courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(1991) 11 AHC CK 0071

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 7321 of 1986

Padam Nath Singh	APPELLANT
Vs	
Joint Director Consolidation and Others	RESPONDENT

Date of Decision: Nov. 13, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11, 20, 21, 21(2), 4
- Uttar Pradesh Consolidation of Holdings Rules, 1954 - Rule 111
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2), 13

Citation: (1992) 1 AWC 276

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: H.P. Dubey and G.N. Verma, for the Appellant; S.A. Ansari, for the Respondent

Final Decision: Allowed

Judgement

B.L. Yadav, J.
By the present petition under Article 226 of the Constitution of India the prayer is that a writ of Certiorari may be issued quashing the order dated 20-2-86 passed by the Joint Director of Consolidation, Azamgarh in a revision u/s 48 of the U.P. Consolidation of Holdings Act, 1953, (for short the Act), and the order dated 21-4-69 passed by the Settlement Officer Consolidation rejecting the appeal of the Petitioner u/s 21(2) of the Act in proceedings u/s 20 for the allotment of Chak.

2. Factual matrix of the case is that the consolidation proceedings commenced in village Pardaha Pargana Mohammadabad Gohna, district Azamgarh and allotment of Chak

proceedings were initiated. The Petitioner could not know about any order of the Consolidation Officer, consequently he sent a letter (Annexure 1 to the petition) stating that as he was not regularly residing in the village, consequently he could not know about the progress of consolidation operations, particularly allotment of Chaks and that a chak of very bad share has been allotted to him and that the Chak road has been made in such a way that it cannot be used as a road and the common way has been included in his chak. However, that letter was very surprisingly treated by the Settlement Officer Consolidation to be a memo of appeal and that appeal was decided by the impugned order and the same was dismissed. As the order was passed in the absence of Petitioner and without any information to him, the Petitioner filed a revision u/s 48 of the Act accompanied by an application u/s 5 of the Limitation Act for condonation of delay, along with an affidavit explaining the delay (Annexure 4 to the petition). It was stated in the affidavit that as the Petitioner does not reside in the village, rather he lives at Allahabad in connection with his practice, consequently he could not know about the progress of consolidation operations in the village, nor he could know anything about the impugned order dated 21-4-69 passed by the Settlement Officer Consolidation rejecting the appeal substantially, and when he came to the village on 11-7-88, he learnt about the rejection of appeal, hence he preferred revision with all diligence as there has been no deliberate delay nor there was any lack of sincerity, hence the delay in revision may, be condoned and the same may be treated to be within time.

3. The Deputy Director of Consolidation by the impugned order, rejected the application u/s 5 of the Limitation Act holding that no sufficient cause was made out for condonation of delay. The Deputy Director of Consolidation also rejected the revision on the ground that the same was filed after the publication u/s 52 of the Act.

4. S/S. G.N. Verma and H.P. Dubey, Learned Counsel for the Petitioner urged that the power of Deputy Director of Consolidation u/s 48 of the Act was very comprehensive and the spirit of language of Section 48 is far reaching. The Director of Consolidation has suo moto power to call for and examine record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the legality of proceedings or correctness or propriety of the order passed by him and as the circumstances of the case were such that even under suo moto power the Deputy Director of Consolidation could ascertain the correctness, legality or propriety of the orders passed by the subordinate authorities. In any case the delay was satisfactorily explained by the affidavit filed in support of application u/s 5 of the Limitation Act and a liberal view ought to have been taken. It was further urged that when record of the case was summoned by the Deputy Director of Consolidation he must have decided the revision on merits and not just on technicalities. From para 2 of the impugned order passed by the Deputy Director of Consolidation it appears that relevant files were perused, meaning there by that the record of subordinate authority was summoned, hence the revision must have been decided on merits. Reliance was placed on Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and Others, .

5. It was next urged that the appeal was decided prior to the decision of revision, where as u/s 52 the notification closing consolidation operation was made prior to the decision of revision. In any case the Consolidation Officer and the appellate authority decided the objection and appeal prior to issuance of notification u/s 52 of the Act closing consolidation operation and the revision was filed much thereafter. Hence in case the delay was condoned the revision could have been decided on merits, and in view of Section 52(2) of the Act, any proceeding which was pending on the date of issuance of notification under Sub-section (1) of Section 52 of the Act, was to be decided on merits. Reliance was placed on Basalat v. Deputy Director of Consolidation 1983 ALJ 37 (NOC) which was a case decided by Hon K.N. Misra J. to the effect that even after denoti-fication of the village revision can be filed and by condoning delay the same can be decided on merits.

6. Sri S.A. Ansari, Learned Counsel appearing for the Respondents, on the other hand, urged that there was no case made out for condonation of delay and each day"s delay was not explained The Petitioner could have come to know about the impugned order of the Settlement Officer Consolidation much earlier, but he did not prefer revision within time; and that as the notification u/s 52(1) of the Act has been issued closing consolidation operation, hence the Deputy Direct or of Consolidation has no jurisdiction to decide the revision subsequent to that. Reliance was placed on Smt Sunder Bala v. Shambhu Singh 1967 RD 5 to the effect that the allotment of Chaks transfers, possession and fresh rights accrue to the persons to whom chaks have been allotted. Thus, if a person has not been careful to raise an objection u/s 20 of the Consolidation of Holdings Act, a latter establishment of his rights cannot dislodge the rights that have accrued to the new chak holder u/s 20. Under the circumstances, the petition was held to be infructuous. Reliance was placed on Vijai Kumar v. State of U.P. 1991 AWC 515.

7. Having heard Learned Counsel for the parties the points for determination are as to whether under the circumstances of the case sufficient cause was made out to decide the Revision on merits, and in any case, for the condonation of delay in filing the revision, and as to whether Respondent No. 1 has jurisdiction to decide the revision subsequent to denotification u/s 52(2) of the Act.

8. Before grappling with the problems posed by the Learned Counsel from either side, it is appropriate to comprehend the nature and policy underlying the statutes of limitation and certain cardinal principles of interpretation. It is well known that statutes of limitation bars the remedy and not the right of the suitor. In that respect it contains rules of procedure only and forms part of the "rex fori". If an action is brought in a court of law, in that event wherever the cause of action arose the period of limitation is governed by the appropriate limitation enactment or by some other relevant statute. The policy of the Limitation Act is that dormant claims may not be revived, as by that time the evidence available may be wiped out and hence the person with good cause of action must pursue them with reasonable deligence.

9. It is better to refer to Volume 28 of the Halsbury"s Laws of England (Fourth Edition), page 266, para 605 as follows:

The courts have expressed three differing reasons supporting the existence of the statutes of limitation:

(1) that long dormant claims have more of cruelty than justice in them;

(2) that a Defendant might have lost the evidence to disprove a stale claim;

(3) that persons with good causes of actions should pursue them with reasonable diligence." (See R.B. policies at Lloyd"s v. (Butler (1950) 1 KB 76 ; Jones v. Bellgrove Properties Ltd. (1949) 2 KB 700 ; Board of Trade v. Cayzer Irvine Co. (1972) AC 610).

10. In American Jurisprudence, 2nd Volume 51, page 602, para 17, contains a statement:

Statutes of limitation are founded upon the general experience of mankind that claims which are valid are not usually allowed to remain neglected if the right to sue there on exists. Statutes on limitation are designed to prevent undue delay in bringing suit on claims and to suppress fraudulent and stale claims from being asserted to the surprise of the parties or their representatives.

Under para 18, there is following statement:

Viewed broadly, however, the statutes of limitation embody important public policy considerations in that they stimulate activity punish negligence and promote repose by giving security and stability to human affairs. Thus statutes of limitation rest upon reasons of sound public policy in that they tend to promote the peace and welfare or the society, safeguard against fraud and oppression and compel the settlement of claims within reasonable period after their origin and while the evidence remains fresh in the memory of the witnesses.

11. The elementary rules of interpretation of the statutes of limitation ought to be consistent with it. Its nature is disabling and at the same time benevolent. As a disabling statute the provision deserves to be interpreted at the plain language. It is a statute of repose, hence it is inspired with the idea not to keep the controversies alive indefinitely. As a benevolent legislation, it must be interpreted as far as the plain language permits, in favour of person whose remedy is being lost even though the right survives. There is another aspect for benevolent construction. In many cases the fixation of the period for a suit, appeal or revision, by the Legislature is arbitrary and very often results in hardship. The nature of the litigation, whether voluntary or compulsory or State imposed, has also to be kept in mind. If a Plaintiff brings a suit, he is supposed to be more vigilant in preferring the suit or filing an appeal or preferring a revision. In an State imposed litigation, i.e., U.P. Consolidation of Holdings Act, where a cause, matter or litigation is to be fought simply because State wants it and has issued notification u/s 4 of the Act. Even

if a suitor might be in connection with practice, business or service etc. far away from native village where consolidation has commenced, or he may not be mentally or financially prepared for the litigation, but he has been dragged in the arena against all his wishes. In such situation a liberal and justice oriented view has to be taken while interpreting a particular provision of the Act, i.e. Section 48 read with Rule 111 of the U.P.C.H. Rules prescribing 30 days period of limitation for preferring a revision or Section 21(2) providing limitation for preferring an appeal and Section 9-A provides 21 days for preferring objections. Similarly equitable approach by the Court would not be out of place while considering an application u/s 5 of the Limitation Act for condonation of delay.

12. As regards the first point as to whether the delay in filing revision ought to have been condoned. The order of Settlement Officer Consolidation dated 21-4 69, the revision u/s 48 was filed on 9-8-82. The revision was accompanied by an application u/s 5 of the Limitation Act and an affidavit by the Petitioner. (Annsxure-4 to the petition) explaining the delay. The power of Deputy Director of Consolidation u/s 48 of the Act is very comprehensive. The Legislature was conscious in conferring revisional jurisdiction to be exercised either suo moto or on the application being made to him by the aggrieved person. Once the record of the subordinate authorities have been summoned to ascertain correctness, legality or propriety under the impugned orders, it would not be proper to dismiss the revision on technical grounds as the same was time barred.

13. Tn Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and Others, it has been held that after be record has been called by the Deputy Director of Consolidation u/s 48 he should examine the record to decide whether it was a fit case for exercise of the revisional jurisdiction suo moto. Such opinion shall have to be formed even where the application in revision moved by a party is defective having been made beyond the prescribed period of limitation or all the necessary parties have not been impleaded. In the present case, however, from a perusal of the para 2 of the order of the joint Director of Consolidation it is apparent that the relevant files were summoned. Hence in view of the ratio of the Full Bench case referred to above, the Joint Director of Consolidation ought to have decided the case on merits rather than having dismissed the same as time barred.

14. Apart from that having perused the affidavit (Annexure-4) filed by the Petitioner for condonation of delay I am satisfied that the application u/s 5 of the Limitation Act may not be dismissed just on technicality and the circumstances pointed out for condonation of delay need not be considered in a pedantic manner, rather Section 5 of the Limitation Act must be interpreted in a justice oriented way. The earlier view used to be that every day"s delay has to be explained, but there is no such criterion for explaining every day"s delay, otherwise it can also be expected that every hour"s delay has to be explained and every minute"s delay and thereafter every moment"s delay and there would be no end to it. In my considered opinion as the consolidation operations are compulsorily imposed litigation and not a voluntary litigation, hence every allowance must be made for bona fide mistake or some delay having been caused. There is distinction between voluntary litigation and

compulsory litigation. In case litigation is initiated voluntarily, in other, words, he files a civil suit or a suit in a revenue court, in that event he is expected to be vigilant on every stage, every steps and every dates, but where the litigation is compulsorily imposed against his wishes, just like commencement of consolidation operations against the wishes of the village people, in that event they are not expected to be so vigilant or to be so prepared for every date and every eventuality. In such circumstances, some reasonable view has to be taken so that substantial justice may be done between the parties. As fresh rights are decided every effort should be made by resorting to benevolent interpretation and making a liberal approach so that rights of the parties may be determined on merits.

15. In G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , it was pointed out after reviewing the entire authorities on the subject that the contours of the area of discretion of the case in the matters of condonation of delay must be justice oriented and Section 5 of the Limitation Act need not be interpreted in a pedantic manner.

16. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, it was held that to ask for each day''s explanation is not a reasonable approach, otherwise there could be made every hour''s explanation for delay and every minute''s. Under the circumstances, I am satisfied that the delay in filing revision was satisfactorily explained and the revision ought to have been decided on merits.

17. Vijai Kumar v. State of U.P. (Supra) relied upon by Sri Ansari, Learned Counsel for Respondents, was a case decided by me where the question was about the delay in filing appeal u/s 13 of the U.P. Imposition of Ceiling on Land Holdings Act arising out of proceedings u/s 10(2) of that Act. Suffice it to say that there was a case where the provisions of Section 13 of the Ceiling Act were entirely different than the provisions of Section 48 of the U.P. Consolidation of Holdings Act. Under the Consolidation of Holdings Act the Deputy Director of Consolidation has suo moto power to decide the revision and also jurisdiction to entertain the revision filed by any private individual. Hence the analogy of the provisions of Section 13 of the Ceiling Act cannot be borrowed for the condonation of delay u/s 48 of the U.P. Consolidation of Holdings Act.

18. Reverting to the last limb of the argument of the Learned Counsel for the Respondent that after denotification u/s 52(1) of the Act, the Director of Consolidation shall have no jurisdiction to entertain the revision, suffice it to say that the Legislature has designedly used the expression "or" in cases of proceedings pending under this Act on the date of issue of notification u/s 52(2), under Sub-section (1) of Section 52, in such a language which has a very wide sweep. The word "proceeding" has a very wide connotation. It means any step taken in a legal action, or something which proceeds. The word proceeding is derived from, Latin word "procedure", which means to go on. The proceeding in consolidation starts by issuing extracts u/s 9 or 9-A, inviting objections from tenure holders and even prior to that and terminates, rather continues and remains in progress till the notification u/s 52(1) is issued closing the consolidation operations. As

the appeal was decided on 21-4-69 (Annexure-3) and thereafter denotification was issued, and revision was filed later on, when the delay in filing the revision is condoned and the revision is treated to be within time, the inescapable conclusion is that the proceedings in appeal would revive and revision would be deemed to be pending when notification u/s 52(1) was issued. See Dilawar Singh v. Gram Samaj 1972 AWR 557 (DB); Garikapatti Veeraya Vs. N. Subbiah Choudhury, . The revision accordingly ought to have been decided on merits.

19. Smt. Sunder Pala v. Shambhu Singh (Supra), relied upon by the Learned Counsel for the Respondents, was a case decided prior to the amendment of Section 52 adding Sub-section (2), hence in view of the change of law, that is no longer a good law and the writ petition would not become in-fructuous even if fresh rights have accrued to the chak holders consequent upon the allotment of chaks. Apart from that the jurisdiction under Article 226 of the Constitution is a constitutional power conferred on the court of record and the same cannot be made infructuous by making any provision in a statute enacted by the State Legislature Even if the denotification u/s 52(1) was issued earlier, the revision could not become infructuous and the same was to be decided on merits. The Joint Director of Consolidation committed error apparent on the face of record in holding otherwise.

20. To sum up, a reasonable and judicial attention has been paid to the delay of years together in preferring revision, but as the case stands on a different footing than other cases where condonation of delay is sought for. In the present case the applicant was a practicing lawyer in the High Court Being compelled by circumstances he could not reside permanently in the village where plots in dispute were situate. Hence with great difficulty he could spare sometime in a year or so to have a visit of his native village. As soon as he came to know about the case being decided by the Consolidation Officer, he sent a letter but curiously enough that letter was treated to be memo of revision. The Petitioner was not informed about hearing in the appeal, nor he was informed about the result of appeal. The legislature is, however, silent about the result of appeal being communicated to the Appellant or Respondent. In compulsory litigations imposed by the State against the wishes of the village people, there ought to be a provision u/s 9-A or Section 11 or Section 21 or Section 48 for communication of result of petition, appeal (either on merits of the claim or in the progress of allotment of chaks or the result of revision to be conveyed to both the parties through court). But there appears to be "causus omissus". I am conscious of my limitations as a court while interpreting the statute. In such matters the court is called upon only to interpret as the statute stands and not as it ought to be. When there appears to be some omission on the part of Legislature, it is for the Legislature to rectify it or amend it, and not for the court. (See 1953 SC 148: 1933 PC 63).

21. I am of the considered opinion that there must be a justice oriented reasonable approach in the matters of condonation of delay. Keeping in view that the statute of limitation is a benevolent legislation, it may be interpreted in favour of a person whose

remedy is being lost even though his rights survive. Refusing to condone the delay would have disastrous results in a meritorious matter being thrown out at the very threshold and there by the cause of justice would be defeated. As against this when the delay is condoned, both the arties shall have opportunity to fight out their cases on merits and the maximum that can happen would be that the case would be decided on merits after full opportunities to both the parties. Under these circumstances, having perused Annexure-4 to the petition, the affidavit of Petitioner, I am satisfied that the delay has been satisfactorily explained and the same deserves to be condoned and the matter may be decided on merits.

22. I decline to go into the matter as to what would be the proper form of memo of appeal and whether the letters sent by the Petitioner could be treated to be memo of appeal. That would, however, be decided in some appropriate cases.

23. In view of the premises aforesaid and applying the principles of Aristotalean and Baconian reasoning, I am of the view that the impugned order dated 20-2-86 rendered by the Joint Director of Consolidation cannot be sustained.

24. In the result, the petition succeeds and is allowed. The impugned order dated 20-2-86 is here by quashed. The Joint Director of Consolidation is directed to restore the revision to its original number and decide the same within four months from the date a certified copy of this judgment is furnished before him, after making spot inspection preparing its memo and keeping it on record and hearing the parties, and if necessary, after impleading other necessary parties. There shall be no order as to costs.