

Abdul Karim Vs. Deputy Director of Consolidation and ors.

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Court : Allahabad

Decided On : Jan-02-2003

Reported in : 2003(1)AWC516

Judge : S.K. Singh, J.

Acts : Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 11, 12 and 52; [Limitation Act, 1963](#) - Sections 5

Appeal No. : C.M.W.P. No. 53211 of 2002

Appellant : Abdul Karim

Respondent : Deputy Director of Consolidation and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.A. Quadeer, Adv.

Disposition : Writ petition dismissed

Judgement :

S.K. Singh, J.

1. Heard learned counsel for the petitioner and learned standing counsel.

2. Challenge in this petition is the judgment of the Deputy Director of Consolidation, Basti, dated 27.11.2002 by which, by dismissing the revision filed by the petitioner, the order of the Assistant Settlement Officer, Consolidation, dated 29.5.2002 has been maintained.

3. There happens to be no dispute on the facts which can be summarised thus. The Assistant Consolidation Officer passed an order on 11.10.1997 under Section 12 of the U. P. Consolidation of Holdings Act (hereinafter referred to as the Act) on the basis of reconciliation. Thereafter, de-notification under Section 52 of the Act took place on 15.2.1999. The petitioner filed appeal after the de-notification referred above on 16.4.1999. A preliminary objection was raised on behalf of the present petitioner that as the appeal has been filed after the de-notification under Section 52 of the Act and, therefore, it is not maintainable and thus, it is liable to be dismissed as such. The application so moved by the petitioner for dismissal of the appeal being not maintainable was rejected by the Assistant Consolidation Officer, Consolidation, on 29.5.2002 which has been affirmed by the Deputy Director of Consolidation by dismissing the revision by the judgment dated 27.11.2002, These two orders of the Assistant Settlement Officer, Consolidation and the Deputy Director of Consolidation are under challenge in this petition.

4. Learned counsel for the petitioner raised two submissions, viz., (i) after de-notification under Section 52 of the Act, the appeal as filed by the opposite party was not to be entertained (ii) the appeal was further not to be entertained and can be heard on merit unless it is accompanied by an application under Section 5 of Limitation Act and the delay is condoned. In support of the aforesaid submissions, reliance has been placed on the decisions as has been given in Nanhki v. Deputy Director, Consolidation, 1995 RD 264, Kapil Dev v. Deputy Director of Consolidation, 1996 (2) AWC 1121 (LB) : 1996 RD 403, Smt. Munaki Devi v. Deputy Director of Consolidation. 1990 RD 243, Bhagwat and Ors. v. Dy. Director of Consolidation, 1990 RD 376 and Hari Ram v. Deputy Director of Consolidation, 1989 RD 281.

5. On examination of aforesaid submissions and the cases as has been placed by learned counsel for the petitioner, this Court is of the view that the contention of

learned counsel for the petitioner has no force. The decision as has been given by this Court in the case of Hari Ram v. Deputy Director of Consolidation and Ors., 1989 RD 281, taking the view that after de-notification under Sections 52 of the Act, consolidation authorities have no jurisdiction to entertain the dispute which has been decided before issue of de-notification, has been considered and by referring other decisions of our own Court, this Court in the decision of Ramrati v. Deputy Director of Consolidation, 1998 (2) AWC 973 : 1998 RD 204, has held that in the decision given in the case of Hari Ram (supra), the question that whether the consolidation authorities can consider the matter on filing application under Section 5 of Limitation Act for reconsideration of the matter so decided was not considered. This Court has taken the view that as and when a party who might not be aware about the decision so taken by the consolidation authorities or any proceeding taken therein, on coming to know moves to the consolidation authorities by giving proper explanation for delay, the consolidation authorities can consider the matter and after if it is found that the explanation for delay is sufficient, the matter may be considered on merits. Similar view has been again taken by this Court in Bechan Ali v. Deputy Director of Consolidation, 2001 (1) AWC 1003 : 2001 RD 317. In view of the aforesaid, the decisions referred by the learned counsel for petitioner are of no help to the submission advanced by him.

6. Otherwise also, the question can be viewed from another aspect. If the contention of learned counsel for the petitioner that after de-notification under Section 52 of the Act the consolidation authorities have no jurisdiction to entertain any matter, is accepted, then it will lead to a very drastic result. We cannot forget the effect of Section 49 of the Act which clearly lays down that all adjudication in respect to the rights after the close of consolidation proceedings shall be barred and no Court can take cognizance of the dispute so decided by the consolidation courts or which could have been decided and thus take a case that if a party obtains some order from the consolidation authorities which may be without proper notice or knowledge to other party and somehow or the other gets the same non-implemented for some time and waits for de-notification under Section 52 of the Act and thus making recall of that order by the consolidation authorities to be not within their jurisdiction, will lead to maintaining various fraudulent and mischievous steps to be finalised if one party has succeeded in obtaining the same in that

manner. In view of this, there can be no other interpretation in respect to the powers of the consolidation authorities but to hold that as and when any party approaches the consolidation authorities even after de-notification, it is the first concern of that authority to examine that whether the delay in moving the Court is bona fide and the proceedings/orders had been in their knowledge or not and if the Court is satisfied that there is bona fide explanation in coming to the Court late, the matter can be examined on merits and if the Court feels that the party approaching the Court had been in knowledge of the orders/proceedings, then no indulgence is required and the application/appeal/revision can be dismissed straightway. In view of the aforesaid, the jurisdiction of the consolidation authorities will be dependant on acceptance of the plea of delay in approaching the authorities. In view of above discussions, the submission of learned counsel for the petitioner that the consolidation authorities have no jurisdiction to entertain the appeal filed by the opposite party deserves rejection,

7. So far as the submission of learned counsel for the petitioner that the application under Section 5 of Limitation Act should have been decided by the appellate authority first before proceeding on merits and the appeal was not to be entertained as it was not accompanied by an application under Section 5 of Limitation Act, also merits dismissal. A perusal of the memo of appeal which has been filed by the opposite party which has been brought on record as Annexure-5 to the writ petition clearly indicates that in the memo of appeal itself, explanation has been offered for filing appeal after de-notification and a specific prayer at several places besides in the prayer clause has been made that the appeal be allowed after giving benefit of Section 5 of Limitation Act and thus the submission that no separate application has been filed in this respect, being too technical on the facts, cannot be accepted. The other submission that the appellate authority was required to decide the question of delay condonation first, also cannot be accepted as the Deputy Director of Consolidation has clearly directed that the appellate authority will decide the question of limitation as well as merits together after hearing the parties. In the event, appellate authority finds that the appeal is barred by time and there is no proper explanation, then there may not be any question of adjudication on merits and. therefore, there appears to be no harm if the appellate authority is permitted to hear the arguments on both aspects

together, i.e., the question of limitation as well as merits. The aforesaid exercise will save the time of the Court as well as of both parties. The appellate authority can only proceed on merits when the delay in filing appeal is condoned and thus in the event, the judgment of the appellate authority goes against the petitioner on both issues, i.e., on merits and the limitation, it will be open for him to challenge the same before the revisional authority on both counts. On the facts, this Court finds that in the event the authority is directed to decide only the question of limitation first then in view of the decision either way, it will lead to multiplicity of proceedings, i.e., taking the matter to the higher forum which may not be in the ends of Justice.

8. In view of the aforesaid discussions, this Court is of the opinion that the authorities below in taking the view that the appeal filed by the opposite party even after de-notification under Section 52 of the Act, cannot be dismissed as not maintainable, and the matter is to be heard on the question of limitation as well on merits upon which, a final opinion is to be formed, in no way can be said to be illegal or unjustified.

9. Accordingly, writ petition fails and is hereby dismissed at admission stage.

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