

Court No. - 18**Case :-** MATTERS UNDER ARTICLE 227 No. - 5340 of 2023**Petitioner :-** Omkar And 2 Others**Respondent :-** Commissioner Devi Patan Mandal, Gonda And 5 Others**Counsel for Petitioner :-** Nripendra Mishra**Counsel for Respondent :-** C.S.C., Pankaj Gupta**Hon'ble Saurabh Lavania, J.**

Heard learned Counsel for the petitioner, Sri Hemant Pandey, learned State Counsel and Sri Pankaj Gupta, learned Counsel for the Gaon Sabha.

It appears from the record that without issuing the notice to private opposite parties, the impugned order dated 22.06.2023 was passed and taking note of the same as also in view of the order proposed to be passed by this Court, notice to the private opposite parties is dispensed with.

The present petition has been filed for the following main reliefs:-

"I. to set aside the order dated 22.06.2023 passed by the opposite party No. 1 in Revision no. 709 of 2023 (Omkar and Other Versus Ram Sewak and Others) and the order dated 19.02.1979 passed by opposite party no. 2 in case no. 33/186/380, under Section 198 of U.P.Z.A. & L.R. Act (Ram Sewak & Other Versus Jamuna Prasad & Other) contained as Annexure No. 1 & 2 to this writ petition.

II. to direction to opposite party no. 2 to 5 not to disturb the peaceful possession of petitioners."

By means of the present petition the petitioners have assailed the order dated 22.06.2023 passed by respondent no.1/Commissioner Devi Patan Mandal, Gonda, on an application preferred under Section 5 of Limitation Act, in instituting the revision challenging the order dated 19.02.1979 passed by respondent no.2/Additional Collector, District Bahraich, in Case No. 33/186/380 (Ram Sewak and Others Versus Jamuna Prasad and Others), which was instituted under Section 198 of U.P.Z.A. & L.R. Act, 1950 (in short 'Act of 1950').

Vide order dated 19.02.1979, the respondent no.2 cancelled the 'Patta' granted to Jamuna Prasad (father of petitioner nos. 1 and 2 namely Omkar and Shyam) and also cancelled the 'Patta' of petitioner no.3/ Ram Chandar son of Siyaram.

Assailing the order dated 19.02.1979, the petitioners filed the revision under Section 333 of the Act of 1950 alongwith application for condonation of delay in preferring the

revision which was registered as Revision No. Revision no. 709 of 2023 (Omkar and Other Versus Ram Sewak and Others). Vide order dated 22.06.2023 the respondent no.1 rejected the application for condonation of delay and consequently dismissed the revision. The order dated 22.06.2023 on reproduction reads as under:-

"पत्रावली प्रस्तुत। निगरानीकर्ता के विद्वान अधिवक्ता एवं विद्वान डी0जी0सी0 (राजस्व) को निगरानी की ग्राह्यता पर सुना।

यह निगरानी अतिरिक्त कलेक्टर बहराइच द्वारा पारित आदेश दिनांक 19.02.1979 के विरुद्ध जेड0ए0एण्ड एल0आर0एक्ट की धारा 333 के अंतर्गत आयुक्त न्यायालय में दिनांक 20.05.2023 को अत्यधिक विलम्ब से योजित की गयी है। विलम्ब के सम्बन्ध में मियाद अधिनियम की धारा 5 के प्रार्थना पत्र दिनांक 20.05.2023 में विलम्ब मर्षण हेतु जो आधार/कारण दर्शाया गया है वह पर्याप्त एवं संतोषजनक नहीं है। अतः ऐसी स्थिति में निगरानीकर्ता द्वारा प्रस्तुत निगरानी अत्यधिक कालधित होने के कारण ग्राह्यता के स्तर पर ही निरस्त किये जाने योग्य है।

अतः उपरोक्त के परिप्रेक्ष्य में प्रस्तुत निगरानी अत्यन्त कालबाधित होने के कारण ग्राह्यता के स्तर पर ही निरस्त की जाती है। पत्रावली दाखिल दफ्तर हो।"

Challenging the order dated 22.06.2023 passed by respondent no.1, learned counsel for the petitioners stated that a perusal of the application for condonation of delay (annexure no. 4 to the present petition), which was preferred on 25.05.2023, would show that in the application it has specifically been indicated that on 09.03.2023, the petitioners came to know about the cancellation of 'Patta' and thereafter on 10.03.2023, the petitioners contacted to an Advocate at Civil Court Bahraich, who searched the file and informed regarding the order dated 19.02.1979, whereby the 'Patta' in favour of petitioners was cancelled and on account of Second Saturday (11.03.2023) and Sunday (12.03.2023), an application for getting a certified copy of the order dated 19.02.1979 was preferred on 13.03.2023 and the same was prepared on 28.03.2023 and thereafter was received on 05.04.2023 but while rejecting the application for condonation of delay, the authority concerned has not considered all these facts, thus the order is non speaking order.

He further submitted that Khatauni of Fasli year 1430-1435 (01 July 2022 to 30 June 2028) indicates that petitioner nos. 1 and 2 are in possession over the property in issue.

On being asked regarding petitioner no.3, the learned Counsel for the petitioners says that on account of urgency in the matter the Khatauni related to petitioner no.3 could not be placed on record, but the fact is that petitioner no. 3 is also in possession over the property in issue.

It is also stated that it is settled principle of law that reasons are heart beat of order and even the administrative authority should record the reasons, if the order affects the right of the concerned party. Reference has also been made to the judgment of this Court passed in the case of **Rakesh Kumar Pandey Versus State of U.P. & Others (Service Single No. 18642 of 2018)** decide on 20.02.2019.

The aforesaid principle regarding recording the reasons, could not be disputed by learned Counsel for the side opposite.

Considered the submission of learned Counsel for the parties and perused the records as also the judgment referred herein above.

From the impugned order dated 22.06.2023, quoted above, it is apparent that the order is non speaking as the facts seeking condonation of delay in filing the revision stated in the application for condonation of delay, indicated above, have not been considered by the respondent no.1.

Further, it prima facie appears from the record including the Khatauni of Fasli Year 1430-1438 that the petitioners are in possession of the land in issue and the order dated 19.02.1979, affecting the rights of the petitioners, has not been implemented till date and on coming to know about the same, the revision in issue alongwith an application for condonation of delay was filed and all these facts are also required to be considered.

Thus, for the reasons aforesaid, this Court is of the view that interference is required in the matter. Accordingly, the petition is **allowed**. The order dated 22.06.203 is set aside. The matter is remanded back to the respondent No.1-Commissioner Devi Patan Mandal, Gonda, who shall look into the matter and pass a fresh, reasoned and speaking order in accordance with law expeditiously.

Order Date :- 26.10.2023

Jyoti/-