

Kashi Ram Vs. Uoi and ors

Kashi Ram Vs. Uoi and ors

SooperKanoon Citation : sooperkanoon.com/924466

Court : Delhi

Decided On : Feb-06-2012

Appellant : Kashi Ram

Respondent : Uoi and ors

Advocate for Def. : Mr. Som Dutt Kaushik

Judgement :

* HIGH COURT OF DELHI : NEW DELHI Reserved on : January 20, 2012
Pronounced on : February 06, 2012 + W.P. (C) No.5863/2002 and C.M. No. 9977/2002 % KASHI RAM ... Petitioner Through: Mr.L.R.Bhilware,Advocate versus UOI and ORS. ... Respondents Through: Mr. Som Dutt Kaushik, Advocates. CORAM: HON'BLE MR. JUSTICE SUNIL GAUR % ORDER 06.02.2012.

1. In the year 1950, petitioner and his co-villagers had decided to start a High School in Village Ujjawa, Delhi and to run the said school the villagers had given some of their agricultural land to Dabur Educational Trust to augment the income which would be used for running the said school. Petitioner alongwith his co-owners had purportedly given 14 Bighas and 14 Biswas of agricultural land of Khasra No.

606. in Village Dandsa, Delhi to the aforesaid Trust and according to the petitioner, the said school was taken over by Delhi Administration in the year 1952 but the

petitioner who was living 10 kilometers away from the said school did not come to know about it and only in the year 1998, petitioner came to know that the said school has been taken over by the Delhi Administration. W.P. (C) No.5863/2002
Page 1.

2. Upon learning that Dabur Educational Trust has ceased to exist, petitioner had filed a suit for possession of the aforesaid land against the said Trust before SDM, Najafgarh and the petitioner had learnt that the aforesaid land vested in Gaon Sabha Dandsa, Delhi and the same had been subject of consolidation proceedings. Despite Dabur Educational Trust having no objection to the said subject land being returned to the petitioner, SDM, Najafgarh, Delhi dismissed petitioner's suit for want of jurisdiction in May, 2002, although Gazette Notification of the year 1959 had exempted the land in question from the operation of the Delhi Land Reforms Act, 1954..

3. While dismissing petitioner's case, the concerned SDM, in its order of 31st May, 2002, (Annexure-K) had observed that Punjab Land Revenue Act is applicable to the subject land, therefore, petitioner has invoked the writ jurisdiction of this Court to seek a mandamus to the Respondent Gaon Sabha of Village Dandsa, to enter petitioner's name in the Revenue Record in respect of his one-third share of land measuring 14 Bighas and 14 Biswas in Khasra No. 606, Village Dandsa, Delhi or in the alternative, to give equal land out of the holdings of Gaon Sabha and to annul the vesting of the petitioner's land in the Gaon Sabha Dandsa, Delhi..

4. As per the petitioner, vesting of the subject land in Gaon Sabha Dandsa, Delhi without notice to the petitioner/owner, in spite of Delhi Land Reforms Act, 1954 being inapplicable, and in view of Dabur Educational Trust having no objection, to the return of the subject land to the petitioner, inaction of the Respondents is clearly arbitrary and illegal. W.P. (C) No.5863/2002 Page 2.

5. In response, contesting Respondents assert that as per the report of the concerned Halka Patwari, Khasra No. 606, existed before consolidation proceedings but the ownership of this land could not be figured out and after consolidation, Khasra No.

606. does not exist in Village Dandsa, Delhi. What is asserted by the contesting Respondents is that as per previous Revenue Record before consolidation, the subject land was of public interest/use under the possession of the undisclosed owners, whose ownership could not be traced. Vesting of the subject land in Village Dandsa, Delhi is not disputed but it is asserted by the Respondents that the petitioner has no right, title or interest in it. In rejoinder, petitioner asserts that the subject land still exists and only Khasra Number has changed and after consolidation, the land has been bifurcated and divided but the ownership of the petitioner in the subject land stands established from Revenue Record, i.e., Jamabandi of 1947- 1948 (Annexure A). In the additional affidavit of 15th January, 2009, it is disclosed by the contesting Respondents that the consolidation proceedings were completed in the year 1981-1982 and that the subject land alongwith adjoining land had merged and new numbers have been allotted, details of which are disclosed in this additional affidavit..

6. After having heard learned counsel for both the parties and upon perusal of the material on record, I find that the petitioner ought to have disclosed as to how he had come to know about taking over the High School by Delhi Administration in the year 1998 as it is highly unlikely that the petitioner who was living just ten kilometers away from the said school was blissfully unaware that the said school had been taken over by the Delhi Administration. Such a view is being taken because petitioner himself claims that the lands of co-villagers had been returned W.P. (C) No.5863/2002 Page 3 long back and for the reason that petitioner does not seek to cover up the inordinate delay of more than four decades by claiming to be an illiterate person..

7. It was in the year 1952 the High School in question was taken over by Delhi Administration and the subject land had reverted back to the Gaon Sabha Dandsa, Delhi. Now, it is too late in the day for the petitioner to assert that the said vesting of land was in violation of the Delhi Land Reforms Act, 1954 or the procedure prescribed under the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 was not followed, as the consolidation proceedings had also come to an end about two decades prior to the filing of the instant petition..

8. Since the identity of the subject land upon repartition during consolidation proceedings is lost, due to lack of vigilance on the part of the petitioner, therefore, this Court is quite reluctant to delve into the merits of this case as even the question of ownership of the subject land is a disputed question of fact. On the aspect of the delay and laches, the pertinent observations of the Apex Court in *Printer (Mysore) Ltd. vs. M.A.Rasheed and Ors.*, 2004 (4) SCC 460 are as under:- "Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first Respondent. The Division Bench of the High Court also does not appear to have considered the plea W.P. (C) No.5863/2002 Page 4 taken by the appellant herein to the effect that the first Respondent had been set up by certain interested persons."

9. Ratio of the Apex Court in *Printer (supra)* stands reiterated in a recent decision by the Apex Court in *Tamil Nadu Housing Board, Chennai vs. M.Meiyappan and Ors.*, JT 2010 (12) SC 29, while observing as under:- "It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extraordinary jurisdiction and grant relief to the writ petitioner."

10. Question of delay and laches is a primary question, which is required to be considered by the writ Court. There can be little doubt if it is shown that a party moving the High Court under Article 226 for a writ is in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction..

11. Thus, it is well settled that unless reasonable explanation for the considerable delay (of 46 years in the instant case) is forthcoming, this Court will not exercise the discretionary jurisdiction under Article 226 of Constitution of India as this discretionary power is to be exercised W.P. (C) No.5863/2002 Page 5 judiciously.

In the instant case, there is no worthwhile explanation for the huge delay for about 46 years..

12. Viewed in the aforesaid context, finding this petition to be hit by delay and latches, I dismiss it, while leaving the parties to bear their own costs. Consequently, pending application for stay is disposed of as infructuous. (SUNIL GAUR) JUDGE February 06, 2012 pkb W.P. (C) No.5863/2002 Page 6 W.P. (C) No.5863/2002 Page 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com