

State of U. P.

Vs

District Judge, Unnao and Others

Civil Appeal No. 10782 of 1983

(D. A. Desai, D. P. Madon JJ)

06.12.1983

ORDER

1. Special leave granted.
2. We heard Mr. Manchanda, learned counsel for the appellant and Mr. Syed, learned counsel for the respondents.
3. The Prescribed Authority constituted under the U. P. Imposition of Ceiling on Land Holdings Act determined the compensation payable to respondents 3 to 6 for acquisition of the surplus land and trees in the amount of Rs. 90,637.20 p. The State of U. P. having been dissatisfied with this quantum of compensation assessed by the Prescribed Authority preferred an appeal in the court of the District Judges on September 19, 1972, but as the appeal was by that time barred by limitation, the appellant simultaneously filed an application under Section 5 of the Limitation Act for condoning the delay in preferring the appeal. In support of the application under Section 5, affidavits of Sri. Ahmad Ullah Khan, Shri Shiam Lal Shrivastava, Tehsildar Hasanganj, Sri. Ram Bahadur Sexena, Sadar Kanungo of the Officer of the Assistant Compensation Commissioner and Sri. Rajendra Singh, Assistant Rajeswa Anubhag-6, U. P. Civil Secretariat, Lucknow, were filed. Respondents 3 to 6 contested the application seeking condonation of the delay. The learned District Judge held that the order under appeal was dated January 25, 1972 and the appeal was filed on September 19, 1972 and that prima facie it was barred by limitation. The learned District Judge noted the fact that the allegation that Lekhpal and Sadar kanungo were in collusion with the answering respondents does not carry conviction. The learned District Judge further held that the explanation for not filing the appeal in time is not very convincing and that even though the concerned department had the knowledge about the order which was to be questioned in appeal, right from January 25, 1972, the appellant failed to explain each days delay and therefore could not avail of the benefit of Section 5 of Limitation Act. Approaching the matter from this angle, the learned District Judge rejected the application praying for condonation of delay and dismissed the appeal as barred by limitation.
4. The present appellant approached the High Court in Writ Petition No. 610 of 1974 under Article 227 of the Constitution. The High Court declined to interfere with the order of the learned District Judge even though it was satisfied that the appellant had established that it was prevented by a sufficient cause from preferring the appeal in time. This is frankly unundestandable and exhibits a rigid and inflexible view of jurisdiction under Article 227 ultimately leading to injustice. This is what the High Court Says :

May be, if I had considered the matter as the Court of first instance I might have taken a different view, but unless it can be held that the view taken by the learned

District Judge was not a plausible view that cannot be reversed in exercise of the powers under article 226 of the Constitution.

Article 227 or Article 226 were devised to advance justice and not to thwart it. Therefore, accepting the finding of the High Court that sitting as trial court, it was satisfied that the appellant had made out sufficient cause for condoning the delay, we must interfere in this appeal so as to advance justice.

5. Accordingly this appeal is allowed and the Order and Judgment of the learned District Judge as well as of the High Court are set aside. The application made under Section 5 of the Limitation Act by the present appellant seeking condonation of delay in preferring the appeal before the learned District Magistrate is granted and delay is condoned and the appeal is admitted to file. The matter is remitted to learned District Judge with a direction to dispose of the appeal on merits.

6. Respondent 3 to 6 are dragged to this Court through no fault of theirs. Though in the facts of the case they ought not to have very seriously contested the application made by the appellant for seeking condonation of delay in preferring the appeal, however, as discretion is exercised in favour of the appellant, it is just and proper that the appellant shall pay costs incurred by the respondent 3 to 6 both in the High Court and this Court quantified at Rs. 1500 within one month from today.

7. Appellant shall also pay interest at 9 per cent on the amount of compensation that may be determined finally in the appeal from the date of the order of the Prescribed Authority.

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