Section 5. were expressly excluded by the U. P. Consolidation of Holdings Act. In support of his contention, he placed reliance on a Full Bench decision of this Court in *Raja Pande v. Sheopujan Pande AIR 1942 All 429 (FB)*. In that case, an application for the adjudication of one Raja Pande as insolvent was filed in the court of the Civil Judge on 5th July. 1937. alleging that on 8th March. 1937, Raja Pande had fraudulently transferred almost all his properties with intent to defeat or delay his creditors and had thus committed an act of insolvency in view of the provisions of Sub-clause (c) of Section 9(1) of the Provincial Insolvency Act. which runs as follows:--

"A creditor shall not be entitled to present an insolvency petition against a debtor unless the Act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition".

11. The period of three months from the date of transfer expired during the long vacations of the Civil Court. The question was whether the benefit of Section 4 of the Limitation Act could be extended. Section 4 of the Limitation Act provides:

"4. Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens".

Admittedly, the application for insolvency, in that case, was made on the reopening day of the Court after long vacations, but after the expiry of the period of three months. The Provincial Insolvency Act has prescribed the period of limitation for applications and appeals by Sections 68 and 75, and subsequently, by clauses (1) and (2) of Section 78, the Act made the provisions of Sections 5 and 12 of the Limitation Act applicable to appeals and applications under the Act and has also made provisions of exclusion of time in the computation of the period of limitation prescribed for any suit or application for the execution of a decree in certain cases. It was thus obvious that unlike many other special or local laws, the Provincial Insolvency Act does not stop short at merely prescribing periods of limitation, but also makes provisions for the computation of such periods and for exclusion of certain time in such computations. The Legislature, therefore, intended to make the Act a self-contained Act in the matter of limitation for proceedings contemplated by the Act.

In that case, the Full Bench held as follows:--

"If the Legislature had intended that, apart from Sections 5 and 12. Limitation Act. other sections of that Act should apply to proceedings under the Provincial Insolvency Act, one would have expected the Legislature to enumerate those sections of the Limitation Act also in Section 78. When one finds that the Legislature in a particular statute has made provisions about the applicability of certain sections of the Limitation Act to proceedings under that statute, the conclusion is irresistible that the Legislature intended only the enumerated sections and no other sections of that Act to apply to proceedings under that statute. It. therefore, appears to me that the Provincial Insolvency Act is a self-contained Act in the matter of "limitation" with respect to proceedings contemplated by the Act. It follows that the general provisions of the Limitation Act, other than those specified in the Provincial Insolvency Act. cannot be applied to for determining the period of limitation as regards proceedings under the latter Act".

12. Next reliance was placed on paragraph 195 of the Construction of Statutes by Earl. T. Crawford, (1940 Edn.) which reads:--

"195. As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It, therefore, logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect".

13. The Full Bench was noticed by a learned Single Judge of this Court in [Harbir Singh Vs. Ali Hasan and Others,](#) . The question for consideration in that case was whether Section 5 of the Limitation Act had any application to the petition for leave to appeal u/s 417(3), Criminal P. C. The Court relying on the earlier Supreme Court decision held that the Code of Criminal Procedure was a special law. It further held that the expression "expressly excluded" used in Section 29 of the Indian Limitation

Act signifies exclusion by words. It will not mean exclusion by process of construction or reasoning. The Full Bench case of AIR 1942 All 429 (supra) was distinguished on the ground that that was a case under the Provincial Insolvency Act. Sections 68 and 75 of the Provincial Insolvency Act prescribed periods of limitation for various applications and appeals under that Act. Section 78 makes provision of Sections 5 and 12 of the Limitation Act applicable to appeals and applications under the Provincial Insolvency Act. as was clear from the observation made by the Full Bench Itself in the following terms:--

"It is, therefore, manifest that, unlike many other "special or local law", the Provincial Insolvency Act does not stop short at merely prescribing periods of limitation, but also makes provisions for the computation of such periods and for exclusion of certain time in such computations. This, I feel, is a strong indication of the fact that the Legislature intended to make the Act a self-contained Act in the matter of "limitation" for proceedings contemplated by the Act. If the Legislature had intended that, apart from Sections 5 and 12, Limitation Act, other sections of that Act should apply to proceedings under the Provincial Insolvency Act. one would have expected the Legislature to enumerate those sections of the Limitation Act also in Section 78. When one finds that the Legislature in a particular statute has made provisions about the applicability of certain sections of the Limitation Act to proceedings under that statute, the conclusion is irresistible that the Legislature intended only the enumerated sections and no other sections of that Act to apply to proceedings under that Statute".

14. In the instant case, however, the U. P. Consolidation of Holdings Act. has not provided for all the contingencies, for example, if the limitation for filing the appeal was expiring on a date, which was a holiday, whether Section 4 of the Limitation Act would or would not apply. Similarly, if the certified copy of the order to be appealed against could not be obtained within the period of limitation, whether the period taken in obtaining such copies would or would not be excluded. It is, therefore, obvious that U. P. Consolidation of Holdings Act has not provided for those contingencies and there is no express provision in the Act itself excluding the provisions of Section 12(2) of the Limitation Act which provides for the exclusion of time taken in obtaining the certified copy of the order to be appealed against.

15. Shri Krishna Pal Singh built up his argument thus. Section 53-B of the U. P. Consolidation of Holdings Act applied only Section 5 of the Limitation Act to consolidation proceedings. The Legislature thus obviously intended the exclusion of other provisions of the Limitation Act. This intention of the Legislature is further clear in retaining Section 53-B of the U. P. Consolidation of Holdings Act in spite of the amendment of Section 29(2) of the Limitation Act in 1963. By the amendment of 1963. Section 29(2) of the Limitation Act contemplates the application of Sections 4 to 24 to all Special Acts unless expressly excluded. Prior to 1963, Section 5 of the Limitation Act was not applicable to Special Acts by virtue of Section 29(2) of the said

Act. There might have been a Justification for applying Section 5 of the Limitation Act by a special Section 53-B. But there was absolutely no sense in retaining Section 53-B after 1963. The Legislature still retained that section on the Statute Book and this only indicates that the Legislature wanted the application of Section 5 of the Limitation Act alone to proceedings under the U. P. Consolidation of Holdings Act.

16. Section 5 of the Indian Limitation Act was made applicable to proceedings under the U.P. Consolidation of Holdings Act by Rule 106 of the U. P. Consolidation of Holdings Rules. Rule 106 was subsequently deleted by Notification No. 437-CH/I-E-256-61. dated 25th March, 1964, and the same has now been replaced by Section 53-B of the U. P. Consolidation of Holdings Act. Merely because Section 53-B of the U. P. Consolidation of Holdings Act has been retained despite the amendment of Section 29(2) of the Indian Limitation Act in 1963 so as to include Section 5 of the Limitation Act, it is not sufficient to hold that the other provisions of the Indian Limitation Act, as contemplated by Section 29(2), were expressly excluded from application to proceedings under the U. P. Consolidation of Holdings Act. There was a justification for applying Section 5 of the Indian Limitation Act by a specific rule or section in the Act, as, prior to the amendment of 1963 Section 29 of the Indian Limitation Act did not include Section 5 of the Act. Under the circumstances the retention of Section 53-B of the U. P. Consolidation of Holdings Act in spite of the amendment of Section 29(2) of the Indian Limitation Act, does not, in my opinion, lead to the irresistible conclusion that the legislature has expressly excluded the application of the other sections of the Indian Limitation Act as contemplated by Section 29(2) of the Act.

17. Sri Sankatha Rai appearing for the petitioner, placed reliance on Lala Ram Vs. Hari Ram, . In that case the complainant filed an application u/s 417(3), Cr. P. C. for leave to appeal against the order of the Magistrate. The contention in that case was that the appeal was not filed within the time prescribed u/s 417(3), Criminal P. C. The question that arose for consideration was whether Section 12(2) of the Limitation Act was attracted to that case. The Supreme Court, while holding that Section 12(2) would be attracted, observed as follows:--

"Once it is held that the special rule of limitation laid down in Sub-section (4) of Section 417 of the Code is a special law of limitation, governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that Section 5 of the Limitation Act is wholly out of the way, in view of Section 29(2)(b) of the Limitation Act".

18. Sri Krishnapal Singh, appearing for the respondents, tried to distinguish this case on the ground that the question involved in the present case was not specifically in issue in that case, and that observation made by the Supreme Court was only a casual observation which would not bind this Court. He, however, conceded that even an obiter observation of the Supreme Court would bind this Court provided the Supreme Court had applied its mind and considered that

particular point even though it might not have been necessary to consider that point for the purposes of that case. I am not prepared to accept this contention. The Supreme Court in that case applied the provisions of Section 12(2) of the Limitation Act while considering the period of limitation, and the Supreme Court had considered this question. It is not correct to say that their Lordships of the Supreme Court had made only a casual observation in that case. It is now well settled by the decision of this Court and various other Courts that even the obiter of the Supreme Court would bind this Court, as that would be the law declared by the Supreme Court. The only condition is that the question must have engaged the attention of the Supreme Court even though it might not have been necessary for the Supreme Court to make that observation for the decision of that particular case.

19. For the reasons given above, I am definitely of the opinion that Section 12(2) of the Limitation Act would be attracted to the proceedings under the U. P. Consolidation of Holdings Act. In that view of the matter, after excluding the period taken in obtaining the certified copy of the order of the Consolidation Officer, the appeal was well within time. The Deputy Director of Consolidation, in my opinion, erred in law in holding that the appeal before the Settlement Officer (Consolidation), was barred by limitation.

20. It appears from the order of the Deputy Director of Consolidation that the revisionists before him had raised a further ground that the appeal before the Settlement Officer (Consolidation) was not properly filed on behalf of the Gaon Sabha. The Deputy Director of Consolidation did not think it necessary to decide that question, as he allowed the revision on the ground that the appeal before the Settlement Officer (Consolidation) was barred by time and the delay could not be condoned. Now that it is held that there was no delay in filing the appeal, the Deputy Director of Consolidation should consider this point as well.

21. In the view that I have taken on the question of law, it is not necessary to enter into the question whether the Settlement Officer (Consolidation) had condoned the delay u/s 5 of the Limitation Act, or whether he was justified in condoning the delay in the absence of any application u/s 5 of the Limitation Act.

22. For the reasons given above, the writ petition must succeed. It is accordingly allowed, the order of the Deputy Director of Consolidation dated 3rd January, 1970 is quashed and the case is sent back to him for deciding the revision afresh according to law in the light of the observations made above. In the circumstances of the case the parties shall bear their own costs.