

(2012) 07 AHC CK 0264

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 13747 of 1995

Smt. Manmohan Kaur

APPELLANT

Vs

Additional Commissioner (J) and
Others

RESPONDENT

Date of Decision: July 9, 2012

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2013) 1 ADJ 246 : (2013) 2 ALJ 64

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: S.D. Pathak, Dinesh Pathak and Rakesh Pathak, for the Appellant;

Final Decision: Allowed

Judgement

A.P. Sahi, J.

Heard Shri S.D. Pathak, learned counsel for the petitioner and learned Standing Counsel for the respondents. This writ petition arises out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The Prescribed Authority proceeded in the matter and vide order dated 21st of March, 1994 declared certain land as surplus.

2. The petitioner claiming herself to be a divorced wife of Gurubachan Singh filed an appeal against the said order on the ground that she had no knowledge of the said order.

3. The appeal was filed on 31st March, 1995. An application u/s 5 of the (Indian) Limitation Act was filed supported by an affidavit, a copy whereof has been filed alongwith writ petition as Annexure 2. The petitioner disclosed reasons about the non-filing of the appeal within time and also the date of knowledge whereafter the learned counsel for the petitioner made an inspection of the file and accordingly instituted the appeal.

4. The learned Additional Commissioner has dismissed the appeal on two grounds namely, the explanation given by the petitioner in support of the Section 5, application does not appear to be satisfactory and even otherwise another appeal against the same order had already been dismissed.

5. The writ petition was entertained and an order directing the parties to maintain status quo as regards to the land in dispute was passed on 24.5.1995.

6. A counter-affidavit has been filed stating therein that during the proceedings before the Prescribed Authority the statement of the petitioner was recorded on 2nd of April, 1993 and, therefore, it cannot be said that the petitioner had no knowledge about the proceedings before the Prescribed Authority. It has further been stated that an appeal filed by another person against the same order has already been dismissed and, therefore, there was no ground made out for entertaining the same.

7. Having perused the pleadings on record as also the impugned order, no reasons have been given by the appellate authority as to why the explanation given by the petitioner for delay in filing the appeal was not satisfactory and it is primarily on this ground that the appeal has been held to be not maintainable as barred by time. The dismissal of another appeal has been stated by way of a fact in the order. There is no indication as to how the said dismissal governs the appeal filed by the petitioner and as to what is the impact of the said order in another appeal.

8. In the absence of any cogent reasons on both grounds the impugned order dated 17.4.1995 is unsustainable.

9. The writ petition is allowed. The order dated 17.4.1995 is hereby quashed.

10. Keeping in view the facts and circumstances of the case as also the reasons given in support of the delay condonation application, it would be appropriate that the same is considered by this Court itself instead of remanding the said issue after a lapse of 17 years. The delay is accordingly condoned as the explanation is satisfactory and the appeal will be treated to be within time and will be disposed of on merits as expeditiously as possible by the appellate authority after giving an opportunity of hearing to the State as well. Allowed.