

Reserved On:7.4.2025

Delivered On:5.5.2025

Court No. - 50

Case :- WRIT - B No. - 62368 of 2017

Petitioner :- Sarla

Respondent :- Dy. Director Of Consolidation And 13 Others

Counsel for Petitioner :- Abhishek Tripathi, Archana Agrawal, Chandra Shekhar Agnihotri, Kunal Ravi Singh, Manjari Singh, Mazhar Shakeel

Counsel for Respondent :- C.S.C., Chandra Bhan Dubey, R.S. Mishra, Surya Bhan Dubey

Hon'ble Chandra Kumar Rai, J.

1. Heard Ms. Manjari Singh, learned counsel for the petitioner, Mr. Ram Sajeevan Mishra, learned counsel assisted by Mr. Chandra Bhan Dubey, learned counsel for private respondents and learned Standing Counsel for the State-respondents.

2. Brief facts of the case are that plot no.790 area 16 biswa, 10 Biswansi, plot no.861 area 3 Biswa, plot no.909 area 1 Bigha 14 Biswa total area 2 Bigha 13 Biswa, 10 Biswansi were recorded in the name of Girwar son of Medhu, Muleram, Chandpa son of Heera and Shiv Charan (petitioner's father) in the khatauni of 1378-80 fasli. In the basic year khtauni of Khata No.17, the name of Shiv Charan son of Heera was inducted as co-tenancy. Vide order dated 22.10.1981, the name of Shiv Charan son of Munshi was deleted and in his place the names of private respondents were recorded as legal heir of deceased Shiv Charan son of Munshi. Petitioner along with her mother filed an appeal on 3.8.2016 along with application for condonation of delay of 35 years before Settlement Officer of Consolidation under Section 11 (1) of U.P. Consolidation of Holdings

Act, 1953 (hereinafter referred to as "U.P.C.H. Act"). Settlement Officer of Consolidation vide order dated 12.6.2017 dismissed the petitioner's appeal on the ground of limitation as well as maintainability. Against the appellate order dated 12.6.2017, revision under Section 48 of U.P.C.H. Act was filed by the petitioner only as petitioner's mother has expired. The aforementioned revision was decided by the Deputy Director of Consolidation dismissing the petitioner's revision vide order dated 8.11.2017, hence this writ petition for the following reliefs:

"i. to issue a writ, order or direction in the nature of certiorari to quash the impugned orders dated 8.11.2017 passed by the Deputy Director of Consolidation, Gautam Budh Nagar and the order dated 12.6.2017 passed by Settlement Officer of Consolidation, Gautam Budh Nagar and order dated 22.10.1981 passed by Assistant Consolidation Officer, Gautam Budh Nagar.

ii. to issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the peaceful possession of the petitioner and not to dispossess the petitioner from the land in dispute."

3. This Court entertained the matter on 8.1.2018 and directed the learned counsel for the private respondent to file counter affidavit but no interim protection was granted by this Court. In pursuance of the order dated 8.1.2018, the parties have exchanged their affidavits.

4. Learned counsel for the petitioner submitted that the impugned orders have been passed in illegal and arbitrary manner without considering the case of the petitioner in accordance with law. She further submitted that

Deputy Director of Consolidation has not considered the entire interpolation made in the basic year khatauni as well as the fact that respondents have been recorded as legal heir of Shiv Charan son of Munshi. She further submitted that without receiving the record of the case no.221 dated 22.10.1981 by the Settlement Officer of Consolidation, a time barred title appeal filed by the petitioner has been dismissed on the ground of limitation as well as maintainability. She further submitted that khata in dispute was the co-tenancy land of the petitioner's father hence it cannot be said that the petitioner has no land in the village. She further submitted that the petitioner and her mother were legal heirs as provided under Section 171 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "U.P.Z.A. & L.R. Act") and the private respondents could not be granted any right as provided under Section 175 of U.P.Z.A. & L.R. Act. She further submitted that the impugned order passed by the consolidation authorities should be set aside.

5. On the other hand, learned counsel for the private respondents submitted that the Assistant Consolidation Officer has rightly passed the order in the year 1981 for recording the name of private respondents over the plot in question. He further submitted that the title appeal under Section 11 (1) of U.P.C.H. Act has been filed by the petitioner along with his mother after about 35 years which cannot be entertained. He further submitted that Settlement Officer of Consolidation has considered the entire controversy as well as delay condonation matter while passing the

impugned order dismissing the appeal on the ground of limitation as well as maintainability. He further submitted that revision filed by the petitioner has been rightly dismissed under the impugned order. He further submitted that no interference is required against the concurrent judgement passed by the consolidation authorities.

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

7. There is no dispute about the fact that the time barred appeal (delay of 35 years) filed by the petitioner along with her mother was dismissed on the ground of limitation as well as maintainability. There is no dispute about the fact that the title revision filed by the petitioner has also been dismissed under the impugned revisional order.

8. In order to appreciate the controversy involved in the matter, perusal of the finding of fact recorded by Settlement Officer of Consolidation will be relevant which is as under:

"न्यायालय बन्दोबस्त अधिकारी चकबन्दी, गौतमबुद्धनगर।

अपील सं०-202 धारा-11(1) जो०च०अधि०

श्रीमती प्रेमवती बनाम देशराज आदि।

ग्राम छायासा पर० दादरी जिला-गौतमबुद्धनगर

निर्णय

पक्षों को सुनने तथा अपील पत्रावली का अवलोकन करने से स्पष्ट है कि विवादित भूमि खतौनी सन् फसली 1375 ता 1377 के खाता संख्या 18 पर तस्दीक खतौनी के समय की खाते पर सरूपा के पिता का नाम सही हीरा है व शिवचरन के पिता का नाम मुशी है वाद तस्दीक दर्ज हो। की प्रविष्टि अंकित किये जाने के बाद उक्त शिवचरन पुत्र मुशी के मृतक होने के कारण उसकी विरासत गलत सं०च०अ० द्वारा तर्क देकर अंकित/दर्ज कर दी गयी है कि प्रविष्टि के कारण उत्पन्न हुआ है उक्त के सम्बन्ध पक्षों द्वारा अपने-अपने तर्क के समर्थन में विभिन्न अभिलेख व तर्क दिये गये हैं जिससे यह तथ्य स्पष्ट हो गया है कि शिवचरन पुत्र हीरा व शिवचरन पुत्र मुशी दो अलग-अलग व्यक्ति हैं, जिनकी संपत्तियाँ भी पृथक पृथक हैं। किन्तु खतौनी सन फसली 1375 ता 1377 के खाता संख्या 18 पर तस्दीक

खतौनी के समय ही खाते पर सरूपा के पिता का नाम सही हीरा है व शिवचरन के पिता का नाम मुशी है वाद तस्दीक दर्ज हो। की प्रविष्टि अंकित है। जिससे इस वाद का आगमन होता जबकि विपक्षी द्वारा यह तथ्य स्पष्ट किया गया है कि विवादित सम्पत्ति गिरवर पुत्र मडू व बूलेराम सरूपा शिवचरन पुत्रगण हीरा की पिछले बन्दोबस्त से दर्ज पुश्तैनी जमीन है जिस पर शिवचरन पुत्र मुशी का कभी किसी भी प्रकार का कोई लेना-देना नहीं है। चकबन्दी आकार पत्र 45 के खाता संख्या 197 व खतौनी फसली वर्ष 1369 है। 1371 के खाता संख्या-92 कुल रकबा 9-14-5 के स्वामी शिवचरन पुत्र मुशी निवासी ग्राम छायासा के नाम अंकित थे। खतौनी फसली वर्ष 1372 ता 1374 के खाता संख्या-90 शिवचरन पुत्र मुशी के नाम अंकित थी तथा खतौनी फसली वर्ष 1375 ता 1377 के खाता संख्या-102 पर अंकित शिवचरन पुत्र मुशी की मृत्यु हो जाने पर दिनांक 13.06.1968 के द्वारा विरासत के आधार पर प्रेमवती विधवा का नाम दर्ज किया गया जिसने उक्त खाते की सम्पूर्ण भूमि रकबा 8-7-15 पुख्ता विक्रय कर दिया जिसके बाद अपीलार्थी के पास कोई भूमि शेष नहीं बची उसी समय की खतौनी 1375 ता 1377 के खाता संख्या 18 पर विवादित भूमि शिवचरन पुत्र हीरा का नाम अंकित था जो कि साक्ष्यों से स्वतः सिद्ध है कि विवादित भूमि शिवचरन पुत्र हीरा की है। सहायक चकबन्दी अधिकारी द्वारा केवल खाते पर अंकित गलत/फर्जी इन्द्राज को दुरुस्त करके अभिलेख सही किये गये हैं। जिससे अपीलार्थीया को कोई विधिक हानि नहीं है। उक्त के आलोक में निम्नलिखित आदेश किया जाता है कि-

आदेश

उपरोक्त विवेचना के आधार पर अपील अपीलान्त की प्रथम दृष्टया मियाद के बिन्दु पर कोई ठोस साक्ष्य व तथ्य प्रस्तुत न करने तथा पोषणीय न होने के फलस्वरूप निरस्त की जाती है। पत्रावली समस्त औपचारिकताएं पूर्ण कर राजस्व अभिलेखागार में संचित हो।

दिनांक

(विजय कुमार)

बन्दोबस्त अधिकारी चकबन्दी,

गौतमबुद्धनगर।”

9. Perusal of the finding of fact as quoted above fully demonstrates that there was inordinate delay of 35 years in filing the title appeal by the petitioner. The appellate Court has also examined the appeal on merit and has found that there was no illegality in recording the name of private respondents over the plot in question. Deputy Director of Consolidation has also examined the matter in exercise of jurisdiction under Section 48 of U.P.C.H. Act and has dismissed revision filed by the petitioner.

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. Considering the entire facts and circumstances of the case coupled with the fact that there was delay of 35 years in filing the title appeal, there is no scope of interference under Article 226 of the Constitution of

India.

12. The writ petition is ***dismissed***.

13. No order as to costs.

Order Date :- 5.5.2025
Rameez