

**Ram Rati Vs. Dy. Director of Consolidation, Banda and Others**

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**Court :** Allahabad

**Decided On :** Dec-03-1997

**Reported in :** 1998(2)AWC973

**Judge :** Sudhir Narain, J.

**Acts :** Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 48 (3), 52 and 53B; Indian Limitation Act, 1908 - Sections 5

**Appeal No. :** C.M.W.P. No. 29127 of 1997

**Appellant :** Ram Rati

**Respondent :** Dy. Director of Consolidation, Banda and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Rajendra Kumar, Adv.

**Judgement :**

**Sudhir Narain, J.**

1. The controversy in this writ petition is as to whether after issue of Notification under Section 52 of the U. P. Consolidation of Holdings Act, 1953 (in short the Act), the application for condonation of delay in filing the appeal can be entertained and decided by the Consolidation Authorities.

2. The controversy arises on the following facts. The petitioner filed objection that she is a tenureholder of the land in dispute. The objection was allowed by the Consolidation Officer. In pursuance of the order of Consolidation Officer a reference was made to the Deputy Director of Consolidation which was accepted by him. The village was denotified under Section 52 of the Act on 20.6.1981. The petitioner sold her rights to Ramraj Singh and Balram Singh. They filed an application for mutation of their names. This mutation application was allowed by the Assistant Consolidation Officer on 28.3.1993. On 21.8.1995 an appeal was filed on behalf of the State of U. P. and Gaon Sabha against the order of the Consolidation Officer, whereby the objection of the petitioner was allowed. In the memo of appeal it was stated that the Gaon Sabha was owner of the property in dispute. The petitioner and Kama) S/o Iqbal were never in possession and could not have acquired rights over the land of Gaon Sabha. The applicants also filed an application to condone the delay in filing the appeal. An affidavit was filed by the Pradhan of the Gaon Sabha explaining the delay in filing the appeal. The petitioner raised an objection that the application for condonation of delay was not maintainable. The Assistant Settlement Officer Consolidation passed an order on 20.3.1997 that the matter relating to the condonation of delay can be considered after the parties adduced evidence in the case. It was further observed that the question as to whether the application for condonation of delay be decided first, will be considered at a later stage. The petitioner filed the revision against this order before the Deputy Director of Consolidation. Respondent No. 1 has dismissed the revision by the impugned order dated 21.8.1997.

3. Sri Rajendra Kumar, learned counsel for the petitioner submitted that after issue of Notification under Section 52 of the Act, the Consolidation Authorities have no jurisdiction to entertain any application in respect of a dispute which has been decided before the issue of Notification under Section 52 of the Act.

4. Section 53B of the Act provides that the provisions of Section 5 of the Indian Limitation Act. 1908 shall apply to the applications, appeals, revisions and other proceedings under the Act or the Rules made thereunder. In *Bhagwati v. Deputy Director of Consolidation and others*, 1983 ALJ 1250, it was held that an appeal or revision can be filed even after denotification against an order which was passed

prior to the date of denotification although limitation for filing the appeal or revision had already expired in view of Section 53B of the Act which makes Section 5 of the Limitation Act applicable to the proceedings under the Act. The Court relied upon the decision *Shyam Narain Rai v. Deputy Director of Consolidation*, 1981 RD 301. The same view was taken in *Nathani Singh v. Assistant Director of Consolidation, Ghazipur*, 1990 RD 258.

5. Learned counsel for the petitioner has placed reliance upon the decision *Hari Ram v. Deputy Director of Consolidation, Azamgarh and others*, 1989 RD 281, wherein it was held that if the village is denotified under Section 52 of the Act, the Deputy Director of Consolidation is not entitled to exercise his power by deciding reference under Section 48 (3) of the Act. In this case, the Court was not considering a case when a party files an application to condone the delay in submitting a matter or files an application for restoration of the case decided ex parte. This question came up for consideration in *Radhey Shyam and another v. Deputy Director of Consolidation, Bhadohi and others*, 1996 RD 231. The case of *Hari Ram* (supra), was considered and distinguished. In that case, in the reference proceedings a portion of land was to be given to the S.S.P., Varanasi, mentioned in the letter dated 27.10.1975 for construction of the quarters for Police Station. On reference sent to the Deputy Director of Consolidation, he passed the order on 30.6.1992. An application was filed to recall the said order. The contention raised that Deputy Director of Consolidation had no jurisdiction after denotification of the village under Section 52 of the Act to recall the order, was repelled. It was held that he had jurisdiction to recall an ex parte order.

6. The second submission of learned counsel for the petitioner is that the Settlement Officer Consolidation illegally directed the parties to lead evidence without first deciding the application to condone the delay in filing the appeal. The matter as to condonation of delay in filing the appeal was related with the fact as to whether any fraud was practised in respect of the land of the Gaon Sabha. This depends upon the various facts. Respondent Nos. 1 and 2 were justified in taking the view that the parties may lead evidence and considering the entire aspects of the matter, the question of limitation and the merit of the case both may be decided. Considering the facts and circumstances of the case, the order passed

by the Deputy Director of Consolidation does not suffer from any manifest illegality.

7. The writ petition is accordingly dismissed.

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