

Court No. - 48

Case :- WRIT - B No. - 15177 of 2007

Petitioner :- Madhav Prasad

Respondent :- Dy. Director Of Consolidation Maharajganj Camp
And Others

Counsel for Petitioner :- N.K. Saxena,Alok Kumar Yadav,Deepak
Saxena,Niraj Tripathi

Counsel for Respondent :- C.S.C.,Dwivedi S.C.,R.K.
Tiwari,Ramanuj Yadav,Sanjeev Khare

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Alok Kumar Yadav, learned counsel for petitioner and Sri Ramanuj Yadav, learned counsel for respondents.

2. This matter is arising out of consolidation proceedings. It appears that Consolidation Officer has decided the objections on the basis of a compromise between the parties. The respondents after about 18 years have objected said compromise and filed a belated appeal along with application for condonation of delay before Settlement Officer of Consolidation. The appeal was dismissed on the ground of delay and laches by impugned order dated 05.10.2001. The respondents thereafter preferred a revision petition. The Revisional Authority by impugned order dated 31.01.2007 allowed the revision petition and set aside the orders passed by Consolidation Officer and Settlement Officer of Consolidation and after entering into merit of the case, remitted back matter for fresh consideration.

3. Learned counsel for petitioner submits that Revisional Authority has committed two errors, firstly impugned order before Revisional Authority was only in regard to condonation of delay in filing belated appeal was rightly

rejected or not? However, without considering the aspect of delay and even not condoning the delay in filing appeal, Revisional Authority has committed second error by entering into merit of the case and returned a finding referred above.

4. Learned counsel for respondents submits that compromise was creation of fraud and Deputy Director of Consolidation under its wide power has rightly appreciated the objections to compromise and in order to verify the same, remitted back the matter to Consolidation Officer. However, learned counsel has not disputed that Deputy Director of Consolidation has not condoned the delay in filing appeal.

5. Heard learned counsel for parties and perused the record.

6. Before considering rival submissions of parties, relevant part of order of Revisional Authority is reproduced below -:

"मैंने पक्षों के विद्वान अधिवक्तागणों के तर्कों को सुना तथा पत्रावली का अवलोकन किया। चकबंदी अधिकारी के पत्रावली पर उपलब्ध समझौते के अवलोकन से स्पष्ट है कि इस पर रामदास, चेताराम, माधव प्रसाद के हस्ताक्षर हैं और इनकी शिनाख्त है परन्तु लिखित खातेदार विवादित भूमि के रामदास व चेताराम पुत्रगण काशी प्रसाद व प्यारी दुल्हन बेवा रामनाथ भी हैं और प्यारी दुल्हन के समझौते पर उसके हस्ताक्षर नहीं हैं अतः जब तक सभी समझौते पर हस्ताक्षर न करें और उनकी शिनाख्त न हो तब तक चकबन्दी अधिकारी द्वारा ऐसे समझौते के आधार पर पारित आदेश विधि के अन्तर्गत नहीं है दूसरे राजावाई पुत्री रामनाथ का जो बयान लिया गया है वह समझौते के प्रस्तुत होने के दिनांक का नहीं है अतः वाद में लिये गये बयान के आधार पर समझौते को विधिपूर्वक नहीं माना जा सकता है। पक्षकारों को न्याय मिल सके इसलिये यह उचित पाता हूँ कि पुनः चकबन्दी अधिकारी इसमें पक्षों को साक्ष्य प्रस्तुत करने का अवसर प्रदान करें। सहायक बन्दोबस्त अधिकारी चकबन्दी ने केवल विलम्ब के बिन्दु पर ही पूरा आदेश आधारित किया है, स्वत्व के मामलों में तकनीकी आधार पर पक्षकारों को उनके हितों से वंचित नहीं किया जाना चाहिये अतः मैं यह उचित पाता हूँ कि स०ब०अ०च० का आदेश तकनीकी आधार पर जो आधारित है वह न्यायोचित नहीं है और इससे पक्षकारों के हितों पर प्रतिकूल प्रभाव पड़ता है स०ब०अ०च० का आदेश निरस्त किया जाकर पत्रावली

चकबन्दी अधिकारी के न्यायालय को प्रत्यावर्तित करना उचित होगा। तदनुसार चकबन्दी अधि० द्वारा पारित आदेश दिनांक 13.03.81 एवं सहायक बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित आदेश दिनांक 05.10.2001 निरस्त होने योग्य है।"

7. It is not in dispute that Appellate Authority has rejected the belated appeal on ground of delay without entering much into merit of the case. This was challenged before Revisional Authority, therefore, Revisional Authority has to consider firstly whether the delay could be condoned or not.

8. However, as referred above, there is no finding in regard to that issue and therefore, I find merit in argument of learned counsel for petitioner that at this stage, Revisional Authority has committed a legal error by entering into merit of the case without deciding issue of delay .

9. In these circumstances, impugned order dated 31.01.2007 is set aside and matter is remitted back to Deputy Director of Consolidation with a direction to decide only an issue that whether Appellate Authority has rightly rejected the application for condonation of delay in filing appeal after 18 years or not and on basis of its outcome may proceed further in accordance with law.

10. Learned counsel for parties are at liberty to raise all contentions on delay condonation application.

11. Revisional Authority is directed to consider the revision petition afresh on the issue referred above expeditiously, preferably within a period of three months.

12. Writ petition is **disposed of**.

Order Date :- 28.11.2023

Nirmal Sinha