

Prithvipat Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-04-1997

Reported in : 1998(1)AWC471

Judge : R.R.K. Trivedi and ;M. Katju, JJ.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 285-I; [Limitation Act, 1963](#) - Sections 5

Appeal No. : C.M.W.P. No. 5212 of 1987

Appellant : Prithvipat

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : K.N. Saxena, Adv.

Judgement :

R.R.K. Trivedi and M. Katju, JJ.

1. Notices to respondents were directed to be issued by order dated 6.3.1987. However, as per office report dated 2.9.1987, petitioner failed to take steps for service on respondent Nos. 5 to 7. Learned counsel for the petitioner submitted that he may be granted time to take steps for service on respondent Nos. 5 to 7

and the steps could not be taken inadvertently as the fact was not brought to his notice. We have considered the submission of the learned counsel for the petitioner. This petition is pending since 1987. In the meantime, the legal position on which basis the objection of the petitioner was rejected by the Commissioner has changed in view of the judgment of the Full Bench of this Court in 1990 RD 291. The objection of the petitioner was rejected by the Commissioner as time-barred only on the technical ground that Section 5 of the Limitation Act is not applicable. The objection of the petitioner under Rule 285-I and Section 5 application has not been decided on merit. The respondents 5 to 7 shall get full opportunity of hearing before the Commissioner and no prejudice shall be caused to them. Considering the above facts and to avoid further delay in the matter which arises out of recovery proceedings, we are deciding this petition on merits after hearing the learned standing counsel.

2. In this petition at the time of admission, a Division Bench directed that the papers of this case shall be laid before Hon'ble the Chief Justice for constitution of a larger Bench as the view expressed in *Indu Engineering and Textile Ltd. v. Commissioner, Agra Division*. AIR 1984 All 334, needs reconsideration. However, a Full Bench of this Court in the case of *Ram Swarup v. Board of Revenue*, 1990 RD 291 (FB) has already considered the view taken by the Division Bench in the case of *Indu Engineering and Textile Ltd.* and has reversed the same, hence it is no more now necessary to refer this case to a larger Bench. The conclusion of the Full Bench is being reproduced below.

'Accordingly, we are of the view that the Commissioner while deciding the objection under Rule 285-I of U. P. Z. A. and L. R. Rules will be a 'court' as such and the proceedings taken before him will be deemed judicial proceedings as such and the Commissioner who otherwise is a court under U. P. Z. A. and L. R. Act will be deemed to be a court. We are accordingly of the view that the cases of *Indu Engineering* (supra) and *Nihal Singh* (supra) were not correctly decided and are overruled.'

3. As the judgment of Division Bench in *Indu Engineering* (supra) relied on by the Commissioner for rejecting the application under Section 5 of the Limitation Act

and objection of the petitioner by the impugned order dated 19.2.1987 has been reversed by the Full Bench, the impugned order cannot be sustained. The proceedings initiated on an objection filed under Rule 285-I of U. P. Z. A. and L. R. Rules have been held to be Judicial proceeding. Hence we hold that Section 5 of the Limitation Act shall be applicable to the proceedings under Rule 285-I and the application of the petitioners filed for condonation of delay ought to have been decided on merits which has not been done by the Commissioner.

4. For the reasons stated above, this petition is allowed. The impugned order dated 19.2.1987 rejecting the application and objection registered as Case No. 63 of 1985-86, is quashed. The application for condonation of delay under Section 5 of the Limitation Act and the objection filed by the petitioner shall now be considered and decided afresh by the Commissioner in accordance with law after hearing both the parties. As a long time has already elapsed, the application and objection shall be decided by the Commissioner within a period of four months from the date a copy of this order is filed before him. There will be no order as to costs.

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