

Court No. - 18

Case :- WRIT - B No. - 1141 of 2023

Petitioner :- Jagdish Prasad

Respondent :- Deputy Director Of Consolidation, Pratapgarh
And Others

Counsel for Petitioner :- Rajesh Kumar Singh, Anand Kumar
Arya, Ankit Singh

Counsel for Respondent :- C.S.C., Puttu Lal Misra

Hon'ble Shree Prakash Singh, J.

Heard Rajesh Kumar Singh, learned counsel for the petitioner, Sri Puttu Lal Misra, learned counsel for the caveator, Sri Hemant Pandey, learned Standing counsel for the State.

By means of the instant petition, the petitioner has assailed the order dated 18.11.2023 passed by Deputy Director of Consolidation- Pratapgarh as well as the order dated 21.01.2019 passed by Settlement Officer Consolidation.

The contention of learned counsel for the petitioner is that the matter was decided by the Consolidation Officer on 16.04.1973 in favour of the petitioner and the caveator, after passing of about 31 years, moved an appeal before the Settlement Officer Consolidation in year 2004, which was dismissed in the default, in year 2004 itself and after passing of about 14 years, the caveator moved an application for recall of the order passed in the year 2004 and that was allowed behind the back of the petitioner, without affording any opportunity of hearing which goes against the settled proposition of law as there is inordinate delay which was not properly explained. He further added that by way of allowing the aforesaid application, the matter is being re-opened after passing of about 50 years and therefore, the present petitioner is essentially be heard before the

Settlement Officer Consolidation, so far as the application for condonation of delay in filing the recall application of the order of 2004, is concerned therefore, submission is that the order passed by Deputy Director of Consolidation dated 18.11.2023 and Settlement Officer Consolidation dated 21.01.2019 maybe be set aside.

Learned counsel for the Caveator has opposed the contentions aforesaid and submitted that in fact no unlawfulness committed by the Settlement Officer-Consolidation or the D.D.C. as the matter was heard only on the application for recall and the present petitioner has an opportunity to be heard on merits.

He further added that so far as the settled proposition of law is concerned, the liberal approach is to be adopted so far as the recall of the orders passed for want of prosecution.

Learned counsel appearing for the State has vehemently opposed the contentions of learned counsel for the petitioner and has supported the version of learned counsel for the caveator.

In support of his contentions, he has placed reliance on the judgment rendered in **Mukesh and Ors. Vs. Addl. District Magistrate (F and R), Mathura and Ors.** passed in C.M.W.P No. 26694 of 2015 and has referred paragraph 8 of the judgment.

Paragraph 8th of the judgment is quoted hereinunder:-

"8. In view of the law laid down by the Apex Court in the aforesaid cases, it is abundantly clear that while considering the delay condonation application, the Court has to see the merit of the case also as the law of limitation is not meant to take away the right of appeal. The Courts are meant for imparting substantial justice and not to scuttle the justice on technicalities. The length of delay is also not very much material if there is substance on merit."

Referring the aforesaid, he submits that the Court while passing the order has held that while dealing with delay condonation application, the court has to see the merit of the case also as the law of limitation is not meant to take away the right of appeal, therefore, submission is that no interference is warranted.

Having heard learned counsel for the parties and after perusal of material placed on record, it transpires that initially on 16.04.1973, order was passed by the Consolidation Officer and the Caveator kept mum until 31 years, after passing of the order, which attained finality, but in year 2004, he moved the appeal against the order dated 16.04.1973 and that too was dismissed in default in year 2004 itself and after 14 years, the recall application of the order passed in year 2004 was moved which was considered and admitted and the appeal was re-opened for hearing, without affording opportunity to the petitioner, on condonation of inordinate delay.

Against the aforesaid order the revision was moved, which was also dismissed and the petitioner has challenged, both the orders by means of this petition.

While examining the aforesaid orders on facts and law, it emerges that the matter is being re-opened after passing of 50 years by way of allowing the application for recall of the order passed in year 2004 though, an appeal was filed after 31 years of passing of Consolidation Officer's order in year 1973, this prima facie shows that the caveator has moved the application for recall after 14 years and admittedly there is inordinate delay.

The fact remains that the opportunity of hearing was also not been accorded to the petitioner, while recalling of the order of year 2004.

So far as the reliance which has been placed by counsel for the State in case of Mukesh and Ors. Vs. Addl. District Magistrate (F and R), Mathura and Ors., the same is with respect to consideration of delay condonation application, wherein, the court has touched upon the merit also, but the ratio of abovesaid judgment would not apply in the instant matter as the issue with respect to inordinate delay has not been dealt with in the present case and the petitioner has not afforded opportunity.

Considering aforesaid submissions and discussions, the instant petition is hereby **allowed**, the order dated 18.11.2023 and 21.01.2019 are hereby set-aside.

Matter is remitted back to the Settlement Officer Consolidation, concerned to decide a fresh, the application for recall of the order passed in year 2004, within a period of two months from the date of this order.

The parties are directed to cooperate with the proceeding, before the Settlement Officer Consolidation concerned.

It is clarified that this Court has not made any observations on the merit of the case.

Order Date :- 19.12.2023

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