

Jata Shankar vs Board Of Revenue U.P. And 3 Others on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29669

Court No. - 50

Case :- WRIT - B No. - 3598 of 2018

Petitioner :- Jata Shankar

Respondent :- Board Of Revenue U.P. And 3 Others

Counsel for Petitioner :- Mahesh Kumar Dubey

Counsel for Respondent :- C.S.C., Noori Ullah, Ram Babu Yadav, Siddarth Jaiswal

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Pradeep Kumar Rai, assisted by Sri Mahesh Kumar Dubey, learned counsel for the petitioner, Ms. Noori Ullah, learned counsel for respondent no.4 and the learned standing counsel for the state-respondents.

2. Brief facts of the case are that the petitioner and respondent no.4 are real brothers. A partition suit under Section 176 of The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "U.P. Z.A. & L.R. Act") was filed by respondent no.4-Shiv Shanker, impleading the petitioner as defendant. In the aforementioned partition suit, preliminary decree was passed on 7.5.2012 and Lekhpal was directed to prepare kurra. He submitted that on the basis of the kurra dated 3.8.2012/15.3.2013 prepared by the Lekhpal, final decree was also prepared on 4.4.2013. Respondent no.4 filed a time-barred restoration application dated 20.3.2014. Against the time-barred application, objection as well as application dated 13.5.2015 was filed on behalf of the petitioner with the prayer that delay condonation matter should be heard first but the Sub

Divisional Officer passed the order dated 21.5.2015 that delay condonation matter and restoration matter shall be heard together. Revision filed by the petitioner against the order dated 21.5.2015 has been dismissed by Board of Revenue vide order dated 16.5.2016 and the review application has also been dismissed on 24.8.2017. Hence, this writ petition for the following relief:-

"Issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 24.8.2017 passed by respondent no.1 in Review Application No.1036/2016 (Annexure No.11) and also stay the effect and operation of the order dated 16.5.2016 passed by respondent no.1 in Revision No.1941 of 2015 (Annexure No.9) and also stay the effect and operation of the order dated 21.5.2015 passed by respondent no.2 in Case No.25/2015 (Annexure No.7) under Section 176 of the U.P. Z.A. & L.R. Act."

3. This Court entertained the matter and interim order was granted on 23.4.2018, staying the proceeding of the case before the Sub Divisional Officer. In pursuance of the order dated 23.4.2018, parties have exchanged their affidavits.

4. Learned counsel for the petitioner submitted that preliminary decree and final decree were prepared, following the provisions of the U.P. Z.A. & L.R. Act and the Rules framed thereunder, as such, the time-barred restoration application filed by respondent no.4 is abuse of process of law. He submitted that objection was filed on behalf of the petitioner in time-barred restoration/recall application with the prayer that delay condonation matter should be heard and disposed of 1st but the objection/application of the petitioner has not been considered in proper manner and revision has also been dismissed in arbitrary manner. He placed reliance on the decision of this Court reported in 2022 (155) R.D.309, Ram Prakash vs. Deputy Director of Consolidation and Others, in support of his arguments.

5. On the other hand, learned counsel for respondent no.4 submitted that restoration/recall application was filed in proper manner, as such, the objection filed on behalf of the petitioner in the restoration/delay condonation matter, cannot be allowed. She submitted that Kurra has been prepared in arbitrary manner by the Lekhpur and without affording opportunity of hearing to the petitioner, the impugned preliminary and final decree have been prepared. She submitted that the writ petition filed by the petitioner should be dismissed and direction be issued to decide the time-barred restoration application in accordance with law expeditiously.

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

7. There is no dispute about the fact that the preliminary decree and final decree has been passed by the court in the proceeding under Section 176 of the U.P. Z.A. & L.R. Act. There is also no dispute about the fact that a time-barred restoration/recall application filed on behalf of respondent no.4 is pending before respondent no.2/S.D.M., Laganj, Mirzapur.

8. This Court in the case of Ram Prakash (supra) has held that in time-barred proceeding, the delay condonation matter should be decided 1st in accordance with law. Paragraph Nos. 19, 20, 21, 22 and 23 of the judgment rendered in Ram Prakash (Supra) will be relevant which are as follows:-

"19. We are not going into the issue as to whether an order passed by appellate authority on an application seeking condonation of delay is an interim order or final as the same has not been referred for consideration by the Division Bench. Different situations may arise in an appeal filed along with application seeking condonation of delay. Firstly, the application for seeking condonation of delay may be dismissed. As a consequence thereof, the appeal will also fail. Another situation may be that application seeking condonation of delay is allowed and thereafter the appeal may either be accepted or rejected.

20. If any statute provides certain period for filing of appeal, an appeal filed beyond the time limit will certainly be not entertained. If the provisions of 1963 Act are applicable and party is entitled to seek condonation of delay in filing appeal, an application has to be filed specifying the grounds on which delay in filing the appeal is sought to be condoned. It is only after that the application is allowed, the appeal can be entertained and heard on merits. Before that the appeal cannot be taken up and considered on merits.

21. As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted.

22. In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay.

23. Let the matter be listed before learned Single Judge as per roster for further proceedings in the case."

9. In the instant matter, restoration application dated 20.3.2014 filed by respondent no.4 is time-barred, as such, Sub Divisional Officer should consider and decide the delay condonation matter by passing proper order for delay condonation/refusal as well as proper order should be passed on the restoration application but there is no hindrance to pass the order on delay condonation as well as restoration application on the same day.

10. Considering the entire facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.2/S.D.M., Lalganj, Mirzapur to decide the time-barred restoration application of respondent no.4, in the light of the ratio of law laid down in the case of Ram Prakash (supra), as expeditiously as possible, preferably within a period of 4 months, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

Order Date :- 3.3.2025 C.Prakash