

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1631 of 2017

In

Civil Writ Jurisdiction Case No.16257 of 2011

=====

Dipak Kumar Tripathi Son of Late Raj Kishore Tiwary, resident of Village- Maharihan, Police Station- Dhansoi, District- Buxar, at present resident of Village and P.O. and P.S.- Pathatgawan, District- Godda Jharkhand.

... .. Appellant/s

Versus

1. The Joint Director, Consolidation Bihar, Patna and Anr
2. The Consolidation Officer, Rajpur, District- Buxar.
3. Most. Mina Devi, W/o- Late Satya Prakash Tiwary, resident of Village- Maharihan, Police Station- Dhansoi, District- Buxar.
4. Manoj Kumar Tiwary, Son of Satya Prakash Tiwary, resident of Village- Maharihan, Police Station- Dhansoi, District- Buxar.
5. Rewati Raman Tiwary, Son of Satya Prakash Tiwary, resident of Village- Maharihan, Police Station- Dhansoi, District- Buxar.
6. Yugal Prasad Tiwary, Son of Ramjanam Tiwary, resident of Village- Maharihan, Police Station- Dhansoi, District- Buxar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar
For the Respondent/s	:	Mr.Md. Khurshid Alam – Aag12
For the Private Respondents	:	Mr. K.N. Choubey, Sr. Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-10-2022

Heard Mr. Sanjay Kumar, the learned

Advocate for the appellant and Mr. K N Choubey, the

learned senior Advocate for the private respondents.

2. The challenge in the present proceeding

is to the order passed by the learned Single Judge on



12.07.2017 in CWJC No. 16257 of 2011, whereby the order passed by the Director Consolidation, Bihar, Patna in Consolidation Revision Case No. 252 of 2010, has been set aside on several grounds; one being that by the aforesaid order, the Joint Director, Consolidation has exercised the revisional powers under Section 35 of the Consolidation Act after an unusual delay of about 20 years and that no good grounds have been employed by the Joint Director for condoning the delay in preferring a revision against an issue which was ultimately decided in Consolidation Case No. 32 of 1987 and which was never challenged in any forum whatsoever.

3. The case of the parties is that they are agnates coming from a common descent and their paternal properties are situated in four villages namely, Khempur, Moharia, Jamuni Dihra and Sugara.

4. All the lands in afore-noted villages were recorded in the name of one Samrajo Devi but in the consolidation operations with respect to lands in three of the villages viz. Moharia, Jamuni Dihra and Sugara, the



lands were entered in the name of both the parties.

5. However, it is the claim of the appellant/respondent in C.W.J.C. No. 16257 of 2011 that the lands of village Khempur was wrongly and fraudulently recorded in the name of the ancestors of the respondents herein this appeal and the order was passed in Consolidation Case No. 32 of 1987 itself.

6. Mr. Sanjay Kumar, the learned Advocate for the appellant, while assailing the order has taken this Court to the order passed by the Joint Director, Consolidation wherein, it has been recorded that the appellant was not staying in the village and in his absence and behind his back, the land situated in village Khempur was fraudulently and collusively recorded in the name of the respondents in this appeal and that since the parties hail from a common stock of family where properties in three villages have been distributed amongst them, there could have been no good reason for recording the name of only one of the parties in one of the villages.

7. Apart from this, it has been stated that



the learned Single Judge took reference of a Title Suit presumably preferred by the appellant with respect to his rights and title over the property which was not recorded in the name of the appellant in the consolidation proceedings, which actually is not factually correct. The Title Suit preferred by the appellant is for a totally different relief altogether.

8. He further submits that the order passed by the learned Single Judge is bad for the reason that a very rigid and dogmatic view has been taken in not accepting the decision of the Joint Director, who for good reasons, had condoned the delay and had directed the consolidation authorities to identify and demarcate the *chaks* in favour of the parties.

9. As opposed to the aforesaid contention, Mr. Choubey, the learned senior Advocate has submitted that the order passed by the Joint Director, Consolidation, which has rightly been set aside by the learned Single Judge, is absolutely without jurisdiction, in as much as the order passed in the Consolidation Case No. 32 of 1987



has not been questioned but what has been decided by the Joint Director, Consolidation is against the order passed by the Consolidation Authority, who had refused to interfere with the demarcation of *chaks* which already stood finalized by the order passed in Consolidation Case No. 32 of 1987.

10. He further submits that there is a reason behind enacting the law of limitation which has been totally ignored by the Joint Director of Consolidation in interfering in a matter which stood finalized sometime in the year 1987 and which was challenged after about 20 years.

11. The authorities including *quasi* judicial authorities are always alert that the stale claim may not be brought before them as it causes many difficulties in adjudicating such claims. The issues may have changed over the period of time and if such stale claims are entertained, without definite reason or condoning the delay as provided under Limitation Act, the whole principle of law governing the law of limitation that there shall be a



finality with respect to cases decided, shall be rendered nugatory.

12. Thus, the sum and substance of the argument of Mr. Choubey is that the Joint Director, Consolidation was absolutely unjustified in flouting the provisions contained in Rule 28 of the Bihar Consolidation Rules read with Section 35 of the Bihar Consolidation Act, 1956 in condoning the delay of 20 years in revoking the order in actual terms which was passed in the Consolidation Case No. 32 of 1987. He further submits that except for one line reasoning that "good grounds exist for condoning the delay", no reason has been ascribed for exercise of such jurisdiction.

13. With respect to the aforesaid arguments, Mr. Sanjay Kumar, the learned Advocate has submitted that the Supreme Court in ***Dheeraj Singh (Dead) Through Legal Representatives and Others v. State of Harayana and Others; (2014) SCC 1427***, has laid down that it is not necessary to always adopt a very strict approach while dealing with an issue which has been



challenged after a long time. The principles regarding condonation of delay which has been enunciated in ***Collector Land Acquisition & Anr. vs Mst. Katiji & Ors; 1987 2 SCC 107*** clearly stipulate that the power to condone delay by enacting Section 5 of Limitation Act, 1963 is for the purpose of enabling Courts to do substantial justice to the parties by disposing of matters on merits and that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the end of justice.

14. While coming to this conclusion, the Supreme Court was of the view that in ordinary course, the litigant does not benefit by lodging an appeal late in point of time and in such situation, refusing to condone the delay can result in meritorious matter being thrown out at the threshold, which may defeat the ends of justice. Though, the requirement under the statute is that every day's delay must be explained but such requirement has not to be understood and applied in a pedantic manner so



as to make in unworkable.

15. The Supreme Court, with great refrain pointed that while every day's delay need be explained, but why not an hour's delay. Perhaps, the Supreme Court was not happy at the manner in which a meritorious matter was thrown out at the threshold only on the ground of limitation.

16. Mr. Kumar has further pointed out that when substantial justice and technical justification are pitted against each other, the cause of substantial justice deserves to be preferred and the sole reason for the same is that no party can have a vested right in injustice being done only because of a delay which is not deliberate. He has submitted that because the appellant had been residing at Ranchi, he could not get any opportunity to know that the records were collusively tampered and family property in one village was wrongly recorded in the name of one of the parties only, to the complete exclusion of the appellants. This was the primary reason why the Joint Director, Consolidation, conscious of the fact that the



Consolidation Proceeding No. 32 of 1987 stood finalized and no revision was filed against the aforesaid order, entertained the application of the petitioner in revision under Section 35(b) of the Consolidation Act against the refusal of interference by the Consolidation Officer.

17. He has further submitted while assailing the order that there can be no good reason for making any distinction with respect to rights of one of the parties who is an agnate, to be kept excluded from enjoying the fruits of family property in one village whereas in another village, the property has been demarcated in the names of all the parties/agnates.

18. After having heard the learned counsel for the parties, we are of the view that the learned Single Judge was absolutely justified in taking a view that the Joint Director, Consolidation exceeded his jurisdiction in directing for fresh demarcation of lands and identification of the names of the parties. Such exercise could not have been directed, specially in the absence of any evidence with respect to any arrangement between the parties.



19. The Joint Director of Consolidation was not aware as to what has transpired between the parties for the aggrieved party not to have challenged the order passed in Consolidation Case No. 32 of 1987 for good 20 years.

20. The safest course for any quasi judicial authority in such case was to direct for filing of an appropriate proceeding with respect to specific rights and title of the aggrieved party. A Consolidation Officer does not decide the rights and title *vis-a-vis parties*. All that the Consolidation Officer is to do is to demarcate the land for the purposes of consolidation.

21. It may be true that the reference of the Title Suit in the impugned order is with respect to another claim put forth by the appellant; nonetheless we gather from the wordings of the order that the learned Single Judge was conscious of the fact that such right of the appellant, in case it is deemed necessary by them could be agitated before an appropriate forum, i.e. by way of Title Suit. No good purpose would have been served in allowing



the order of the Joint Director of Consolidation to have remained inviolate, specially in view of the fact that the rights of the parties had been decided finally in the year 1987 and it was never questioned for another 20 years.

22. Thus, finding no fault with the order passed by the learned Single Judge, we unhesitatingly dismiss this appeal but without any order as to costs.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.11.2022
Transmission Date	N/A

