(2011) 05 AHC CK 0365

Allahabad High Court

Case No: Writ-B No. 26398 of 2011

Smt. Prabhawati		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 6, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229D, 299B

Citation: (2011) 113 RD 468

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amreshwar Pratap Sahi, J.
Heard Sri Krishna Nand Yadav, learned Counsel for the Petitioner at length.

2. The challenge is to the order passed by the learned Member of Board of Revenue which is being assailed on the ground that the restoration ought not to have been allowed as the predecessor in interest of the contesting Respondent, Smt. Jiyana, had been heard and the order passed in the year 1988 was not ex-parte.

3. Sri Krishan Nand Yadav submits that in the absence of any such cogent material, the restoration was not maintainable nor it could have been allowed on the basis of the averments contained in the affidavit in support of the restoration application. He therefore submits that the restoration ought to have been rejected and the decree passed by the Court below deserves to be maintained as it was passed after recording findings on the merits of the case.

4. Sri Tiwari learned Counsel for the Respondent No. 5, who claims herself to be the grand daughter of Smt. Jiyana, submits that Smt. Jiyana died during the proceedings and she had filed the restoration application with the clear allegation that due to her old age and ailment she has been unable to attend court. She had No. adequate knowledge about the date by her lawyer and the restoration was filed within a short span of time after a month of the passing of the decree and therefore there was No. deliberate delay or default on the part of the Smt. Jiyana in moving the restoration application.

5. He therefore submits that keeping in view the nature of the dispute of title between the parties, it was all the more necessary that the matter should have proceeded after a reasonable opportunity of hearing to the parties and allowing them to lead evidence. He therefore contends that substantial justice has been done and hence the impugned order does not deserve any interference.

6. Having perused the records and the findings recorded, it is evident that the suit is in respect of title of an agricultural land under the provisions of Section 229-B of the U.P.Z.A. & L.R. Act. Any decree passed by the competent authority under the said act would be binding for all times to come and therefore in the matter of a title dispute it is always expedient and in the interest of justice to allow the parties to contest the matter on merits instead of disallowing a claim on a technical ground of restoration. The authorities below have therefore not committed any error and have rather avoided any possible miscarriage of justice which might occur if the restoration was not allowed.

7. Accordingly, the impugned order in the opinion of the Court does not require any interference in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. However, in view of the nature of the dispute which is continuing for the past 2 decades the matter should be disposed of by the authority expeditiously as directed by the learned Board of Revenue itself. In case the parties want, they can claim or move an application for any interim relief in view of the provisions contained in Section 229-D of the 1950 Act.

8. The writ petition is dismissed with the aforesaid observations.