

Court No. - 8

Case :- WRIT - C No. - 1500 of 2024

Petitioner :- Jhinka Devi And Others

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

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

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Meera Jain, Mohan Singh

Hon'ble Jaspreet Singh, J.

1. Heard learned counsel for the petitioners. Notice on behalf of respondents no.1 and 2 has been accepted by the office of the Chief Standing Counsel. Shri Mohan Singh, learned counsel has accepted notice on behalf of respondent no.5. Ms. Meera Jain, learned counsel has put in appearance on behalf of respondent no.3 on caveat. Shri Atul Kumar Dwivedi, learned counsel has put in appearance on behalf of respondent no.4. He has filed his Vakalatnama, which is taken on record.

2. The learned counsel for the parties submit that the matter may be heard and disposed of finally at the admission stage as the respondents do not wish to file a counter affidavit. Hence, the petition is being disposed of at the admission stage itself with the consent of the learned counsel for the parties.

3. Under challenge is the order dated 02.02.2024 passed by the respondent no.2 whereby a delay of 35 years has been condoned and an appeal preferred by the private respondents has been entertained, admitted and fixed for hearing.

4. Learned counsel appearing for private respondents no.3 and 4 has raised a preliminary objection regarding maintainability of the petition to the effect that the instant petition assails an

interlocutory order whereby the appellate court has exercised its discretion in condoning the delay and as such, an order of this notice may not be interfered with in exercise of powers under Article 226/227 of the Constitution of the India.

5. It is further urged that the petitioners have not disclosed the true and correct facts inasmuch as the petitioners no.2 and 4 have sold some part of the disputed property by means of a sale-deed dated 19.12.2023 and this fact has not been disclosed which in any case will not permit the petitioners no.2 and 4 to file the said petition as they do not have the locus standi. In the aforesaid circumstances, the petition may not be entertained.

6. Shri Mohammad Ehtesham Khan, learned counsel for the petitioners while refuting the aforesaid contentions submits that the predecessor in interest of the present petitioners had initially instituted a suit under Section 229-B of the U.P.Z.A.&L.R. Act, 1950 which came to be decreed on 21.10.1998 relating to Plot No.696 measuring 3 bighas, 11 biswa and 19 Biswansi situated in Village - Ranopali, Tehsil - Sadar, District - Ayodhya. It is further submitted that the private respondent no.4 preferred an appeal with an application seeking condonation of delay of about 35 years on 12.07.2023.

7. Initially, the lower appellate court by means of order dated 25.08.2023 without even issuing notice to the respondent in the appeal condoned the delay by preponing the date without even noticing that no ground for preponing the date was made out. However, the petitioners being aggrieved preferred a petition before this Court bearing Writ - C No.8825 of 2023. The said petition came to be dismissed as not pressed with liberty that in case, if any party is aggrieved against the order passed by the Additional Commissioner on the application for recall preferred by the petitioners, there would be entitled to approach this

Court.

8. It is further submitted that in furtherance of the order passed by this Court dated 13.10.2023, the parties had appeared before the respondent no.2 wherein the petitioner had filed their objections as well as written submissions raising the plea that the appellants have neither disclosed appropriate cause for seeking condonation of delay of 35 years and moreover, the appellant who is a juristic person and the person representing it as next friend did not have the locus to maintain the said appeal. It is further submitted that in the aforesaid backdrop though the initial order dated 25.08.2023 was recalled but the issues that were raised by the petitioners have not been taken note of and even though the arguments were heard and reserved for order on 27.12.2023 after a lapse of about a month and a half the impugned order dated 02.02.2024 has been passed. It is also urged that that even this order is completely non-speaking and does not even deal with the issues regarding maintainability of the application as a result the order is not only bad in the eyes of law but is also in teeth of the orders passed by the Coordinate bench of this Court dated 13.10.2023.

9. The Court has heard the learned counsel for the parties and also perused the material on record.

10. Apparently, by the impugned order, the lower appellate court has condoned the delay on the premise that contentious issues have been raised which require the appeal to be admitted. However, the record is reflective of a fact that despite passing the order dated 02.02.2024 yet there is not a single reason assigned by the lower appellate court regarding the cause shown by the private respondent for seeking a delay of 35 years. There is also no prima facie satisfaction recorded regarding the maintainability which has been raised by the

petitioners or in respect of the grounds upon which the lower appellate authority thought expedient to admit the appeal. This is to be seen in context with the observations made by the Coordinate Bench of this Court in its order dated 13.10.2023 and the relevant Paragraphs 8 to 13 is being reproduced hereinafter for ease of reference:-

"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 हों।"

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 सरथराहकार अमरजीत उर्फ अर्जुन दास चेला विरेन्द्र सिंह उर्फ विजय दास द्वारा योजित की गयी है। अपील की ग्राहला 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 inquire 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."

11. Having taken note of the aforesaid, this Court is clearly is of the opinion that the order passed by the lower appellate court dated 02.02.2024 is completely bereft of reasons and suffers from the vice of non application of judicial mind inasmuch as there is no consideration whatsoever regarding the cause shown by the private respondent, who has come forward to seek condonation of delay of 35 years. It is now well settled that in case, if any appeal is accompanied by an application under Section 5 of the Limitation Act, then, it is the said application which has to be heard and decided first and needless to say that since it is in judicial proceedings, hence, the order is required to be visited by reasons.

12. In this regard, the observations of the Apex Court in the case of **Cyril Lasrado (Dead) by LRs and another vs. Juliana Maria Lasrado and another, (2004) 7 SCC 431** shall be relevant, which is reproduced hereinafter.

"11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

13. In view of the aforesaid, this Court is of the clear opinion that the order dated 02.02.2024 is not sustainable. The order dated 02.02.2024 is set aside and the matter shall stand remitted and restored on the Board of respondent no.2 where the parties shall appear on the next date fixed i.e. 28.02.2024. The lower appellate court shall after affording full opportunity of hearing to the parties shall pass afresh order within six weeks on the application under Section 5 seeking condonation of delay and in case, if the cause shown finds favour with the appellate authority, it shall be in its discretion to admit the appeal. However, needless to say that the order should be reasoned and speaking.

14. It is made clear that the Court has not examined the case of either of the parties on merits and the the order has been set

aside solely on the ground that it is non-speaking and against the spirit of the order passed by the Coordinate Bench of this Court on 13.10.2023.

15. With the aforesaid, the petition is **allowed**. Costs are made easy.

Order Date :- 15.2.2024

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