

Court No. - 48

Case :- WRIT - B No. - 1392 of 2023

Petitioner :- Ramashray And 3 Others

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

Counsel for Petitioner :- Shakeel Ahmad Azmi

Counsel for Respondent :- C.S.C.,Ajay Kumar
Rai,Mohammad Sahabjan,Pratima Srivastava

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Shakeel Ahmad Azmi, learned counsel for petitioners and Sri A.K. Rai, learned Additional Chief Standing Counsel.

2. According to office report dated 2.5.2023 notices could be deemed to be served upon respondent nos.7, 8/1, 8/2 and 8/3 since neither A.D. nor undelivered cover received back, whereas respondent nos.8/1, 8/2 and 8/3 are represented by Mr.Mohammad Sahabjan, Advocate. However, he is not present.

3. This Court has passed following order on 21.4.2023:

"Heard Sri Shakeel Ahmad Azmi, learned counsel for the petitioners and Sri Ajay Kumar Rai, learned counsel for respondent nos.5 & 6.

Counsel for the petitioners submitted that against the order passed by the Consolidation Officer on the basis of compromise in the year 1988, an appeal has been filed under Section 11 of the U.P. C.H. Act by the contesting respondent in the year 2018. It is further submitted that the appellate court without condoning the delay in proper manner, has allowed the appeal outrightly, setting aside the order of the Consolidation Officer and maintaining the basic year entry. He also submitted that appellate court can remand the matter back before the Consolidation Officer to decide the title objection on merit in place of maintaining the basic year entry. He further submitted that filing of restoration application after such a long period is an abuse of the process of law. He further placed reliance on a Division Bench decision of this Court, reported in 2022(155) RD 309, Ram Prakash vs. Deputy Director of Consolidation and others in order to demonstrate that the appellate court should decide the delay condonation matter first and, thereafter, shall decide the appeal on merits. He also submitted that in the instant matter, by passing a cryptic order, the appeal has been allowed outrightly.

On the other hand, learned counsel for the contesting respondent submitted that the order passed by the Consolidation Officer on the basis of compromise, was illegal, as such, the same was rightly set aside in appeal. He also submitted that the application for condonation of delay was filed in the appeal, as such, even there is no proper order on the delay condonation matter but the appeal has been allowed on merit then the delay shall be deemed to be condoned. He further submitted that even on merit, the petitioners has no case under Section 9-A(2) of the U.P. C.H. Act that they should be declared as co-tenant of the plot in dispute.

Matter requires consideration as to whether the appeal under Section 11(1) of the U.P. C.H. Act can be allowed outrightly without condoning the delay in filing the appeal and without remanding the matter to the Consolidation Officer to decide the title objection on merit.

Issue notice to respondent nos.7 and 8/1 to 8/3, returnable at an early date.

Steps within 10 days.

Respondent nos. 5 to 7 and 8/1 to 8/3 shall file their counter affidavits within 6 weeks. Petitioner will file rejoinder affidavit within two weeks thereafter.

List on 24.7.2023, before the appropriate Bench.

Until further orders of this Court, parties are directed to maintain status quo with respect to nature and possession of the plot in dispute."

4. In light of the above, I have carefully perused the impugned orders and I find merit in the argument of learned counsel for petitioners that the impugned order dated 17.3.2018 was passed in the teeth of judgment passed by Division Bench of this Court in ***Ram Prakash Vs. Deputy Director of Consolidation and others 2022 (155) RD 309*** and that error was not cured by the Revisional Authority therefore, both the impugned orders dated 17.3.2018 and 28.3.2023 are set-aside and the matter is remitted back to Settlement Officer of Consolidation to decide the appeal afresh in terms of the judgment passed in ***Ram Prakash (supra)***.

5. With the aforesaid direction/observation, this writ petition is disposed of.

Order Date :- 3.11.2023-SB