

Court No. - 6

Case :- WRIT - C No. - 8825 of 2023

Petitioner :- Jhinka Devi And 3 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Revenue, Lucknow And 4 Others

Counsel for Petitioner :- Mohammad Ehtesham Khan, Shashi Kant Mishra

Counsel for Respondent :- C.S.C., Meera Jain, Mohan Singh, Vaibhav Srivastava

Hon'ble(Rajnish Kumar,J.)

1. Heard Sri M.E Khan learned counsel for the petitioners, Sri Vaibhav Srivastava, and Ms.Meera Jain learned counsel for opposite party no.4, Sri Mohan Singh learned counsel for the respondent no.5 and learned Standing counsel appearing on behalf of the respondent nos.1 and 2.

2. Learned counsel for the petitioners submits that the predecessor-in-interest of the petitioners had filed suit under Section 229B of U.P.Z.A & L.R Act 1950 with regard to Gata no.696 Minjumla area 3-11-19 situated in village Ranopali, Tehsil-Sadar District Ayodhya. The suit was decreed on 21.10.1988. In pursuance thereof, the name of the predecessor-in-interest of the petitioners was recorded. The petitioners have moved application for substitution, which is pending consideration, in which the objections have been filed by the respondent nos.3 and 4 and the same is listed today. In the meantime, respondent nos.4 and 5 filed a highly time barred appeal against the order dated 21.10.1988, on which the report was submitted by the Munsrim on 12.07.2023 that the appeal is within time and the case was fixed for admission and hearing on application for interim relief on 19.07.2023, thereafter, the case was adjourned on 19.07.2023, 26.07.2023 and 04.08.2023 on account of strike of lawyers. On 09.08.2023 the appeal was heard on admission and the case was fixed on 14.08.2023 for orders. On 14.08.2023, the Court observing that the appeal has been instituted against the order dated 21.10.1988, therefore, before admission, the lower court record is required to be perused for admission and on the point of limitation both the parties are required to be heard, directed to summon the lower court record and issued notice to the opposite parties fixing 11.09.2023 for hearing both the parties.

3. He further submits that as per the margin of the order dated

14.08.2023 placed on record at page no.82, it is apparent that the requisition for record was sent on 17.08.2023 and the same was received on 21.08.2023. Thereafter, before the next date fixed i.e 11.09.2023, an application for early hearing and stay without any urgency was moved by the opposite party nos.4 and 5 on 25.08.2023, on which the opposite party no.2 preponed the date for the same date i.e 25.08.2023 and passed the impugned order dated 25.08.2023 condoning the delay without recording any reasons for delay of more than 35 years and also granted interim order without assigning any reasons and fixed 11.09.2023, which is now fixed for 30.10.2023. He further submits that the petitioners have moved an application for recall of the order dated 25.08.2023 on 04.10.2023 but the same has not been considered and the date has been fixed for 30.10.2023, therefore, the petitioners are constrained to approach this Court.

4. Learned counsel for the respondent no. 4 submits that since the petitioners have moved an application for recall before the opposite party no.2, which is pending consideration and listed on 30.10.2023, therefore, this petition at this stage is not maintainable, however, on being enquired, he is not in a position to defend the impugned order, at this stage.

5. Learned counsel for the petitioners, at this stage, fairly submits that the petition may be dismissed as not pressed with liberty to pursue his application for recall and prays that the respondent nos.3 and 4 may be directed to cooperate in disposal of the application on the date fixed with further liberty to approach this Court after disposal of the application, if occasion arises.

6. Learned counsel for the opposite party no.4 has no objection to the request of learned counsel for the petitioners not pressing the petition to pursue his application before respondent no.2, however, he opposes prayer for liberty to approach this Court again. However, he submits that the counsel for the respondent nos.3 and 4 shall remain present on the date fixed and thereafter, before the respondent no.2 and assist the court in disposal of the application.

7. Having considered submissions of learned counsel for the parties and I have perused the records.

8. The opposite party nos.3 and 4 filed a highly time barred appeal against the order dated 21.10.1988 passed under Section 229B of U.P.Z.A & L.R. Act in a suit filed by predecessor-in-interest of the petitioners on 12.07.2023. The munsarim submitted a report dated 12.07.2023 that the appeal is within time, accordingly, the case was fixed on 19.07.2023 for hearing

on appeal and application for interim relief. The report dated 12.07.2023 is extracted hereinbelow:-

"12.07.2023

यह अपील श्री एच०आर०एस० राठौर द्वारा प्रस्तुत। उक्त अपील ग्राह्यता एवं मियाद अन्दर प्रस्तुत की गई है अतः पत्रावली वाद पत्र 12.07.2023 एवं स्थगन प्रा० प० शपथ पत्र पर सुनवाई हेतु दिनांक 19.07.2023 को पेश हो। "

9. The case was adjourned for one or the other reason, thereafter, and the appeal was heard on admission on 09.08.2023 and 14.08.2023 was fixed for orders. By means of the order dated 14.08.2023, the opposite party no.2, considering the appeal against the order dated 21.10.1988 observed that before hearing on admission, the parties are required to be heard on limitation. Accordingly, directed to summon the lower court record and issued notice to the opposite parties. The order dated 14.08.2023 is extracted hereinbelow:-

"पत्रावली प्रस्तुत हुई। प्रश्नगत अपील सहायक कलेक्टर, प्रथम श्रेणी/परगनाधिकारी, सदर, फैजाबाद द्वारा पारित निर्णय व डिक्री दिनांकित 21.10.1988 के विरुद्ध अपीलार्थीगण श्री ठाकुर विजय राघव जी विराजमान मन्दिर रानोपाली द्वारा सरबराहकार अमरजीत उर्फ अर्जुन दास चेला विरेन्द्र सिंह उर्फ विजय दास द्वारा योजित की गयी है। अपील की ग्राह्यता व स्थगन के बिन्दु पर अपीलार्थीगण के विद्वान अधिवक्ता के तर्कों को सुना गया तथा इस न्यायालय की पत्रावली पर उपलब्ध समस्त तथ्यों व साक्ष्यों का सम्यक् रूप से परीक्षण एवं परिशीलन किया गया।

चूंकि प्रश्नगत वाद अत्यधिक पुराना है तथा अवर न्यायालय द्वारा पारित प्रश्नगत आदेश दिनांक 21.10.1988 के विरुद्ध योजित प्रश्नगत यह अपील ग्राह्य किये जाने के पूर्व अपील की ग्राह्यता व मियाद के बिन्दु पर अवर न्यायालय की पत्रावली का अवलोकन किया जाना व उभय पक्ष को सुना जाना आवश्यक है। अतः अवर न्यायालय की पत्रावली मंगाई जाय तथा विपक्षीगण को नोटिस जारी हो। पत्रावली वास्ते उभय पक्ष की सुनवाई हेतु दिनांक 11.09.2023 को पेश हो।

दिनांक: 14.08.2023

(राजेन्द्र प्रसाद त्रिपाठी)
अपर आयुक्त (प्रशासन),
अयोध्या मण्डल, अयोध्या।"

10. In view of the above, though the opposite party no.2 considered that the appeal was delayed, therefore, it is required to be heard on limitation but does not inquired from the

Munsarim as to how the report has been submitted that the appeal is within time, whereas the same should have been inquired. However, in pursuance of the order dated 14.08.2023, it appears that the records were summoned through requisition dated 17.08.2023, which were received on 21.08.2023. Thereafter, an application for early hearing on admission and stay was moved by the opposite party no.4 without showing any ground for urgency, which is extracted below:-

"श्रीमान जी,

उपरोक्त सन्दर्भित अपील प्रार्थी/अपीलान्त द्वारा न्यायालय श्रीमान् जी के समक्ष अधीनस्थ न्यायालय द्वारा पारित विवादित आदेश व डिग्री के विरुद्ध प्रस्तुत किया गया है।

अपील में प्रस्तुत स्थगन प्रार्थना पत्र विचाराधीन है, एवं जिसके विरुद्ध कोई भी कैबियट अथवा आपत्ति किसी भी पक्ष द्वारा नहीं प्रस्तुत किया गया है, परन्तु अपील में प्रस्तुत स्थगन प्रार्थना पत्र की सुनवाई पेशी दिनांक 11/09/2023 नियत होने के कारण सुनवाई नहीं हो पा रही है।

अपील न्यायालय श्रीमान् जी के आदेश से ग्राह्य अवधारित कर अधीनस्थ न्यायालय पत्रावली संलग्न अपील है, एवं जिसमें पंजीकरण आदेश की तिथि पर न्यायालय द्वारा आदेश पारित किया गया था, कि अधीनस्थ न्यायालय पत्रावली तलबी के उपरान्त स्थगन प्रार्थना पत्र का निस्तारण किया जावेगा।

अतः माननीय न्यायालय से विनम्र निवेदन है, कि उपरोक्त अपील में नियत पेशी 11/09/2023 को प्रीपोन करते हुए प्रार्थी की शीघ्र सुनवाई बावत स्थगन प्रार्थना पत्र का निस्तारण करने की कृपा करें।

दिनांक: 25/08/2023

प्रार्थी

अमरजीत उर्फ अर्जुन दास"

11. Perusal of the aforesaid application dated 25.08.2023 indicates that there was no ground for early hearing for admission and stay, even than the opposite party no.2 considered the said and preponed the date for 25.08.2023 itself without recording any reason for preponment and verifying as to whether notices have been served on the respondents or not and if the notices have been served as to whether the copy of the application dated 25.08.2023 has been served on the respondents or not. He not only preponed the date for 25.08.2023 for hearing of the opposite party nos.3 and 4, but

passed the order dated 25.08.2023 also condoning the delay of more than 35 years without assigning even a single reason and considering the grounds of delay and also granting an interim order of stay on implementation and effect of the order dated 21.10.1988, whereas the order was already implemented but without verifying it, recorded that the appellants i.e opposite party nos.3 and 4 in the present petition have a prima facie case and balance of convenience in their favour and if the stay order is not passed in their favour there is likelihood of irreparable loss to the appellants without assigning even a single reason.

12. This Court failed to comprehend as to whether such an order could have been passed by the authority/judicial authority exercising the revisional jurisdiction, without assigning any single reason by preponing the date, condoning the delay of more than 35 years and granting the stay order, except if the authority does not know the law or for the (extraneous) reasons better known to him. It has also been informed by some of the counsels that the authority concerned is in habit of passing such orders and in the circumstances for which he had also submitted unconditional apology before this Court earlier. **Therefore, the Government has to look into it and take appropriate steps/action in accordance with law.**

13. In view of the above and considering the over all facts and circumstances of the case, this Court is of the view that the liberty cannot be denied to the petitioners to move to this Court again, in case occasion arises, after disposal of application for recall filed by the petitioner.

14. With the aforesaid, the petition is **dismissed as not pressed with liberty as prayed for.**

15. Let a copy of this order be sent to the Chief Secretary, Government of U.P., Civil Secretariat, Lucknow by the Senior Registrar of this Court forthwith for appropriate steps/action in the matter in accordance with law expeditiously and inform to the Senior Registrar of this Court.

(Rajnish Kumar,J.)

Order Date :- 13.10.2023
Harshita