

Counsel for the Petitioners:
Sri Ankit Mishra, Sri Mohd. Ali

Counsel for the Respondents:
C.S.C., Sri Umesh Chandra Pandey

Civil Law - Delay Condonation - Limitation Act, 1963 - Section 5 - U.P. Consolidation of Holdings Act, Section 11 (1), 48 (1) - Private opposite parties filed an application before A.C.O. seeking mutation on the basis of a Will-Deed allegedly executed by one Sri Bhagauti, the original tenure holder of the property, without impleading the wife of late Bhagauti, stating that she had died whereas she was alive. Consolidation Officer directed that the name of the private opposite parties be entered in the Chak in question. Wife of late Bhagauti was living with the opposite parties and did not know about the aforesaid order, being an illiterate lady; therefore, she could not file any appeal challenging the order dated 26.03.1981. She became aware of the aforesaid order in May 2005 when the behaviour of the private opposite parties became rude towards her. Thereafter, she filed an appeal and revision. Both were dismissed on the ground that there was an inordinate delay of 24 years in assailing the impugned order dated 26.03.1981 passed by the Consolidation Officer. Held: At least one opportunity should have been given to the wife of late Bhagauti so that she could adduce evidence apprising the authority that there was no Will-Deed of her late husband in favour of the private opposite parties. This is not a case wherein the revision should have been decided only on the ground that there was an inordinate delay in assailing the impugned order dated 26.03.1981.

Allowed. (E-5)

List of Cases cited:

1. Rikhdev & anr. Vs Additional District Magistrate (Finance), Azamgarh & ors.[2012 (30) LCD 712]

2. Roop Narain & ors. Vs Deputy Director of Consolidation & ors.2020 (38) LCD 2577

3. Ram Padarath & ors. Vs IInd Additional District Judge, Sultanpur & ors.; Writ Petition No.1732 of 1982

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Mohd. Ali, learned counsel for the petitioners, Sri Upendra Singh, learned Standing Counsel for the State-opposite parties and Sri Umesh Chandra Pandey, learned counsel for the Caveators/ private opposite party Nos.4 to 7.

2. By means of this writ petition, the petitioners have prayed for the following reliefs:-

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.03.2023, passed by the Deputy Director of Consolidation, Gonda in Revision No.530 of 2017 (Savitri and another vs. Ram Dheeraj (Died) through his legal representatives and others) filed under Section 48 (1) of U.P. Consolidation of Holdings Act, the order dated 04.07.2016, passed by the Settlement Officer of Consolidation, Gonda in Appeal No.769 of 2015-16 (Mst. Kalawati vs. Ram Dhani and others), filed under Section 11 (1) of U.P. Consolidation of Holdings Act and the order dated 26.03.1981, passed by the Consolidation Officer, Kshetra No.3, Utraula, District-Gonda in Suit No.140 of 1980 (Ram Dhani and others vs. Bhagauti and another), as contained in Annexure Nos.1, 2 & 3 respectively to the writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to

give effect to the impugned order dated 27.03.2023, passed by the Deputy Director of Consolidation, Gonda in Revision No.530 of 2017 (Savitri and another vs. Ram Dheeraj (Died) through his legal representatives and others) filed under Section 48 (1) of U.P. Consolidation of Holdings Act, the order dated 04.07.2016, passed by the Settlement Officer of Consolidation, Gonda in Appeal No.769 of 2015-16 (Mst. Kalawati vs. Ram Dhani and others), filed under Section 11 (1) of U.P. Consolidation of Holdings Act and the order dated 26.03.1981, passed by the Consolidation Officer, Kshetra No.3, Utraula, District-Gonda in Suit No.140 of 1980 (Ram Dhani and others vs. Bhagauti and another), as contained in Annexure Nos.1, 2 & 3 respectively to the writ petition.

The opposite party Nos.1, 2 & 3 may further be commanded to make consequential entry in the name of petitioners in the concerned records of the land of Araji Chak No.268, Khata No.267/2 and 269 being legal heirs and daughters of late Bhagauti, who was recorded tenure holder of the aforesaid land."

3. The basic premise to assail the impugned orders is that the private opposite parties have filed an application dated 06.01.1981 before the court of Assistant Consolidation Officer seeking mutation on the basis of Will-Deed allegedly executed by one Sri Bhaughati on 28.11.1980, the original tenure holder of the property in question, without impleading the wife of late Bhagauti as a party of that case saying that she has died whereas she was alive and remained alive for quite long time thereafter.

4. Learned counsel for the petitioners has drawn attention of this Court towards

an application dated 06.01.1981 (Annexure No.5) wherein it has been categorically indicated that the original tenure holder of the land in question, namely, Sri Bhagauti, has expired and in his life time he had executed a Will in favour of the private opposite parties. Sri Bhagauti was not having any son (male child) and his wife is also not alive. The applicants of that application/ the private opposite parties hereto have stated themselves as real cousin and since they were looking after Sri Bhagauti in his life time, therefore, Sri Bhaugauti has executed a Will-Deed in their favour. On the basis of the aforesaid application, the Consolidation Officer has directed for publication and the said publication was issued on 08.01.1981. As per the order dated 26.08.1981 passed by the Consolidation Officer, no objection has been filed on that publication. Therefore, after recording the evidence of marginal witness of the Will-Deed he directed that the name of private opposite parties be entered in the Chak in question i.e. Chak No.268, 267/2 and 269.

5. Learned counsel for the petitioners has stated that since the mother of the petitioners, namely, Smt. Kalawati, was alive on 26.03.1981 and the application dated 06.01.1981 was a fraudulent application which provided that the mother of the present petitioner, Smt. Kalawati, was not alive, therefore, the order dated 26.03.1981 passed by the Consolidation Officer is liable to be set aside as the aforesaid order is passed on the basis of fraudulent documents. However, the mother of the petitioners was living with the opposite parties and she could not know about the aforesaid order being illiterate lady, therefore, she could not file any appeal challenging the aforesaid order dated 26.03.1981. However, the mother of

the petitioners could know about the order dated 26.03.1981 in the month of May, 2005 when the behaviour of the private opposite parties hereto became rude against her and they stated her not to live with them, therefore, she filed an appeal under Section 11 (1) of U.P. Consolidation of Holdings Act on 24.05.2005 before the Appellate Authority i.e. the Settlement Officer of Consolidation along with an application under Section 5 of Limitation Act.

6. Learned counsel for the petitioners has further stated that the mother of the petitioners was said to be dead by the private opposite parties in the year 1981 but she being alive person has herself filed an appeal on 24.05.2005. The Appellate Authority has heard the application of Section 5 of Limitation Act being filed by the mother of the petitioners and decided the same vide order dated 04.07.2016 rejecting that application on the ground of inordinate delay of 24 years. The Appellate Authority has indicated in his order that the appellants, Smt. Kalawati, was getting old age pension and she was a Ration Card holder, therefore, she may not say that she is an illiterate persona and she may not aware about the law. The Appellate Authority has further stated that inordinate delay of 24 years has not been explained properly in the application filed under Section 5 of Limitation Act.

7. I have perused that application filed under Section 5 of Limitation Act and find that the said application is not happily worded. However, the fact remains that the impugned order dated 26.03.1981 was passed on the application wherein the mother of the present petitioners was declared as a dead person. Feeling aggrieved from the orders dated 26.03.1981

and 04.07.1916 the petitioners filed a revision before the Revisional Authority i.e. the Deputy Director of Consolidation under Section 48 (1) of U.P. Consolidation of Holdings Act. The Revisional Authority has also rejected the revision of the petitioners vide order dated 27.03.2023 on the ground that there is no infirmity or illegality in the order dated 04.07.2016 passed by the Settlement Officer of Consolidation i.e. the Appellate Authority inasmuch as the unexplained delay of 24 years would vitiate the claim of the revisionists/petitioners hereto.

8. Learned counsel for the petitioners has stated that since the very foundation set up by the private opposite parties before the Consolidation Officer is based on the wrong fact and one fraudulent document, therefore, the delay in challenging such order would be meaningless inasmuch as the factum of fraud would vitiate the entire proceedings and the order being passed by the Consolidation Officer.

9. Attention of this Court has been drawn by the learned counsel for the petitioners towards the judgment of this Court rendered in the case in re: ***Rikhdev and another vs. Additional District Magistrate (Finance), Azamgarh and others reported in [2012 (30) LCD 712]*** referring para-36, which reads as under:-

"36. In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888, the Apex Court stated:

"22. The judiciary in India also possesses inherent power, specially under

Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business."

10. On the basis of the aforesaid judgment of the Apex Court learned counsel for the petitioners has submitted that the order passed by the Consolidation Officer dated 26.03.1981 is liable to be quashed.

11. He has further submitted that the aforesaid ground relating to the fraud should have been considered by the Appellate Authority and the Revisional Authority but both the authorities have dismissed the appeal and the revision only on the ground of inordinate delay of 24 years.

12. Per contra, Sri Umesh Chandra Pandey, learned counsel for the private opposite parties has stated that since the delay of 24 years has not been explained by the petitioners while filing the appeal, therefore, the impugned orders being passed by the Appellate Authority and the Revisional Authority are perfectly just and proper. He has also drawn attention of this Court towards para-39 of the judgment of

this Court rendered in re: **Roop Narain and others vs. Deputy Director of Consolidation and others** reported in [2020 (38) LCD 2577]. Para-39 of the judgment reads as under:-

"39. In addition, it may be acknowledged that the jurisdiction of the Deputy Director of Consolidation to decide both questions of fact and law is very wide. It was hedged in with some limitations prior to the amendment made to Section 48 of the Act, introduced vide U.P. Act no.3 of 2002, in the form of Explanation (3). Under the unamended law also, their Lordships of the Supreme Court approved the principle that where the findings are perverse or not supported by evidence, it would be the duty of the Deputy Director to examine the entire case. This was held in Sheo Nand (supra), to which allusion has been made above. Now under the amended provisions of Section 48, very wide powers have been conferred on the Deputy Director to decide all questions of fact and law recorded by any subordinate Authority. He has also been conferred with the power to appreciate any oral or documentary evidence. Indeed, the enlarged powers under Section 48, conferred on the Deputy Director, vide U.P. Act no.3 of 2002, retrospectively w.e.f. November 10, 1980, make for a most non-conventional kind of revisional jurisdiction. But, the statute ordains it to be so. It is the duty of this Court to give full effect to the amended provisions of Section 48, read with Explanation (3). The amended provisions of Section 48 (as amended vide U.P. Act no.3 of 2002) read:

"In Section 48 of the principal Act, after explanation (2) the following explanation shall be inserted, namely:--

"Explanation (3).-The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence." "

13. Sri Pandey has further submitted that even if the petitioners are aggrieved from the Will-Deed instead of filing this writ petition, they should have filed a suit challenging the Will-Deed and if the Will-Deed is declared void, the petitioners may seek their claim on the property in question on the basis of order being passed by the Civil Court, but at this stage the writ petition would not be maintainable.

14. In reply to the aforesaid contention, learned counsel for the petitioners has stated that undisputedly the mother of the petitioners was a widow of the recorded tenure holder and she was alive when the application was filed by the private opposite parties then she should have been impleaded as opposite party in a case filed by the private opposite parties but the private opposite parties deliberately have not impleaded the mother of the petitioner (Smt. Kalawati) as opposite party and she could not know about the publication for the reason that she was living with the private opposite parties after the death of her husband (Sri Bhagauti) and admittedly the private opposite parties were looking after her. In support of the aforesaid arguments, he has referred the judgment of Full Bench of this Court delivered in the case in re: **Ram Padarath and others vs. IInd Additional District Judge, Sultanpur and others; Writ Petition No.1732 of 1982 connected with Writ Petition Nos.1126 & 1129 of 1983:**

6351 of 1982 and others, decided on 26th September, 1988 referring para-40 thereof, which reads as under:-

"40. We are of the view that the case of Indra Dev v. Smt. Ram Piari, 1982 ALJ 1308, has been correctly decided and the said decision requires no consideration, while the Division Bench Case, Dr. Ayodhya Prasad v. Gangaotri, 1981 AWC 469 is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void documents will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status and a tenure-holder is necessarily needed in which even relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void documents which made him to approach the court of law and such case he can also claim ancillary relief even though the same can be granted by the revenue court."

Reference answered.

15. Having heard learned counsel for the parties and having perused the material available on record, I find that while challenging the impugned order dated 26.03.1981 passed by the Consolidation Officer the mother of the petitioners (Smt. Kalawati) has not properly explained the reasons of delay in filing appeal. However, she has only stated that she being an illiterate lady could not know about the order dated 26.03.1981. However, she has

stated in the appeal as well as in the revision that after the death of her husband (Sri Bhagauti), who was the original tenure-holder, she was living with the family members of her husband, who are private opposite parties hereto, and they were looking after her property, therefore, she could not know the things that the family members of her late husband, the private opposite parties hereto, were having any malafide intention in their mind to usurp the property of her late husband on the basis of one Will-Deed whereas to the best of her knowledge there was no such Will-Deed. She has also stated in the appeal as well as in the revision that despite the fact that she was alive when the impugned order dated 26.03.1981 was passed, even when the application dated 06.01.1981 was preferred by the private opposite parties but she has been declared dead. She has also stated in her appeal and the revision that she had not been afforded an opportunity of hearing before the Consolidation Officer. However, the finding on that point has been returned by the Consolidation Officer that the publication was issued before passing the order impugned dated 26.03.1981, but no one has filed objection thereon.

16. Since the specific ground was taken by the mother of the petitioners that the application dated 06.01.1981 (Annexure No.5) was not proper wherein she was declared as dead person, therefore, atleast an opportunity should have been given to the widow of the original tenure-holder to put up her case. So far as the fact that the marginal witnesses of the Will-Deed appeared before the Consolidation Officer and have proved the factum of Will-Deed is concerned, at least one opportunity should have been given to her so that she could

adduce the evidence apprising the authority that there was no Will-Deed of her late husband in favour of the private opposite parties.

17. Notably, this is a case where the mutation has been sought on the basis of one Will-Deed which is not registered one as no recital to this effect has been given from either side and the widow of the original tenure holder was deliberately not made necessary party so the lacuna may not be filled through the publication.

18. In view of the aforesaid discussions, I find that all those aforesaid facts should have been considered by the Revisional Authority and this is not a case wherein the revision should have been decided only on the ground that there was inordinate delay in assailing the impugned order dated 26.03.1981 passed by the Consolidation Officer. Therefore, the Revisional Authority should have passed a fresh order considering the aforesaid facts and grounds so taken by the petitioners before the Revisional Authority.

19. Accordingly, the impugned order dated 27.03.2023 passed by the Revisional Authority i.e. the Deputy Director of Consolidation, Gonda is hereby set aside. The matter is remanded back to the Revisional Authority to pass a fresh order, strictly in accordance with law by affording an opportunity of hearing to the parties concerned by considering the facts and grounds so taken by the petitioners in the revision. Such order shall be passed within a period of six months from the date of production of a certified copy of this order.

20. The instant writ petition is, therefore, partly *allowed*.