

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2012  
CC 14763/2012

(From the judgement and order dated 18/03/2010 in SA No.829/2008, of The  
HIGH COURT OF JUDICATURE AT ALLAHABAD)

STATE OF UP AND ANR Petitioner(s)

VERSUS

ASHOK KUMAR AND ANR Respondent(s)

(With appln(s) for c/delay in filing SLP,c/delay in refiling SLP)

Date: 16/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Vijay Kumar Shukla, Adv.  
Mr. Sudeep Kumar, Adv.

For Respondent(s) Mr. Pramod Swarup, Sr. Adv.  
Mr. Akshay Verma, Adv.  
Ms. Pareena Swarup, Adv.  
Ms. Sushma Verma, Adv. (Caveator)

UPON hearing counsel the Court made the following  
O R D E R

The delay of 111 days in refiling the special lave petition  
is condoned.

This petition is directed against judgment dated 18.3.2010  
by which the learned Single Judge of the Allahabad High Court  
dismissed the Second Appeal filed by the petitioners and upheld the  
concurrent judgments and decrees passed by the trial Court and the  
lower appellate Court.

The petitioners have also filed an application for  
condonation of 649 days delay.

We have heard Shri Vijay Kumar Shukla, learned counsel for  
the petitioners and perused the record.

In paragraphs 2 and 3 of the application for condonation of  
delay, the petitioners have made the following averments:

"2. There is a delay of 649 days in filing the aforesaid  
Petition. It is submitted that the abovesaid delay is not  
intentional but is on account of the departmental /  
administrative procedures involved in before filing Petition for  
Special Leave to appeal. It is submitted that unlike the private  
litigant the matters relating to the Government are required to  
be considered at various levels and then only a decision is  
taken to file the Petition.

3. That it is respectfully submitted that copy of impugned  
judgment was received in the office of District Magistrate and  
thereafter, the District Magistrate vide its communication  
sought legal opinion from the DGC, Revenue and same was provided  
by the DGC, Revenue on 12.05.2010. Thereafter, the State

Government vide its communication sent a communication to the law department seeking approval for filing special leave petition in the above said matter. In the meanwhile, the Special Secretary Law and Additional Legal Remembrancer Government of U. P. accorded govt's sanction vide noting dated 29.12.2010 to file Special Leave Petition against the impugned order dated 18.03.2010 District Magistrate, Moradabad forwarded the relevant papers and record of the case to the Advocate on Record and the Standing Counsel for the State of U.P. and the same was received in the office of the Advocate on Record. Thereafter, certain other relevant documents were sought by the office of Advocate on Record for preparation of the Special Leave Petition. The aforesaid documents were supplied to the office of Advocate on Record in the 18 March, 2011. Thereafter, the aforesaid documents being in Hindi were sent for translation. On receipt of the documents the Special Leave Petition was got prepared and is now being filed."

In our considered view, the explanation given by the petitioners for delayed filing of the special leave petition is, to say the least, thoroughly unsatisfactory and there is absolutely no warrant for exercise of power by this Court under Section 5 of the Limitation Act.

We are also convinced that the petition does not deserve to be entertained because the petitioners have omitted to place on record the judgments and decrees passed by the trial Court and the lower appellate Court as also the memo of second appeal and without perusing the judgments of the two Courts along with the memo of second appeal, it is not possible to find any fault with the impugned judgment.

A reading of the judgment under challenge shows that after considering the arguments advanced before him, the learned Single Judge observed:

"After hearing the submissions advanced by learned counsel for the parties, it appears that the plaintiffs appellants have assailed the aforesaid two judgments on highly insufficient grounds and substantial questions of law. Substantial questions of law no. 1 and 2 as framed are not applicable in the facts and circumstances of the case as the appeal in question has been primarily decided on the ground that the property in dispute does not form part of quarter no. 10 of Tehsil Bhawan and also not gata no. 57 as claimed by the State. Substantial question of law no. 4 and 5 as framed are also not applicable in the facts and circumstances of the case. As regards substantial question of law no. 3 as framed in the appeal, both the courts below have clearly found that the property in dispute forms part of gata no. 57 measuring 0.008 hectares (2 decimals) which has been so recorded as "abadi janta" in all the revenue records including khatauni of Fasli Year 1386. Specific finding of fact in this regard has been recorded at page 14 of the certified copy of the appellate court judgment. The aforesaid is a pure finding of fact which cannot be said to be substantial question of law calling for any interference."

In our opinion, the view taken by the learned Single Judge cannot be termed as perverse so as to warrant interference by this Court under Article 136 of the Constitution.

The special leave petition is accordingly dismissed as barred by time and also on merits.

| (Parveen Kr. Chawla)  
| Court Master

| | (Phoolan Wati Arora)  
| | Court Master

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