

Court No. - 48

Case :- WRIT - B No. - 48 of 2023

Petitioner :- Jaqirunnisha And 2 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vishesh Rajvanshi

Counsel for Respondent :- C.S.C., Akhilesh Kumar Pandey, Lallan Verma, Prakash Chandra Yadav, Sunil Kumar Singh, Vishveshwar Mani Tripathi

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Vishesh Rajvanshi, learned counsel for the petitioners, Sri Lallan Verma on behalf of contesting respondents and Sri A.C.Nishad, learned Standing Counsel.

2. I find merit in the argument of learned counsel for petitioners that the appeal filed by respondents were heard and allowed even without condoning delay at first instance which was in teeth of a judgment passed by Division Bench of this Court in **Ram Prakash Vs. Deputy Director of Consolidation, Hardoi and Others, 2022 (2) AWC 1345 (LB)** and he referred paragraph 22 of it.

3. Learned counsel for petitioners further submits that specific ground was raised in regard to erroneous approach in the memo of revision petition and he referred paras 9 and 10 of the same which is reproduced hereinafter:

“9. यह कि अपीलीय न्यायालय ने सरसरी तौर पर 19 साल व 22 साल की देरी के लिए कारण को सन्तोषजनक मानते हुए मियाद कानून की धारा-5 का लाभ दिया है। जो सरासर गलत है। इसलिए प्रश्नगत आदेश मात्र इसी आधार निरस्त होने योग्य है।

10. यह कि अपीलार्थी के शपथ पत्र के विरोध में उत्तरवादी के तरफ से प्रति शपथ-पत्र दाखिल किया गया था , इसलिए अदालत को मियाद के बिन्दु पर गहन विचार करना चाहिए था 19 साल 22 साल के देरी को क्षमा करके मियाद का लाभ दिये जाने का कोई औचित्य नहीं था तथा अपील को मियाद

बिन्दु पर ही खारिज कर दिया जाना चाहिए था। ऐसा न करके अपीलीय न्यायालय ने भूल किया है।"

4. Learned counsel for respondents has submitted that respondents have a very good case on merit and both the authorities have decided case on merit.

5. I find merit in the submission of counsel for petitioners that Settlement Officer of Consolidation has committed a procedural error which goes to the root of case and the Revisional Authority has also erred in not considering specific averment made in the revision petition.

6. Accordingly the impugned orders dated 20.12.2022 and 4.3.2020 are set-aside and the matter is remitted to the Settlement Officer of Consolidation to decide the appeal in terms of **Ram Prakash** (supra) expeditiously.

7. With the aforesaid direction, this writ petition is disposed of.

8. It is made clear that this Court has not entered into the merits of the case.

Order Date :- 19.10.2023

SB