

**Mohan and ors. Vs. Settlement Officer Consolidation and ors.**

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**Court :** Allahabad

**Decided On :** Dec-22-2004

**Reported in :** 2005(2)AWC2315

**Judge :** S.K. Singh, J.

**Acts :** Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 9A(2) and 11

**Appeal No. :** C.M.W.P. No. 48402 of 2004

**Appellant :** Mohan and ors.

**Respondent :** Settlement Officer Consolidation and ors.

**Advocate for Def. :** Anuj Kumar, Addl. S.C. and ;S.C.

**Advocate for Pet/Ap. :** S.C. Tripathi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**S.K. Singh, J.**

1. Prayer in this petition is to issue writ in the nature of prohibition, prohibiting the appellate authority to entertain and decide the appeal Nos. 384 and 791 (Annexures-1 and 2 respectively to the writ petition).

2. Facts in brief will be useful to be noticed for disposal of this petition. Against the judgment of the Consolidation Officer dated 2.5.1986 passed in case No. 1135/1136 in a proceeding under Section 9A (2) of the U.P.C.H. Act, two appeals referred above came to be filed before the Settlement Officer Consolidation. One appeal was filed by Ram Karan and others and other appeal by the State. It is in respect to the aforesaid appeals, submission of counsel for the petitioners is that continuance of the appeal is an abuse of process and thus they may be directed not to be proceeded and respondents may be directed to withdraw the appeals.

3. Submission is that appeals filed by the respondents were barred by time and there is no prayer for condonation of delay and in fact there is no application for condonation of delay. It is also submitted that there is no order of Collector for the District Government counsel to file the appeal and the memo does not bear the signature of the Collector. Various averments in this respect are contained in paras 7 to 10 of the writ petition. Submission is that appeals filed by the respondent No. 3 and the State are incompetent and they could not have been entertained by the respondents 1 and 2. In the last it was submitted that Gaon Sabha withdrew its objection against the petitioner and, therefore, the appeal filed against the order of the Consolidation Officer cannot be said to be maintainable.

4. In support of the submissions that if there is no delay condonation application then appeal is to be dismissed and that issue is to be decided first reliance has been placed on Raj Deo v. Jai Karan, 1987 RD 240 and Ragho Singh v. Mohan Singh and Ors., 2000 RD 689. In support of the submissions that if the proceedings are abuse of the process of the Court then this Court has to issue a writ straightaway, reliance has been placed on Raja Srinivas Prasad Singh v. S.D.O., Mirzapur and Anr., : AIR1962 All590 ; Khaeshwar v. Hoshram and Ors., : AIR1966 All191 and S. Govinda Menon v. Union of India and Anr., : (1967)IILLJ219SC .

5. The Court has examined the matter in the light of the aforesaid submission. At the very outset it can be observed that entire submission of learned counsel for the petitioner proceeds on the ground that entire proceedings being abuse of the process are liable to be quashed straightaway by this Court. Thus it is clear that it

is in exceptional cases where the aforesaid situation emerges and the Court is satisfied with the gravity of the matter then the writ as prayed is to be issued.

6. Before dealing the facts in detail the Court may take note of the cases as has been cited by learned counsel. So far the decision as referred by the learned counsel on the question of issue of writ of prohibition suffice it to say that all the three decisions as given in the cases of Raja Srinivas Prasad Singh v. S.D.O., Mirzapur and Anr. ; Khaeshwar v. Hoshram and Ors. and S. Govinda Menon v. Union of India and Anr. (supra) they lay down that if there is patent lack of jurisdiction i.e. if there is want of jurisdiction then the writ can be issued. So far the case in hand is concerned it cannot be said that appeal against the order of the Consolidation Officer does not lie to the Settlement Officer Consolidation as the same is clearly provided under Section 11 of the U.P.C.H. Act and thus decisions on which reliance has been placed are of no help to the petitioner. So far the decision as has been referred on the question of condonation of delay is concerned it appears to be not a stage for this Court to examine this aspect as it is first for the appellate court to pass appropriate orders and it is only thereafter the matter can be examined by the higher court.

7. So far as the case in hand is concerned appeals which are pending before the Settlement Officer Consolidation arise out of the order passed by the Consolidation Officer in the proceedings under Section 9A(2) of the U.P.C.H. Act. The Consolidation of Holdings Act is a complete code for adjudication of the rights of any claimant and for settling the rights of any party. Adjudication between the parties starts on the disposal of the objection by the Consolidation Officer under Section 9A(2) of the U.P.C.H. Act against which statutory appeal as provided under Section 11 of the Act lies. It appears that against the judgment of the Consolidation Officer stated above two appeals were filed. As stated in paras 5 and 6 of the writ petition one appeal was filed on 27.7.1986 and the other appeal was filed on 18.6.1986 and thus both appeals being against the order of the Consolidation Officer dated 2.5.1986 there can be hardly few days delay in filing the appeal. Submission about withdrawal of the objection by Gaon Sabha before the Consolidation Officer and thus no right to appeal also appears to be totally misconceived as appeal No. 791 has been filed by State through Collector who is

the overall incharge of the matter. Gaon Sabha is respondent No. 2 in that appeal. Be that as it may, in respect of both aspects that whether few days delay in filing the appeal was to be condoned or not as it is alleged that there is no application for condonation of delay and there is no prayer for the same and whether the appeal at the instance of the Gaon Sabha, who is appellant No. 2 in appeal filed by the State can proceed or not it cannot be such a situation that this Court has to intervene in the matter by issuing a writ of prohibition to the appellate authority not to proceed in the matter taking the view that proceedings are abuse of the process of court. Needless to say that question of maintainability of the proceedings at any stage before any forum has to be first addressed before that very authority as that authority being in a more better position to examine the things in the light of the record and various factual and legal aspects can decide the same. It is only in exceptional cases where the things are so apparent and lack of jurisdiction is so clear that on accepting every fact the only conclusion comes out that the authority cannot proceed in the matter, this Court has to intervene. Thus on the admitted fact of the case appeal filed by the respondents being regular appeal as provided in the Consolidation of Holdings Act having been filed by them cannot be said to be unauthorised so as to take the view that it is abuse of the process. It can be another situation that appeal is barred by time or it is not maintainable for various reasons but that can be an objection by the respondents in any appeal or revision and thus this Court is of the considered view that unless there are exceptional circumstances straightway extraordinary powers are not to be exercised. On the facts this Court is not satisfied that petitioner cannot get their objection examined by the appellate court so as to exercise the jurisdiction as a writ court. Appeals against the judgment of the Consolidation Officer dated 2.5.1986 appear to have been filed in May/ June, 1986 itself and thus hardly there is few days delay but about 18 years have already passed, the disposal of the appeal appears to be still in dilemma. Various things can be inferred in respect to delay in disposal of the appeal but this may not be proper for this Court at this stage to make any comment against the parties who appear to be prima facie responsible for delay in the matter.

8. For the analysis as made above this Court is not convinced that this is a case where writ of prohibition can be issued, as prayed by the petitioner. The objection

about maintainability of the appeal on various grounds appears to be a routine one which is to be dealt by the appellate authority while deciding the appeal on merits in accordance with law.

9. Before parting with the case it will be useful to make an observation for appellate authority to decide the matter pending before him with all expedition preferably within three months from the date of receipt of certified copy of this order without allowing any unwarranted adjournment to either of parties unless it is required for very compelling reasons. Petitioners are directed to file certified copy of this order before the appellate court within fifteen days from today.

10. In view of the foregoing discussion writ petition fails and is dismissed at admission stage.

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