

Court No. - 48

Case :- WRIT - B No. - 3847 of 2023

Petitioner :- Munni Lal

Respondent :- Gorakh And 10 Others

Counsel for Petitioner :- Dharm Vir Jaiswal,Ashish Kumar,Harsh Vikram

Counsel for Respondent :- C.S.C.,Adya Prasad Tewari

Hon'ble Saurabh Shyam Shamsbery,J.

1. This is second round of litigation. Earlier petitioner has approached this Court being aggrieved that Revisional Authority without even an application for condonation of delay, has allowed revision filed by contesting-respondents.

2. This Court vide order dated 07.07.2023 passed in Writ-B No. 1816 of 2023 has set aside the impugned order therein and matter was remitted back to Revisional Authority. Relevant part of order is reproduced hereinafter:

"Sri Sanjeev Singh, learned counsel for petitioner and Sri Adya Prasad Tiwari, learned counsel for respondents argued at length.

Crux of issue before this Court is whether in absence of any independent application for condonation of delay in filing revision petition to condone huge delay of more than 3-4 decades, a revision petition can be entertained by condoning the delay.

Various rival submissions have been raised by learned counsel for rival parties.

I have perused the record and found that while filing revision petition, no independent application for condonation of delay was filed and only an averment was made in memo of revision to condone the delay. It has also been pointed out that in terms of Rule 111 of U.P. Consolidation of Holdings Rules, 1954, limitation provided for filing revision petition under Section 48 of the U.P. Consolidation of Holdings Act, 1953 is of 30 days. It has also been pointed out that revision is filed alleging that a fraud has been played with the Court/Authority.

Revisional Authority by impugned order has condoned the delay and passed the impugned order treating the averment made in memo of revision petition to be a sufficient ground for condonation of delay, without taking note that no application for condonation of delay was filed and further certain observations, such as that no limitation is provided for

filing revision petition are made which apparently appear to be not in consonance with the legal position.

There is substance in the argument of learned counsel for respondents that only due to fault of advocate for not filing separate application for condonation of delay, rights of contesting respondents may not be curtailed and since there is an averment in regard to fraud, therefore, opportunity be granted to contesting respondents/revisionists to file an application for condonation of delay so that Revisional Authority may consider the same and if it still finds that it is a fit case to condone the delay after hearing the parties, he may hear the revision.

Learned counsel for petitioner submits that in the garb of filing separate application for condonation of delay, respondents may not be permitted to raise absolutely a new case.

In view of above submissions and factual aspects, while setting aside the impugned order dated 23.03.2023 passed by DDC, Maharajganj (respondent no.1) in Revision No. D-201905470001590 (Gorakh vs. Munni Lal and others) along with Revision No. D-201905470001591 (Gorakh vs. Munni Lal and others), this writ petition is disposed of with an observation that if an application for condonation of delay is filed within 15 days from today, the Revisional Authority, after inviting objections from petitioner/respondent therein, shall decide the said application in accordance with law within two months from today, taking note of a judgment of Supreme Court in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649.

It is made clear that Court has not gone into merit of the case so far as issue of any fraud is concerned."

3. Sri D.V. Jaiswal, learned counsel for petitioner submits that on remand Deputy Director of Consolidation after taking note of rival submissions and quoting few relevant paragraphs of the judgment in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649 just allowed delay condonation application without assigning any reason therein. Revisional Authority has not appreciated that delay of 28 years is an extraordinary delay.

4. Per contra, Sri A.P. Tiwari, learned counsel appearing for contesting-respondents submits that considering the facts and circumstances of case that there is an element of fraud also and this is a case arising out of consolidation proceedings, in the interest of parties, let the matter be decided on merit.

5. Heard learned counsel for parties and perused the material available on record.

6. This Court in earlier round of litigation has remitted case to Deputy Director of Consolidation to decide delay condonation application on merit. By means of impugned order Revisional Authority after quoting rival submissions and relevant paragraphs of the judgment in Esha Bhattacharjee (supra) has abruptly allowed delay allowed delay condonation application. In these circumstances, this Court deals with merit of the case so far as delay is concerned.

7. It is not disputed that there is delay of 28 years which is a extraordinary delay. I have carefully perused the detailed application for condonation of delay filed by contesting-respondents, which is part of this writ petition being Annexure-13 and specifically para 15 of the application which states that on similar issue other revisions are still pending, therefore, any argument of prejudice cannot be accepted. For reference paras 14 to 17 of application are reproduced hereinafter:

"14. यह कि विषयगत तीनों ही निगरानियों में Malafied intention से फ्राड एवं कूटरचना तथा BACT DATED पत्रावलियां तैयार कराकर निगरानीकर्ता को सारवान न्याय प्राप्त करने में अवरोध उत्पन्न किया गया है , जो मामले के तथ्यों एवं परिस्थितियों से साबित है। इसलिए परिसीमा विषयक बिन्दू महत्वपूर्ण नहीं रह जाता। लेहाजा न्यायहित में मियाद की छूट प्रदान करते हुए , तीनों निगरानियों पर समेकित सुनवायी गुण-दोष के आधार पर करके उचित व न्यायसंगत आदेश पारित किया जाना आवश्यक है।

15. यह कि तीनों निगरानियों का उन्वान गोरख बनाम मुन्नीलाल वगै० ही है। यद्यपि तीनों निगरानियों एक Land in Dispute के बावत् समान पक्षकारों के मध्य भिन्न भिन्न आदेशों के विरुद्ध योजित की गयी है। जैसे कि निगरानी सं०—डी 201905470001590 च० अ० (न्यायिक) गोरखपुर के आदेश दिनांक—12.07.1991 तथा चकबन्दी अधिकारी दीवान बाजार गोरखपुर के आदेश दिनांक — 19.10.2000 के विरुद्ध दिनांक - 30.05.2019 को दाखिल है। तथा निगरानी संख्या -डी 201905470001591 ब०अ०च० गोरखपुर के आदेश दिनांक— 30.04.1991 के विरुद्ध दिनांक- 30.05.2019 को दाखिल की है। उसी प्रकार निगरानी संख्या -डी 202005470000549 सहायक चकबन्दी अधिकारी के आदेश दिनांक -05.08.1976 के विरुद्ध दिनांक-13.02.2020 को योजित किया गया है।

16. यह कि न्याय की एकरूपता के लिए तीनों निगरानियों का एक निस्तारण किया

जाना न्यायहित में आवश्यक है।

17. यह कि फ्राड एवं कूटरचना पूरी प्रक्रिया को दूषित कर देता है तथा फ्राड करने वालों को फ्राड का लाभ कदापि नहीं दिया जाना चाहिए अन्यथा न्याय की मंशा विफल होती है।"

8. In aforesaid circumstances, though the impugned order is bereft of reasons, however, as discussed above, I find after considering contents of delay condonation application that it is a fit case where delay could be condoned. Therefore, I do not find any reason to interfere with impugned order.

9. The writ petition lacks merit. Dismissed accordingly.

Order Date :- 20.11.2023

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