

Court No. - 6

Case :- WRIT - B No. - 1057 of 2023

Petitioner :- Ajay Kumar Jaiswal

Respondent :- Deputy Director Of Consolidation, Balrampur And Others

Counsel for Petitioner :- Verender Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Verendra Kumar Tiwari, learned counsel for the petitioner and Dr.Krishna Singh, learned Standing Counsel.

2. Learned Standing Counsel raised a preliminary objection that the Gaon Sabha is a necessary party because it appears that the land of drainage, which is under the supervision of the Gaon Sabha, is also in dispute in this case.

3. Learned counsel for the petitioner submits that the same was wrongly recorded. He further submits that on the basis of a forged entry made on 31.05.1985 and after correction of the map accordingly, forceful eviction of the petitioner by the private respondents was attempted in the year 2015, therefore father of the petitioner filed an appeal No.11/15/16(Satya Prakash Versus Hemant Kumar and others) under Section 109 (3) of the U.P.Consolidation of Holdings Act. In the said appeal the notices were issued. However since none had put in appearance, the appeal was decided exparte condoning the delay, by means of judgment and order dated 09.06.2016. Thereafter the respondent No.4 to 6 moved an application for recall of the order dated 09.06.2016, which was allowed by means of the order dated 29.09.2020 without considering that the order was passed after issuing the notices but no objection was filed against the same and appeal has been restored on its original number. The petitioner preferred a Revision No.110/22-23 against the said order dated 29.09.2020 before the Deputy Director of Consolidation. The revision has been dismissed by means of order dated 01.08.2023 without considering the grounds raised by the petitioner, therefore he is constrained to approach this court. The submission of learned counsel for the petitioner is that since it has been found by the appellate authority that the order dated 31.05.1985 was forged, therefore the appeal has rightly been allowed and the matter has been remanded. The impugned orders are liable to be quashed.

4. Having considered the submission of learned counsel for the parties, I have gone through the records.

5. Admittedly, a time barred appeal against the order dated 31.05.1985 was filed on 21.07.2015 on the ground that the entry in pursuance of the order dated 31.05.1985 in regard to Khata No.423-425 has been made in favour of the father of the petitioner in CH-45. On the basis of the aforesaid entry the respondents forcefully tried to evict the father of the petitioner in the year 2015, then after making inquiry in the revenue records he has filed the appeal. The appellate authority though appears to have issued the notices through registered post but since none appeared despite passing of sufficient time treating the service sufficient proceeded to decide the appeal condoning the delay of over 30 years without assigning any reason, merely considering the averments of the petitioner, whereas it appears that even no specific date has even been given, on which the respondents have allegedly tried to evict the petitioner. It is also not clear from the pleadings and the orders placed on record, as to when the map in pursuance of the order dated 31.05.1985 was corrected. Even otherwise, on the one hand the petitioner has challenged the order dated 31.05.1985 and on the another hand he submits that the said order is merely a forged entry in the revenue records, but the order on which basis the said entry has been made is not clear. The appellate authority also merely recording a prima facie satisfaction that the order dated 31.05.1985 seems to be doubtful and forged has set aside the order and remanded the matter by means of order dated 09.06.2016, whereas such a long delay of 30 years can be condoned only after considering the explanation of such a long period and if found sufficient and the order can also not be set aside in appeal merely on prima facie satisfaction without any cogent reason for the same.

6. The respondents no.4 to 6 moved an application for recall of the said order on the ground that the service was not made on them and the order dated 09.06.2016 is exparte and the delay of 30 years has been condoned by means of exparte order on the basis of wrong and forged facts. The petitioner filed objection against the same on the ground that the said order has been passed after issuing notice and the application for recall has been filed on the basis of forged facts, but appears to have failed to controvert the grounds of the application in his objection. The appellate authority allowed the application by means of the impugned order dated 29.09.2020 considering that the same is exparte order which cannot be disputed by the parties, therefore this court is of the views that the impugned order dated 29.09.2020 has rightly been passed in accordance with law. The revision filed by the petitioner has also been dismissed considering the grounds raised by the petitioner. There is no illegality or error in it. Even otherwise only the

order dated 09.06.2016 has been set aside and the appeal of the petitioner alongwith the application for condonation of delay is pending before the Settlement Officer Consolidation, which can be contested by the petitioner in accordance with law.

7. So far as the preliminary objection raised by learned Standing Counsel is concerned, in case the land under the supervision of the Gaon Sabha is involved in the case in hand, the petitioner may move appropriate application before the Settlement Officer Consolidation, Balrampur, who may consider the same and pass appropriate order. Even otherwise, if the land of the Gaon Sabha is involved, it is the duty of the authority concerned to get the Gaon Sabha impleaded.

8. With the aforesaid the petition is **dismissed**.

9. At this stage learned counsel for the petitioner submits that the appeal of the petitioner may be directed to be decided expeditiously. However he has not placed on record the copy of the order sheet, therefore liberty is granted to the petitioner to move appropriate application for expeditious disposal of appeal. In case any such application is moved within a period of two weeks from today the same shall be considered and disposed of and appropriate orders shall be passed thereon within a period of two weeks thereafter by the appellate authority and proceed accordingly.

(Rajnish Kumar,J.)

Order Date :- 29.11.2023

Banswar