

Court No. - 18

Case :- WRIT - B No. - 1085 of 2023

Petitioner :- Shesh Nath Mishra

Respondent :- Deputy Director Of Consolidation Sultanpur And 18 Others

Counsel for Petitioner :- J.P. Shukla,Ajay Pandey

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Shree Prakash Singh,J.

Since, the instant petition is being decided at the admission stage, notices to opposite parties no. 5 to 17 are hereby dispensed with.

Heard Sri J.P.Shukla, learned counsel for the petitioner, Sri Badrish Tripathi, learned Additional Chief Standing Counsel for the State, Sri Mohan Singh, learned counsel for the Gaon Sabha.

The instant petition has been filed with the prayer to quash the impugned order dated 31-03-2023 passed by the opposite party no. 1 in revision no. 785 of 2023, under section 48 of the C.H.Act and the order dated 13-09-2021 passed by opposite party no. 2 in appeal no. 186 under section 11(1) of U.P.C.H. Act as well as the order dated 15-10-2020 passed by the opposite party no. 3 in case no. 264 under section 9A(2) of U.P. C.H. Act, thereby opposite party nos. 1 to 3 deprived the petitioner from irrigation of his tube-well.

Learned counsel appearing for the petitioner submits that the Consolidation Officer, without affording an opportunity of hearing to the petitioner, passed the order on 15-10-2020, whereby the petitioner, being an affected party, was not heard. He added that against the order dated 15-10-2020, the petitioner approached the Settlement Officer Consolidation by way of filing an appeal. S.O.C. also dismissed the appeal on the ground that the affidavit, in support of application for condonation of delay, is filed on false facts though the contention of learned counsel for the petitioner is that the petitioner never signed before the Settlement Officer, Consolidation as is mentioned in the order of appeal. He also added

that reiterating the same analogy and finding, the revisional court also rejected the revision instituted by the present petitioner.

Contention of learned counsel for the petitioner is that infact vide order dated 15-10-2020, the objection of Smt. Pholla Devi alias Rajeshwari was accepted and the report of the Tracer dated 07-10-2020 was also taken part of the order and it was directed that the mutation be done accordingly. He submits that after the order dated 15-10-2020, the Chak of the present petitioner is being affected and therefore, he being an affected party, is required to be heard, prior to passing of any order. He also added that since it is settled law that so far as the condonation of delay is concerned, a liberal view is to be adopted by the authorities concerned, though the same has been ignored by the Settlement Officer, Consolidation and Deputy Director of Consolidation.

He next added that interest of justice would be sub-served if the present petitioner is given opportunity before the Consolidation Officer, to be heard.

On the other hand, learned Additional Chief Standing Counsel appearing for the State as well as learned counsel for the Gaon Sabha have vehemently opposed the contentions aforesaid and submitted that the petitioner has advanced wrong facts before the Settlement Officer, Consolidation while mentioning in the affidavit that he had never signed before the Settlement Officer, Consolidation though the finding was that he has signed before the Settlement Officer, Consolidation. They added that since the petitioner had not come with clean hands before the appellate authority and therefore, the order has rightly been passed, but, they could not rebut the fact that the petitioner is an affected party with the order dated 15-10-2020 and the opportunity of hearing was not afforded to him.

Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires that on an objection filed under section 9 A(2) of the U.P. Consolidation of

Holdings Act, by Smt. Phoola Devi @ Rajeshwari Devi alongwith an application for condonation of delay, the Consolidation Officer, passed the order on 15-10-2020 and the same was mutated in the record on 16-10-2020. Since, the petitioner has succeeded to substantiate that he is the person affected after the order dated 16-10-2020 was passed and therefore, the petitioner could have been given an opportunity of hearing before the court of consolidation, but, once it was raised in appeal, the same was turned down by the Settlement Officer, Consolidation on the ground of delay and laches and the same analogy was also drawn by the revisional court.

This court is also not unmindful that the law is settled with respect to condonation of delay with the proceedings of the court of law, but, the Settlement Officer, Consolidation and the revisional court did not follow it in its letter and spirit.

In view of aforesaid submissions and discussions, the order dated 15-10-2020 passed by opposite party no. 3, the order dated 13-09-2021 passed by opposite party no. 2 and the order dated 31-03-2023 passed by opposite party no. 1, are hereby set aside.

The matter is remitted back to the Consolidation Court concerned to decide the same afresh after affording opportunity of hearing to the present petitioner in the matter.

It is further directed that the petitioner shall submit a copy of this order within 15 days from the date of this order before the Consolidation Court concerned and after submission of such order, the Consolidation Court concerned shall decide the matter afresh within further period of three months.

It is directed that the petitioner shall not seek unnecessary adjournments.

With the aforesaid observations, the writ petition is **allowed.**

Order Date :- 6.12.2023/AKS