

Court No. - 21

Case :- WRIT - B No. - 534 of 2023

Petitioner :- Mabood Ahmad And 6 Others

Respondent :- Deputy Director Of Consolidation District Sultanpur And 18 Others

Counsel for Petitioner :- Anil Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the respondents No. 1 & 2 and perused the record.

2. In view of the peculiar facts and circumstances of the present case and the order proposed to be passed in the instant writ petition, this Court proceeds to decide this matter finally with the consent of the learned counsel for the parties present, without calling for their respective affidavits (counter and rejoinder affidavits) and without putting notices to the contesting respondents, who are at liberty to file recall application, in case, any fact as averred in the instant writ petition is found incorrect.

3. A short point has been raised by the learned counsel for the petitioners that the Settlement Officer of Consolidation has to decide the point of limitation first before entering into the merits of the case. In support of his submission, learned counsel for the petitioners cited case of **Ram Prakash Vs. Deputy Director of Consolidation reported in 2022 (3) ADJ 1 (LB) (DB)/2022 (155) RD 309.**

4. Facts culled out from the averments made in the writ petition are that the Consolidation Officer has passed the order dated 21.1.2014 in proceeding under section 9A(2) of UP Consolidation of Holdings Act. Respondents No. 3 to 19 have filed a highly belated appeal on 3.3.2021 assailing the order dated 21.1.2014 passed by the Consolidation Officer. The Settlement Officer of Consolidation, vide order dated 23.3.2022, has observed to hear the appeal on the point of limitation and the merits of the case simultaneously. Deputy Director of Consolidation, on revision being filed on behalf of the petitioners, has dismissed the revision affirming the order passed by the Settlement Officer of Consolidation.

5. Now, it is no more res-integra, in the light of the judgment dated 3.2.2022 passed by the Division Bench of this Court in the matter of **Ram Prakash (supra)**, that the point of limitation

should be heard and decided first before entering into the merits of the appeal, however, same may be decided on the very same day. Relevant paragraphs No. 21 and 22 of the judgment dated February 03, 2022 passed in the case of **Ram Prakash (supra)** are quoted hereinbelow:

"21. As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted.

22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay."

6. In this conspectus as above, considering the dictum of Hon'ble Division Bench of this Court, I find substance in the submission as made by the learned counsel for the petitioners. No useful purpose would be served to keep the instant writ petition pending, therefore, same is being decided finally in terms of the judgment passed by this Court in the case of **Ram Prakash (supra)**.

7. As such, without entering into the merits of the case, instant writ petition is allowed in absence of the private respondents and the order dated 23.3.2022 passed by the Settlement Officer of Consolidation and order dated 10.5.2023 passed by the Deputy Director of Consolidation are hereby quashed. The matter is remitted before the Settlement Officer of Consolidation, before whom the appeal is pending consideration, with a direction to decide the said appeal in the light of the observation made by the Division Bench, as mentioned above, in the case of **Ram Prakash (supra)**, expeditiously preferably within a period of six months from the date of production of a certified copy of this order.

8. It is expected that the matter should be decided by a reasoned and speaking order, in accordance with law, after affording opportunity of hearing to the parties concerned without granting unnecessary adjournments to either of the parties.

Order Date :- 31.5.2023

vinay