

Rajpal vs Deputy Director Of Consolidation And 4 ... on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67809

Court No. - 50

Case :- WRIT - B No. - 2506 of 2019

Petitioner :- Rajpal

Respondent :- Deputy Director Of Consolidation And 4 Others

Counsel for Petitioner :- Manvendra Nath Singh, Mr. V.K. Singh, Senior Advocate, V.K. Singh

Counsel for Respondent :- Adesh Kumar, Bipin Lal Srivastava, C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Manvendra Nath Singh, learned counsel for the petitioner, Sri J. Nagar, learned Senior Counsel assisted by Sri Adesh Kumar, learned counsel for the respondent no. 3 and Sri Mridul Kumar, learned Standing Counsel for the State.

2. Brief facts of the case are that in the allotment of Chak proceeding an order was passed by Consolidation Officer on 12.07.2018. Against the order of Consolidation Officer dated 12.07.2018, a revision under Section 48 of the U.P.C.H. Act was filed by respondent no. 3-Manendra Singh, which was barred by limitation. The aforementioned revision was registered as Case No. 274 of 2019, the Deputy Director of Consolidation, Hapur vide order dated 30.09.2019 allowed the chak revision without passing any order for condonation of delay. Hence this writ petition for following reliefs:-

"i. issue, a writ order or direction in the nature of Certiorari quashing the impugned judgment and order dated 30.09.2019 passed by the respondent no.1-Deputy

Director of Consolidation, District-Hapur.

ii. issue any other writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

iii. award cost of the petition to the petitioner."

3. This Court entertained the matter on 07.11.2019 and granted interim protection directing the parties to maintain status quo in respect to the land in dispute. In compliance of the order dated 07.11.2019, parties have exchanged their pleadings.

4. Learned counsel for the petitioner submitted that chak revision filed by respondent no. 3 was barred by limitation and no application has been moved for condonation of delay and Deputy Director of Consolidation has allowed the revision, which is wholly illegal. He further submitted that Division Bench of this Court in a case reported in 2022 (2)AWC Page 1345 (LB) Ram Prakash Vs. Deputy Director of Consolidation Hardoi & others has held that in time barred proceeding, the delay matter should be considered first. He next submitted that in view of ratio of law laid down by the Division Bench of this Court in Ram Prakash (Supra) impugned order dated 30.09.2019 passed by the Deputy Director of Consolidation is liable to be set aside and order of Consolidation Officer should be maintained. He further submitted that petitioner and respondent no. 3 are real brother and consolidation officer has passed the order on the basis of consent of both the parties in chak allotment proceeding, as such revision on behalf of respondent no. 3 cannot be entertained.

5. On the other hand, Sri J. Nagar, learned Senior Counsel appearing for respondent no. 3 submitted that the chak revision against the order of Consolidation Officer is not maintainable. He further submitted that chak of the both the parties have been adjusted in accordance with the provisions of the U.P.C.H. Act, as such no interference is required against the order passed by the Deputy Director of Consolidation in chak revision.

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

7. There is no dispute about the facts that the Consolidation Officer has passed the order on 12.07.2018 in chak objection. There is also no dispute about the fact against the order of Consolidation Officer dated 12.07.2018, the time barred revision under Section 48 of the U.P.C.H. Act has been allowed under the impugned order.

8. Since, the chak revision filed by respondent no. 3 was barred by limitation, as such unless the order for condonation of delay is passed, the revision cannot be decided on the merit.

9. The Division Bench of this Court in case of Ram Prakash (Supra) has held that in time barred proceeding there should be proper consideration of delay condonation matter first. 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."

10. Considering the ratio of law laid down by this Court in Ram Prakash (Supra), the impugned order dated 30.09.2019 passed by respondent no. 1-Deputy Director of Consolidation cannot be sustained in the eye of law and same is hereby set aside.

11. The writ petition stands allowed and matter is remitted back before the respondent no.1-Deputy Director of Consolidation to register the revision on its original number and decide the same afresh considering the delay condonation matter first in the light of judgment of Division Bench of this Court passed in Ram Prakash (Supra). Respondent no.3 is permitted to file proper application for condonation of delay along with affidavit before respondent no.1-Deputy Director of Consolidation and respondent no. 1 shall accordingly pass an order for delay condonation taking liberal view on

the delay condonation matter as well as decide the revision on merit in accordance with law afresh, after affording proper opportunity of hearing to both the parties expeditiously, preferably within a period of three months from the date of production of a certified copy of this order.

12. No order as to costs.

Order Date :- 30.4.2025 Neetu