

Neutral Citation No. - 2023:AHC:200157

Judgement Reserved 9.10.2023

Delivered on 17.10.2023

Court No. - 48

Case :- WRIT - B No. - 3465 of 2023

Petitioner :- Smt.Usha R.Singh

Respondent :- Narendra Pratap Singh And 8 Others

Counsel for Petitioner :- Mohit Kumar,Abhinav Prasad

Counsel for Respondent :- C.S.C.,Rakesh Kumar Singh,Sanjay Vikram Singh

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri S.P. Rai, Advocate assisted by Sri Mohit Kumar, learned counsel for the petitioner, Sri N.P.Singh, learned counsel for respondents and Sri A.K.Rai, learned Additional Chief Standing Counsel for State perused the records available along with this writ petition as well as written submissions filed by respective parties.

2. In order to appreciate rival submissions in brief facts of present case are as follows:

(i) The contesting respondents no.1 to 4 have filed objections under Section 9-A (2) of Uttar Pradesh Consolidation of Holdings Act, 1963 (hereinafter called the "Act of 1953") way back on 30.4.1998, which was finally decided by the Consolidation Officer vide order dated 26.10.2019 and relevant part thereof is mentioned hereinafter:

"उभय पक्षों द्वारा प्रस्तुत लिखित बहस एवं उपलब्ध साक्ष्यों के सम्यक अवलोकन एवं परिशीलन से यह निष्कर्ष निकलता है कि विवादित आराजी 1356 से 1359 फ० तक राम फकीर सिंह जो आपत्तिकर्ता नरेन्द्र प्रसाद सिंह के पितामह (बाबा) के नाम थी जिसे अवैधानिक तरीके से लाल स्याही से घेरकर गुरु प्रसाद के नाम बिना सक्षम प्राधिकारी के आदेश में दर्ज की गई। जिसका कोई मूल्य विधि की दृष्टि में नहीं है। लिखित खातेदार गजेन्द्र प्रताप ने अपने बयान में ब्रिटिश राज्य में 10 वर्ष के पट्टे से प्राप्त होना बताया है किन्तु साक्ष्य नहीं प्रस्तुत किया यही नहीं उन्होंने जिरह में राम फकीर सिंह से पारिवारिक सम्बंधों के कारण प्राप्त होना बताया है उसका भी कोई साक्ष्य नहीं

है। इस प्रकार गुरु प्रसाद का नाम अवैधानिक तरीके से दर्ज हुआ है जिसके आधार पर उन्हें कोई अधिकार(Emphasis Supplied) अराजियात में उद्भूत नहीं हुआ। विधि में अब यह सुस्थापित हो चुका है कि ० अभिलेखों में अवैधानिक तरीके से की गई अंकना जो दीर्घकालीन भी हो तो मान्य नहीं होगा। ऐसी दशा में अवैधानिक तरीके से अंकित नाम को अभिलेखों में बनाये रखने का कोई औचित्य नहीं है और निराधार है जो खारिज होने योग्य है।"

(Emphasis Supplied)

(ii) It is the case of petitioner that during aforesaid proceeding after scrutinizing about title of her vendor, she purchased land in dispute on 28.1.2013 by a registered sale deed. A copy of which is not on record. It is an admitted case that petitioner has not become a party in above referred proceedings, despite it was pending when sale deed was executed.

(iii) Being aggrieved by above referred order dated 26.10.2019, vendor (Gajendra Pratap Singh) and vendee (petitioner herein) filed two appeals before the Settlement Officer of Consolidation. The Deputy Director of Consolidation Officer heard and rejected both the appeals by a common order dated 18.8.2023 on different grounds.

(iv) The Appellate Authority has taken a view that the appeal filed by Gajendra Pratap Singh (vendor) could be rejected on ground of delay since no application for condonation of delay was filed. The order records as follows:

" अतः अपील मियाद के बिन्दु पर पोषणीय नहीं है। अतः अपील मियाद बिन्दु पर निरस्त होने योग्य है।"

(Emphasis Supplied)

(v) However, Appellate Authority proceeded further to discuss the matter on merit and finally dismissed the appeal on issue of limitation as well as on merits. The order records that:

"अतः अपील मियाद एवं गुण-दोष पर निरस्त होने योग्य है"

(Emphasis Supplied)

(vi) So far as appeal filed by the petitioner was concerned, it was rejected on the ground of maintainability, that she had purchased land in dispute during pendency of proceedings before the Consolidation Officer. However, despite knowledge she has not taken any steps to become a party therein. The order states as follows:

"यह आपत्ति 18.2.13 को दाखिल की गयी थी जिससे भी स्पष्ट है कि उषा आर० सिंह को चकबन्दी अधिकारी न्यायालय पर विचाराधीन वाद की जानकारी थी किन्तु उन्होंने चकबन्दी अधिकारी के प्रश्नगत वाद में पक्षकार बनने का न कोई प्रार्थना पत्र प्रस्तुत किया और न ही पक्षकार बनने की कोशिश की। इस प्रकार से स्पष्ट है कि अपील उषा आर० सिंह पोषणीय न होने के कारण निरस्त की जाती है।"

(Emphasis Supplied)

(vii) In aforesaid circumstances, though the vendor has not challenged above referred order. However, petitioner challenged above referred order, before the Revisional Authority by way of filing a revision petition, however it was rejected vide order dated 18.8.2023.

The order states as follows:

"चकबन्दी अधिकारी (आर) के न्यायालय की पत्रावली के अवलोकन से स्पष्ट है कि उषा आर० सिंह को उक्त न्यायालय में पक्षकार बनने के लिए विधिक कार्यवाही की जानी चाहिए थी. परन्तु ऐसा न करके निर्णय दिनांक 26.10.2019 के पश्चात अपील प्रस्तुत किया गया। अपीलीय न्यायालय ने गजेन्द्र प्रताप सिंह एवं उषा आर० सिंह की ओर से प्रस्तुत अपील को एकजाई करते हुए समस्त तथ्यों एवं साक्ष्यों का विधिवत अवलोकन कर दोनों पक्षों को सुनकर दिनांक 10.11.2022 को आदेश पारित किये है, जिसमें किसी भी प्रकार से हस्तक्षेप किया जाना विधि सम्मत प्रतीत नहीं है। निगरानीकर्त्री उषा आर० सिंह की निगरानी निरस्त किया जाना विधिक व न्यायसंगत है।"

(Emphasis Supplied)

3. Learned counsel for the petitioner has submitted that she is a

bonafide purchaser and in good faith has purchased the land in dispute. Learned counsel has placed reliance on various judgments passed by Supreme Court in **Ram Awadh Vs. Ram Das (2008) 8 SCC 58, Khemchand Shankar Choudhary Vs. Vishnu Hari Patil and Ors, 1983 (1) SCC 18, Ramesh Hirachand Kundanmal Vs. Municipal Corp. of Greater Bombay, 1992 (2) SCC 254 and Amit Kumar Shaw & Anr Vs. Farida Khatoon, 2005 (11) SCC 403.**

4. Learned counsel for petitioner has submitted that petitioner has a right to file an appeal during consolidation proceedings, despite she was not a party before the Consolidation Officer, being aggrieved by order.

5. Learned counsel for the petitioner has placed reliance upon a judgment passed by this Court in the case of **Jagdish & Anr Vs. Dy. Director of Consolidation & Ors, 2014 (125) RD 344 and Smt. Lal Dei Vs. D.D.C. 2005 (98) RD 520.**

6. Learned counsel for petitioner has also made submissions on merits of case, that vendor was in possession of land in dispute on basis of sale deed, which was executed in her favour. There were admission of contesting respondents which goes against them as well as has addressed on issue of estoppel. Counsel also submitted that mere presumption of fraud would not be sufficient to prove that the vendor was not authorised to execute sale.

7. Per contra, learned counsel for respondents has submitted that petitioner was a subsequent purchaser and he could not get better title than her vendor. The Consolidation Officer has returned a specific finding that entries made in the revenue records were creation of fraud and was rightly expunged and findings were confirmed by the Appellate Authority as well as by Revisional Authority.

8. Learned counsel for the respondents has also touched the merits of the case that transfer of a property during pendency of proceedings would hit by Section 52 of Transfer of Property Act and vendee does not have any independent right in land until transferor right is saved in the decree or order as well as that the transferor is seized off with any right, title or interest in the suit property and the order made in suit between parties are binding and transferee of such land do not have any independent right or interest in suit land to assail finding made in the order.

9. Learned counsel for the respondents further submitted that it is not disputed that when property was purchased in the year 2013, proceedings were pending before the Consolidation Officer which was decided in the year 2019 and for a period of at least 6 years, petitioner has not taken any steps to become a party. On other hand, in civil proceedings, petitioner has filed an application for becoming a party, therefore, despite having knowledge she opted not to become party to the proceedings, as such she has lost right to file an appeal.

10. Heard learned counsel for parties and perused the records.

11. This Court at first instance would decide as to whether appeal filed by the petitioner was rightly dismissed on ground of maintainability or not as well as any effect of dismissal of vendor's appeal and only thereafter if required, the Court would go into the merits of case.

12. This Court now proceeds to consider the rival submissions.

13. Considering the fact that sale deed has not been seriously disputed at this stage, therefore, it is evident that disputed land was purchased by petitioner in the year 2013 and in the absence of any contrary factor, he would fall under category of a bonafide purchaser and legal consequence of her right during proceedings would definitely

follow.

14. It is not in dispute that the petitioner has not tried to become a party before the Consolidation Officer though after sale deed, matter was pending for at least 6 years. However, it is also not under dispute that at the stage of Consolidation Officer, her interest was taken care of by her vendor which is evident from the fact that vendor has also filed an appeal before the Appellate Authority though delay of few days. The petitioner has also filed a appeal against the order passed by Consolidation Officer.

15. As referred above, two appeals were filed, one by the vendor and other by the vendee which were considered separately by the Appellate Authority and both were rejected by common order dated 26.10.2019.

16. Relevant part of consideration by the Appellate Court is already being reproduced in preceedings paragraphs. The appeal filed by the vendor was dismissed both on delay as well as on merit.

17. The vendor has not filed any revision petition against the dismissal of his appeal, whereas the petitioner has filed. However, in interest of justice, this Court has to scrutinise common impugned order including reasons given by the Appellate Authority while rejecting appeals filed by the vendor as well as by the vendee.

18. According to records available and as mentioned in the order passed by Appellate Authority, appeal of vendor was filed on 20.10.2019, whereas the impugned order was passed on 26.11.2019, therefore, delay would be less than 16 or 17 days.

19. Taking note that limitation period provided under Section 11 of the Act of 1953 is 21 days, therefore, delay of 16-17 days would not be an extraordinary delay. The Appellate Authority has taken note that

the appeal was not accompanied with any application for condonation of delay.

20. I am of considered opinion that even in absence of any such application, a short delay of 16-17 days could be condoned and instead of non-pedantic and strict approach, Appellate Authority ought to have taken a liberal approach. The technical approach of Appellate Authority was not only against well established principles of condonation of delay, but was also in teeth of judgment passed by Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors, (2013) 12 SCC 649.***

21. In the above background, it would be relevant to quote few paragraphs of ***Esha Bhattacharjee (supra)***:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude."*

(Emphasis Supplied)

22. As held in ***Esha Bhattacharjee (supra)***, approach of the Appellate Authority was absolutely incorret and therefore, a legal error was committed by him. The Appellate Authority has committed a further legal error when it decided that appeal filed by the vendor could be dismissed on delay, but has proceeded to consider the Appeal on merit. The Appellate Authority has committed not only one, but two legal errors and the impugned order could be set-aside on these error only.

23. Now Court proceeds to consider approach of Appellate Authority in considering appeal filed by the vendee i.e. the petitioner herein.

24. As referred above, at this stage it could be held that the petitioner was not a bonafide purchaser, therefore, she has a legal right to protect her right accrued on basis of a sale deed which still exists. Before the Appellate Authority, it was argued that since vendor has sold land in dispute to vendee, therefore, she has no right to file an appeal, whereas before this Court it was argued that since vendor has not challenged the order passed in his appeal, the petitioner being vendee could not challenge the order passed in her appeal. The respondent nos.4 to 8 have tried to sail on two boats simultaneously.

25. The appeal of the petitioner was dismissed on ground that she was not a party before the Consolidation Officer, however, the Appellate Authority has skipped to consider a fact that right of the petitioner was protected by her vendor before Consolidation Officer who was continuously defending his title and her possession over the land in dispute as well as that he has filed an appeal before the Appellate Authority also.

26. The above approach of Appellate Authority is also in teeth of the judgment passed by this Court in the case of ***Jagdish & Anr Vs. Dy. Director of Consolidation & Ors, 2014 (125) RD 344.*** Relevant Paragraphs of which are mentioned hereinafter:

"15. It is, therefore, clear that it has been held that to be able to maintain an appeal, the appellant has to establish that he is aggrieved by the order under appeal.

16. The Deputy Director of Consolidation in the impugned order has rightly held that a person aggrieved, even if not a party to the proceedings, has the right to maintain an appeal as noticed in the case of Lal Dei (supra). This court has rightly held that in

case the wordings of section 11 (1) are strictly construed, it will lead to a very anomalous situation, enabling persons to obtain orders in their favour without impleading necessary parties, who would thereafter be left remediless not been able to challenge the order by which they are aggrieved, merely on the ground that they were not party to the proceedings."

(Emphasis Supplied)

27. Similarly, this Court in ***Smt. Lal Dei Through LRs, and others Vs. Vs. Deputy Director of Consolidation, Varanasi and Others, 2005 SCC OnLine All 2248*** has held that:

" 20. In view of the aforesaid, the main clue appears to be that if a person is able to satisfy the Appellate Court that he is adversely affected by the order and he under law can be said to be aggrieved by that order then by leave of the Court appeal can be entertained and his contention on the merits can be examined. After this analysis if we take the view that appeal will be not maintainable that will be too harsh and that will be in violation of principle of natural justice. If in spite of proof of prejudice and adverse effect from the order sought to be challenged under appeal, the appeal is held to be not maintainable then it may lead to very drastic results. 'A' obtains order behind the back of 'B' without impleading him and then 'A' sits in safe zone after taking advantage of his fraud, if it is so and 'B' starts running here and there instead of direct remedy of appeal, as it is said to be not maintainable. "B" is either to file suit against order of Assistant Consolidation Officer/Consolidation Officer or to wait for notification under section 52 U.P.C.H. Act or during continuance of Consolidation of Holding proceedings he is to approach Civil Court, it will remain big question. The intention of legislature cannot be interpreted in this way. Thus, it can be safely held that if there is an order to which a person is not party then on satisfaction of the Court about prejudice or adverse effect on him that very Court or if matter is taken up by way of appeal by Appellate Court, the contention is to be examined on the merits subject to of course proof of adverse effect and prejudice from the order challenged.

21. In view of the analysis made above this Court is of the considered view that as and when there is an order by the Assistant Consolidation Officer/Consolidation Officer any person claiming himself aggrieved on proof of prejudice and adverse effect from the order sought to be challenged have a right to

move that very Court or to Appellate Court and his contention has to be examined on merits subject to recording of a findings and the satisfaction about prejudice."

(Emphasis Supplied)

28. Outcome of the above discussion is that petitioner being a bonafide purchaser and though she was not a party before the Consolidation Officer would not be estopped her to file an appeal before the Appellate Authority under the provisions of Section 11 of the Act of 1953, being an aggrieved and interested party.

29. In view of aforesaid circumstances and discussion, the Appellate Authority has absolutely acted contrary to law and was not justified in rejecting both the appeals on technical grounds. The Revisional Authority has ample and wide powers to cure legal errors committed by lower authorities, but in present case it has failed to exercise the same and committed a legal error also.

30. In the aforesaid circumstances, impugned orders dated 10.11.2022 and 18.8.2023, passed by the Settlement Officer of Consolidation, Maharajganj and Deputy Director of Consolidation respectively are set-aside and matter is remitted to the Appellate Authority to decide both appeals on merit after hearing the parties in accordance with law.

31. It is necessary to observe that this Court has not entered into merits of case and parties are at liberty to raise their respective submissions on merits. In a situation, when the vendor failed to pursue his appeal, the Appellate Authority shall have liberty to follow its legal consequence and shall proceed to decide the Appeal filed by the petitioner (vendee) on merit. Appeals shall not be dismissed on ground of delay or maintainability as the case may be.

32. Aforesaid exercise shall be concluded by the Appellate Authority expeditiously, preferably within a period of six months from today.

33. With the aforesaid directions and observations, this writ petition is **disposed of.**

Order Date:-17.10.2023

SB