

Vanshidhar Tiwari And Others vs State Of U.P. Thru Secy F And R And Others on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69447

Court No. - 50

Case :- WRIT - B No. - 19682 of 2009

Petitioner :- Vanshidhar Tiwari And Others

Respondent :- State Of U.P. Thru Secy F And R And Others

Counsel for Petitioner :- Arun Kumar Tiwari

Counsel for Respondent :- C.S.C.,Deepak Dubey,Sushil Kumar Dwivedi

Hon'ble Chandra Kumar Rai,J.

Re: Civil Misc. Delay Condonation / Substitution Application Nos.13 & 14, both of 2018.

1. Heard learned counsel for the parties.

2. The instant applications have been filed to substitute the legal heirs of deceased respondent nos.5 & 7 along with an application under Section 5 of the Limitation Act but in view of order dated 10.1.2020 passed by this Court, this application shall be treated in respect to deceased-respondent no.5 only.

3. Notices were issued to the proposed heirs of deceased respondent no.5 and as per office report, service is sufficient upon the proposed heirs.

4. The reason for condonation of delay mentioned in the affidavit is satisfactory. Delay in filing the

substitution application is condoned.

5. Let the word 'deceased' be mentioned against the name of respondent nos.5 and the names of their legal heirs as mentioned in the prayer clause of the application be substituted as respondent nos.5/1 to 5/3.

5. The applications are, accordingly, disposed of.

Re: Civil Misc. Delay Condonation / Substitution Application Nos.18 & 19, both of 2020.

1. Heard learned counsel for the parties.

2. The instant applications have been filed to substitute the legal heirs of deceased respondent no.7 along with prayer for condonation of delay.

3. The explanation given for condonation of delay is satisfactory. Delay in filing the substitution application is condoned.

4. Let the word 'deceased' be mentioned against the name of respondent no.7 and names of his legal heirs as mentioned in the prayer clause be substituted as respondent nos. 7/1 to 7/3.

5. The applications are accordingly allowed.

Re: Civil Misc. Substitution Application No.17/2020.

1. Heard learned counsel for the parties.

2. The instant application has been filed to substitute the legal heir of deceased respondent no.6.

3. Application is within limitation.

4. Let the word 'deceased' be mentioned against the name of respondent no.6 and the name of his legal heir as mentioned in the prayer clause of the application be substituted as respondent no.6/1 in the array of the parties.

5. The substitution application is, accordingly, disposed of.

Order on Writ Petition

1. Heard Sri Arun Kumar Tiwari, learned counsel for the petitioners and Sri Om Anand, learned standing counsel for the state-respondents.

2. Brief facts of the case are that petitioners' father Ram Akshaywar was chak holder no.592. Original holding of the petitioners' father is mentioned in C.H. form No.23 Part-1 as plot nos. 1797

and 2051/2, having 1/2 share. The father of respondent nos. 5 to 8 Nanku was chak holder no.306. The Assistant Consolidation Officer has proposed single chak to petitioners' father on plot no.2051M, area .221 hect. Private respondents are also the co-sharer of the petitioners. The Consolidation Officer in chak objection, disturbed the petitioners' chak on 1.12.2006, taking out the entire area of plot no.2051 and allotting them on plot no.1796 & 1797. Petitioners' father filed chak appeal before the Settlement Officer of Consolidation under Section 21(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") which was registered as Appeal No.249. The Assistant Settlement Officer of Consolidation vide order dated 29.9.2007 allowed the petitioners' appeal in part and adjusted both the petitioners and private respondents over plot nos.2051/2, 1796 & 1797 according to their share in the aforementioned plots. Against the appellate order dated 29.9.2007, both the parties filed revision under Section 48 of the U.P. C.H. Act. The revision filed by the petitioners' father was registered as Revision No.3258/2008 and the revision filed by the private respondents was registered as Revision No.1707/2008. The Deputy Director of Consolidation vide order dated 18.2.2009 dismissed the revision filed by the petitioners and allowed the revision in part filed by the private respondents. Hence, the instant writ petition for the following reliefs:-

"(i) Issue a suitable writ, order or direction in the nature of certiorari to quash the order dated 18.2.2009, passed by the Deputy Director of Consolidation, Jaunpur.

(ii) Issue a suitable writ, order or direction in the nature of mandamus, commanding the respondents to provide chaks in pursuance of the order dated 29.9.2007 passed by the Settlement Officer of Consolidation, Jaunpur."

3. This Court entertained the matter on 15.4.2009 and directed the parties to maintain status quo with respect to nature and possession of the plot in dispute.

4. At the time of admission of the writ petition, respondent no.5 was represented through counsel Sri Sushil Kumar Dwivedi but no counter affidavit has been filed in the instant petition even after expiry of more than 16 years. Steps were taken by the petitioners to serve the private respondents even by way of publication but no counter affidavit has been filed in the petition.

5. Sri Deepak Dubey, Advocate has made statement before the Court that he has no instruction in the matter and his name is wrongly printed in the cause list as counsel for the respondents.

6. Counsel for the petitioners submitted that petitioners and private respondents are co-sharer and Settlement Officer of Consolidation has rightly adjusted both the parties according to their share in both the original plots, as such, there was proper exercise of the appellate jurisdiction by the Assistant Settlement Officer of Consolidation while deciding the chak appeal. He submitted that the petitioners as well as private respondents have challenged the appellate order but the Deputy Director of Consolidation has allowed the revision filed by the private respondents, taking out the area of plot no.2051 which was allotted to petitioners according to their share in the plot by the Assistant Settlement Officer of Consolidation. He submitted that the petitioners have prayed in revision that the stage of Assistant Settlement Officer of Consolidation should be maintained but

that prayer was refused in revision. He submitted that the impugned revisional order should be set aside and the stage of Assistant Settlement Officer of Consolidation should be maintained.

7. On the other hand, learned standing counsel submitted that no interference is required against the order passed by the Deputy Director of Consolidation in the allotment of chak proceeding as both the parties have been allotted chak on their original plots.

8. I have considered the arguments advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that the petitioners and private respondents are co-tenure holder of the plot in question.

10. In order to appreciate the controversy involved in the matter, perusal of the finding of fact recorded by the Assistant Settlement Officer of Consolidation while deciding the chak appeal will be relevant which is as under:-

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Order Date :- 1.5.2025 C.Prakash