

Neutral Citation No:- 2025:AHC:82962

Court No. 50

Reserved on: 28.4.2025

Delivered on: 19.5.2025

WRIT – B No. - 29668 of 1999

Petitioner :-	Awadh Narain
Respondent :-	D.D.C. and Others
Counsel for Petitioner:-	Mr. P.R. Maurya
Counsel for Respondent :-	C.S.C., Mr. Rakesh Pande, Senior Counsel, Mr. Abhishek Kumar Saroj

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri P.R. Maurya, learned counsel for the petitioner, Sri Rakesh Pande, learned Senior Counsel assisted by Sri Abhishek Kumar Saroj, learned counsel for private respondents and the learned standing counsel for the state-respondents.

2. Brief facts of the case are that plot no.317, area 62 decimal (khata no.32), situated in village Nonari, Pargana Gopalpur, Tehsil Madiyahu, District Jaunpur was recorded in the name of petitioner as co-tenure holder along with other recorded tenure holder, on the basis of order dated 30.7.1969, passed by the Assistant Consolidation Officer in Case No.223. On the basis of the order dated 30.7.1969, the name of the petitioner was recorded in C.H. Form 11, C.H. Form 23, C.H. Form 41 and C.H. Form 45 as co-tenure holder of the plot in dispute. The village in question was denotified under Section 52 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as “U.P. C.H. Act”) vide notification dated 20.10.1984. Against the order dated 30.7.1969, passed

by the Assistant Consolidation Officer, the appeal under Section 11(1) of the U.P. C.H. Act was filed by respondent no.4/Raj Narayan and respondent no.5/Munni Lal, before the Settlement Officer of Consolidation on 1.5.1986 along with prayer for condonation of delay of 17 years in filing the appeal. The Settlement Officer of Consolidation vide order dated 21.4.1987 dismissed the appeal on the ground of limitation. Against the appellate order dated 21.4.1987, respondent nos.4 & 5 filed a revision, under Section 48 of the U.P. C.H. Act which was registered as Revision No.1160/32. The Assistant Director of Consolidation vide order dated 30.6.1999 allowed the revision, granted the benefit of Section 5 of the Limitation Act in filing the appeal, set aside the appellate order dated 21.4.1987 and remitted the matter back before the Settlement Officer of Consolidation to decide the appeal afresh on merit. Hence, this writ petition for the following reliefs:-

“Issue a writ, order or direction in the nature of certiorary quashing the order dated 30.6.1999 passed by respondent no.1 annexed as Annexure No.5 to this writ petition.

Issue a writ, order or direction in the nature of mandamus, commanding the respondent not to interfere in the peaceful possession and enjoyment of the plot in dispute by the petitioners.”

3. This court admitted the writ petition on 22.7.1999 and stayed the effect and operation of the order dated 30.6.1999. In pursuance of the order dated 22.7.1999, parties have exchanged their pleadings.

4. Counsel for the petitioner submitted that the Settlement Officer of Consolidation has rightly passed the order dated 30.7.1969 in Case No.223 for recording the name of the petitioner as co-tenure holder of the plot in question. He submitted that on the basis of the order passed by the Assistant Consolidation Officer, C.H. form 11, C.H. form 23, C.H. Form 41 and final C.H. form 45 were prepared in the name of the petitioner as co-tenure holder of the plot in question. He further submitted that the village in question was denotified under Section 52 of the U.P. C.H. Act on 20.10.1984, as such, filing of title appeal under Section 11(1) of the U.P. C.H. Act on 1.5.1986, i.e., after denotification of the village in question, cannot be entertained by the consolidation authorities. He submitted that the appellate court has rightly dismissed the time-barred appeal on the ground of limitation but the revisional court has exceeded his jurisdiction in setting aside the appellate order, granting the benefit of Section 5 of the Limitation Act in filing the appeal as well as remanding the matter back before the Settlement Officer of Consolidation to decide the title appeal afresh. He submitted that consolidation court became functus officio after denotification of the village under Section 52 of the U.P. C.H. Act, as such, the revisional court cannot allow the revision, set aside the appellate order and remit the matter back before the appellate court to decide the appeal which was filed after 17 years from the date of the order of Assistant Consolidation Officer dated 30.7.1969 and after about 2 years from the date of denotification of the village in question. He submitted that the impugned revisional order should be set

aside and the order of the Assistant Consolidation Officer dated 30.7.1969 should be affirmed.

5. On the other hand, learned Senior Counsel appearing for private respondents submitted that the compromise alleged to take place before the Assistant Consolidation Officer is forged and fictitious, as such, the same cannot be relied upon. He further submitted that co-tenurial right cannot be granted by way of compromise. He submitted that the title appeal was filed on behalf of respondent nos. 4 & 5 along with prayer for condonation of delay, explaining the delay in proper manner, as such, the title appeal cannot be dismissed on the ground of limitation by the Settlement Officer of Consolidation. He submitted that even after denotification of the village, the appeal and revision can be entertained in the facts and circumstances of the particular cases. He submitted that the revisional court has properly exercised the revisional jurisdiction in granting the benefit of Section 5 of the Limitation Act in filing the appeal under Section 11 of the U.P. C.H. Act, setting aside the appellate order and remitting the matter back before the appellate court to decide the appeal on merit. He submitted that fraud vitiates every solemn proceeding, as such, the revisional court has rightly set aside the order passed by the Settlement Officer of Consolidation and remitted the matter back before the appellate court to decide the appeal on merit. He placed reliance upon the decision of the Hon'ble Apex Court in **Inder Singh vs. The State of Madhya Pradesh in Civil appeal No.4304 of 2025 (@Special Leave Petition (Civil) No.6145 of 2024)** decided on 21.3.2025 and that of this Court reported in **2007 (0) Supreme (All) 1110, Saral Tiwari alia Jagdish Tiwari vs. Board**

of Revenue, Uttar Pradesh at Allahabad in order to demonstrate that benefit of Section 5 of the Limitation Act can be granted in order to adjudicate the controversy on merit as well as in order to create fresh tenancy right in the property in question.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the Assistant Consolidation Officer passed an order dated 30.7.1969 for recording the name of petitioner as co-tenure holder along with the recorded tenure holder. There is also no dispute about the fact that the village in question was denotified under Section 52 of the U.P. C.H. Act on 24.10.1984 but appeal under Section 11 of the U.P. C.H. Act was filed on 1.5.1986 along with the prayer for condonation of delay of 17 years which was dismissed on the ground of limitation. There is also no dispute about the fact that revision filed by private respondent nos. 4 & 5 have been allowed, granting benefit of Section 5 of the Limitation Act in filing the appeal, setting aside the appellate order dated 21.4.1987 and remitted the matter back before the appellate court to decide the appeal afresh.

8. Under the U.P. C.H. Act, the full procedure has been prescribed for filing title objection, title appeal and title revision within prescribed period of limitation, although the provision of Section 5 of the Limitation Act is applicable in the consolidation proceeding but under Section 52 of the U.P. C.H. Act, the provision has been made giving finality to consolidation operation in the village in question for all purposes, as such, the

filing of title appeal after denotification of the village cannot be allowed in each and every cases rather in exceptional cases.

9. In the instant matter after an order was passed by the Assistant Consolidation Officer on 30.7.1969, C.H. Form-11, C.H. Form-23, C.H. Form-41 and C.H. Form-45 were prepared accordingly, as such, private respondent nos. 4 & 5 cannot say that they were not aware about the recording the names of the petitioner as co-tenure holder along with the respondent nos. 4 & 5. The Settlement Officer of Consolidation has rightly dismissed the appeal filed by respondent nos. 4 & 5 on the ground of limitation recording finding of fact that delay of 17 years in filing the appeal against the order of Assistant Consolidation Officer cannot be condoned which is correct exercise of appellate jurisdiction by the Settlement Officer of Consolidation. The Assistant Director of Consolidation has exceeded his revisional jurisdiction in setting aside the order of the Settlement Officer of Consolidation and remitting the matter back before the Settlement Officer of Consolidation to consider and decide the dispute on merit after granting benefit of Section 5 of the Limitation Act.

10. On the question of delay condonation, the Hon'ble Apex Court in the recent judgement reported in **2025 0 Supreme (SC) 66, H. Guruswamy & Ors. Versus A. Krishnaiah Since Deceased by LRS** has held that question of limitation is not merely a technical consideration. Paragraph nos.13 to 19 of the judgment rendered by Hon'ble Supreme Court in **H. Guruswamy** (supra) will be relevant for perusal, which is as under:

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as liberal approach”, Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay,

the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.

18. For all the foregoing reasons this appeal succeeds and is hereby allowed.

19. The impugned order passed by the High Court is set aside and that of the Trial Court dated 05.08.2014 passed in Misc. No. 223 of 2006 is hereby restored."

11. The case laws cited by learned counsel for the private respondent nos. 4 & 5 will not be applicable in the facts and circumstances of the instant matter which arises out of the proceeding under the U.P. C.H. Act wherein the tenure holders have opportunity to examine the entry at every stage of the consolidation operation.

12. Considering the entire facts and circumstances of the case as well as the ratio of law laid down by the Hon'ble Apex Court in the case of **H. Guruswamy** (supra), the impugned revisional order dated 30.6.1999 passed by respondent

no.1/Assistant Director of Consolidation, Jaunpur is liable to be set aside and the same is hereby set aside.

13. **The writ petition is allowed** and the order dated 30.7.1969 passed by the Assistant Consolidation Officer as well as the order dated 21.4.1987 passed by the Settlement Officer of Consolidation are hereby affirmed.

14. No order as to costs.

Order Date :- 19.5.2025

C.Prakash

(Chandra Kumar Rai, J.)