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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

KRISHNA BALDEO AND OTHERS — Appellant

Vs.

STATE OF U.P.AND OTHERS — Respondent

(Before : S.N.Shukla, J)

Writ Petition No. 3389 of 2002 (M/S)

Decided on : 01-12-2008

- Civil Procedure Code, 1908 (CPC) - Section 96
- Land Revenue Act, 1863 - Section 210

A. Writ Petition — Maintainability — Delay and Laches — An admitted writ petition should not be dismissed solely on the ground of delay and laches, especially when the petitioner has provided a reasonable explanation for the delay, such as pursuing alternative remedies under bona fide belief or acting on legal advice. (Paras 35, 36, 37, 38)

B. Limitation Act, 1963 — Section 14 — Exclusion of time in good faith — Where a party pursues another civil proceeding diligently and in good faith, even if that court ultimately lacks jurisdiction or the remedy pursued is incorrect, the time spent prosecuting such proceeding should be excluded for the purposes of limitation. "Good faith" implies due care and attention, not necessarily legal acumen, and an illiterate litigant should not suffer for ill-advice from counsel. (Paras 21, 22, 23, 24, 25, 26, 27, 28, 29)

C. U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 331(4) r/w Civil Procedure Code, 1908 (CPC) — Section 100(1) — Second Appeal — Framing of Substantial Question of Law — In a second appeal, the appellate authority (Board of Revenue in this case) is mandated by law to formulate a

substantial question of law and record its satisfaction regarding such question. Failure to do so renders the judgment unsustainable, requiring a remand for fresh consideration on merits after framing the necessary question. (Paras 40, 41, 42, 43, 44)

D. U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 204 — Execution of Decree — Implied Correction of Revenue Records — A decree for eviction or declaring rights (under Section 202) passed by a competent court necessitates correction of revenue records as a natural consequence, even if the decree does not explicitly command such correction. The law does not require specific mention in the decree for correction of records; it is the duty of revenue authorities to align records with judicial pronouncements. If such a decree is not executed within the limitation period, it may impact the accrual of sirdari rights under Section 204. (Paras 31, 32, 33, 34)

JUDGMENT

Shri Narayan Shukla, J.

Heard Mr. Ravi Nath Tilhari, learned counsel for the petitioners and learned Standing Counsel for opposite parties 1 to 5 as well as Mr. Anoop Kumar Srivastava, learned counsel for opposite party No. 6.

The dispute relates to the land of Gata No. 292 bearing area 0.28 hectare and gata No. 336 bearing area 0.10 hectare situate at village Colenalganj Urban Area, Pargana Gawarich, Tehsil Colenalganj, district Gonda. One Smt. Dulara widow of Bale Ram was the recorded tenure holder initially as Sirdar of the land in dispute. She being widow and unable to cultivate the land had let it out to one Ala Din s/o Sri Elahi Bux for cultivation. The petitioner No. 1 is the son of Smt. Dulara and petitioner No. 2 and 3 are sons of Jagdish Prasad elder son of Smt. Dulara and opposite party No. 6 is the son of Ala Din. Smt. Dulara instituted a suit i.e. 23 of 66 under Section 202 of the U.P. Land Revenue Act for eviction of Asami. The father of opposite party No. 6 demanded the possession of the disputed land for cultivating the same but Mr. Ala Din refused to handover the possession. Ultimately, both the parties entered into compromise and submitted the same before the Judicial Officer, Tarabganj in which Mr. Ala Din admitted the Sirdari right of Smt. Dulara and conceded to decree the suit in her favour. Accordingly, the suit was decreed on 20.10.66 but it appears that the name of Smt. Dulara left to be mutated in the revenue record rather the name of Mr. Ala Din was entered into the revenue record in the column of original tenure holder. Therefore, Smt. Dulara on 4.10.67 moved an application for mutation before the Judicial Magistrate, Gonda, which was rejected on the ground of jurisdiction with the observation that let she file an application for entering her name in the

record before the court concerned. Thereafter, she again moved an application on 10.8.76 before the SubDivisional Officer, Tarabganj in which a report was submitted for order by the revenue officer on 28.9.76 but it appears that no order could be passed for mutation. Consequently, the name of both the parties continued in the revenue record showing Mr. Ala Din as Sirdar and Smt. Dulara under clause 9 entry. Thereafter Mr. Ala Din instituted a suit, which was registered as suit No. 283/502 under Section 229B and 209 of the U.P. Land Revenue Act for declaring him as tenure holder stating therein that he succeeded to get the said land from his ancestral and accordingly, he was in possession denying the right and title of Smt. Dulara over the land in dispute. Smt. Dulara contested the same on the ground that in suit No. 23 of 66 filed under Section 202 of U.P. Land Revenue Act, the parties had already entered into the compromise and accordingly, she was in possession of the land in dispute. Mr. Aladin moved an application for amendment of plaint, which was allowed and accordingly new para 8 was added to the effect that Smt. Dulara filed suit under Section 202 of U.P. Land Revenue Act but decree was not executed within the period of limitation provided therefor and he continuously remained in possession over that, as such, the right of Smt. Dulare ceased and he became Sirdar under Section 204 of Land Revenue Act. The plaint was further amended to the effect that from the title of the plaint, Section 229B be deleted. However, the prayer made in para 7 to grant decree of declaration, declaring Ala Din to be the Sirdar of the land in dispute, was never deleted, as such even after amendment it continued to be a suit under Section 229B, 209 of U.P. Land Revenue Act. The SubDivisional Officer, Tarabganj framed necessary issues and by means of judgment and order dated 28.4.1977, dismissed the suit with the findings that it was barred by resjudicata as suit No. 23 of 66 under Section 202 of Land Revenue Act was decreed on the basis of compromise and Smt. Dulara entered into possession of the land in dispute and continued in possession. Hence, Ala Din was not the Sirdar but Smt. Dulara was the Sirdar.

Being aggrieved with which, he filed an appeal bearing No. 244. In the meantime, Colenalganj area was declared as notified area. He moved an application to implead the President of the notified area Colenalganj, which was allowed and he was incorporated in the memo of the plaint on 19.5.1979. The Additional Commissioner, Faizabad Division, Faizabad (appellate authority), without going into the merits of the case and without recording any finding or assigning any reason, simply on the ground that a new party has been impleaded, set aside the order dated 28.4.77 passed by the SubDivisional Officer and remanded the case for decision afresh on merit by judgment and order dated 19.5.79. During the pendency of the case, Smt. Dulara died and was substituted by the petitioner No. 1 and Shri Jagdish Prasad, father of petitioners No. 2 and 3. After remand, they filed additional written statement for specific averments that they are in continuous possession over the land in dispute. The trial court vide judgment and order dated 30.4.1981 decreed the suit with the findings that the decree passed in case No. 23 of 66 did not operate as resjudicata as the same was not executed. The court also observed that Mr. Ala Din became Sirdar of the land in dispute under Section 204 of Land Revenue Act and further observed

that nowhere it is mentioned that on the ground of compromise deed, the name of Smt. Dulara was mutated and possession was handed over to her. Since the decree was not executed within one year, the opposite party No. 6 accrued his right and became Sirdar under Section 204 of Land Revenue Act.

The petitioners challenged the said order through first appeal No. 83/244 before the Divisional Commissioner, Faizabad, which was dismissed on 23.8.1984. They filed the second appeal No. 128/8384 before the Board of Revenue. That was also dismissed. It has been submitted by the petitioner that instead of filing the writ petition against the order passed by the Board of Revenue in appeal, the petitioners filed a suit for declaration of occupancy right, under bona fide belief that that was the proper remedy before the court of Civil Judge, which was dismissed in default. The petitioners applied an application for restoration of the same. However, in the meantime, the petitioner No. 1 contacted the learned counsel appearing in the present case in the first week of September, 2002, who advised him to challenge the order passed by the Board of Revenue by filing the writ petition before this Court. Accordingly, the petitioners have filed the present writ petition.

The learned counsel for opposite parties raised an objection against the maintainability of the present writ petition on the ground of laches as through the present writ petition filed in the year 2002, the petitioners have challenged the orders dated 25.4.1991 passed by the Board of Revenue, U.P. Allahabad in second appeal No. 128 of 198384. In the counter affidavit, the opposite party No. 6 admitted that the plot in dispute belonged to Smt. Dulara widow of Bale Ram, who being incapable of cultivation let it out to his father, Mr. Ala Din earlier in the year 1960. He has also admitted the institution of suit No. 23 of 66 by Smt. Dulara for eviction of his father treating him as asami as well as the compromise entered into therein and the decree passed on the said compromise but it has been submitted that the said compromise decree was never executed by the court and thus, Smt. Dulara never entered into the possession of the disputed land under the said order. It has further been submitted that deponent's father had never surrendered the possession in favour of Smt. Dulara and thus she was not in a position to get the benefit of the compromise decree. Later on, his possession was treated to be hostile and adverse possession against her. Consequently, under Section 204 of Land Revenue Act, his father became bumidhar with nontransferable right. In this manner, after expiry of limitation for execution of decree, revenue authorities recorded his name in column 3 of khata No. 137 F and since the right of adverse possession of his father had become confirmed for acquisition under Section 210 of Land Revenue Act, his father's name was recorded as tenure holder. Accordingly, it has been submitted that the SubDivisional Officer has not committed any error in rejecting the application of Smt. Dulara for mutation. The opposite party NO. 6 has disputed the explanation submitted by the petitioners on the ground of laches in filing the writ petition on the ground that delay was deliberate and intentional as they were pursuing their cases before the civil court but when they became hopeless to get the relief, diverted to file the present writ petition, which is liable to be dismissed on the ground of laches itself.

The petitioners have challenged the order of Board of Revenue on its merits as well as on the ground that the Board of Revenue had decided the second appeal without framing substantial question of law, which is unsustainable.

To support their respective contentions, learned counsel for the parties have cited some decisions which are discussed hereinunder :

Learned counsel for the petitioners has cited some decisions on the point of delay in filing the writ petition, which are quoted as under :

Admitted petition cannot be thrown out on the ground of delay and laches.

Vijay Kumar Rampal and others vs. Diwan Devi and others AIR 1985 SC 1669. In this case, the Hon'ble Supreme Court has held as under :

"Section 14 of the Limitation Act provides for exclusion of time of proceeding bona fide in court without jurisdiction. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings against the defendant shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in a good faith in a court which from a defect of jurisdiction is unable to entertain it. The expression good faith qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. Failure to pay the requisite courtfee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in section 14 of the Limitation Act. The High Court in our opinion was in error in holding that defective valuation and improper computation of courtfees discloses lack of good faith on the part of the plaintiff.

M/s Dehri Rohtas Light Railway Company Limited vs. District Board Bhojpur and others AIR 1993 SC 802, relevant portion of which reads as under :

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its on facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the right which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.....".

Deputy Collector, Northern SubDivision, Panaji vs. Comunidade of Bambolim AIR 1996 SC 148, the relevant paragraph of which reads as under :

"The crucial question is whether the appeal was presented bona fide within limitation. It is true that if the appeal is filed under "Recurso de Apelacao" it is well within time. If appeal is entertained under Section 96 of C.P.C. read with Section 54 of the Act, it is beyond limitation. The question is whether the appellant was pursuing the remedy bona fide. It is contended for the respondent that there are no bona fides on the part of the State and, therefore, Section 14 of the Limitation Act cannot be applied to the facts in this appeal. We are unable to agree with the counsel. The State is acting through its authorised representative and the counsel was in two minds, as to whether the appeal should be pursued under the Portuguese Code or under C.P.C. Since C.P.C. stood extended to G.D.D. on September 15, 1966, by which date there was a decree passed by the Reference Court, obviously the proceedings should be pursued under C.P.C. as per Section 53 of the Act. Therefore, the counsel was pursuing the remedy wrongly under the Portuguese Code. In consequence, the appeal came to be filed beyond limitation. Accordingly, there are bona fides in pursuing the remedy. The State was represented by the counsel and the counsel was in two minds as to whether the appeal should be pursued under the Portuguese Code or under the Code of Civil Procedure. There is a bona fide mistake on the part of the counsel in pursuing the remedy. Since the State acts through the counsel for the State and he is entitled to represent the State in all proceedings initiated in the Court, there was no need to file Vakalatnama but memo of appearance would be sufficient. Accordingly the order of the Judicial Commissioner is set aside."

Ghasi Ram and others vs. Chait Ram Saini and others AIR 1998 SC 2476, the relevant para of which is reproduced hereinunder :

"Learned counsel appearing for the respondents urged that, assuming the High Court suffered from disability to decide the rights of party on facts, the plaintiff appellant did not prosecute the revision petition before the High Court in good faith; therefore, the appellant cannot derive any benefit of Section 14 of the Act. Before the High Court it was not dispute that the plaintiffappellant has prosecuted the other civil proceeding with due diligence. What is disputed is that the plaintiff did not prosecute the civil proceeding in good faith. "Good faith" is defined in the Act as under:

"2.....

(h) "good faith" nothing shall be

deemed to be done in good faith

which is not done with due care and

attention;

....."

The aforesaid definition shows that an act done with due care and attention satisfies the test of "good faith". "Due care" means that sufficient care was taken so far as circumstances demanded and there was absence of negligence. In other words, plaintiff has taken sufficient care which a reasonable man is expected to take in order to avoid any injury. It is not shown here that the plaintiffappellant has not taken sufficient care in prosecuting the remedy. Where a plaintiff is illiterate and is not acquainted with the procedural law, the only thing that he can do is to consult some lawyer for advice. It is not disputed that the plaintiffappellant filed the revision before the High Court on the advice of his counsel, although it may be that he was illadvised. Learned counsel for the respondents contended that any act done in violation of law cannot be described as act done with due care. No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil proceeding in good faith. It is based on sound principle of law. But the said rule can not be enforced in rigidity in every case. Each case has to be judged on its own merits. In the present case the plaintiffappellant is not a legally trained person and thus he sought advice of his counsel for future course of action. The counsel advised him to file revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 C.P.C. it is also true that at that time there was no unanimity about remedy of revision amongst various High Courts. Plaintiffappellant's revision was entertained for hearing by the high Court and that gave expectation to the plaintiffappellant that order of the executing court may be set aside and further there was no inordinate delay in filing the suit under Rule 103. If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiffappellant should not be accorded the benefits of section 14 of the Act. Does the interest of justice demand that plaintiff should be refused benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is illadvised by his counsel. On the facts and circumstances of this case, we are satisfied that the plaintiffappellant prosecuted the earlier civil proceeding in good faith.

General Manager, U.P. Govt. Roadways, Bareilly Region and another vs. State Transport Appellate Tribunal, Uttar Pradesh and others AIR 1971 Allahabad 263, relevant paragraph of which reads as under :

5. On behalf of the contesting opposite party, a preliminary objection was raised that these writ petitions are barred by limitation. This preliminary objection is, however, devoid of any force for the simple reason that no limitation for filing a writ petition is prescribed by any law. It is only discretionary with the Court not to entertain a writ petition on the ground of laches, if the petitioner approaches the Court after an undue delay of the passing of the impugned order. In the present case, the Bench while admitting the writ petitions was satisfied that the delay had been explained and that there were no laches on the part of the petitioners. Hence, this objection is no more open to the contesting opposite party at this

stage.

Rambul Singh vs. Board of Revenue for Rajasthan and others AIR 1957 Rajasthan 19 (V 44 C 8 Jan.), relevant paragraph of which reads as under:

"On the point of delay Shri R. C. Sharma has argued that his client was strenuously prosecuting the case after it had been remanded to the Court of the SubDivisional Officer and thereafter before the Board of Revenue, & when he lost his case finally that the Court he has come to this Court without any delay and that he has not been negligent in this respect.

It may be noted that though a remand order was made by the Board of Revenue interpreting the notification as early as 1091953, the petitioner had been contesting the case in the revenue Courts and he has come to this Court after its final decision there.

On the other hand, learned counsel for the opposite parties has placed reliance upon the following judgments.

Phool Chand and another vs. Dy. Director of Consolidation, Azamgarh and others 2004(22) LCD 474, paragraph 5 of which is reproduced as under :

"5.In connection with this, it may be noticed here that mistake on the part of a counsel/lawyer has been held to be sufficient cause in a catena of decisions. The essence that surfaces from the text of various decisions of the Apex Court in connection with this, appears to be that sufficient cause should receive a liberal construction as so to advance substantial justice when no negligence nor inaction, nor want of bonafides is imputable to the party concerned. As a matter of fact what is sufficient cause, cannot be described with certainty for the obvious reasons that facts on which questions may arise may not be identical inasmuch as what may be sufficient cause in one case may be otherwise in another. However, what is of essence is whether it was an act of prudent or reasonable man (See Shakuntala v. Kuntal, AIR 1969 SC 575)."

Framing of substantial question of law.

M/s Wyawahare & sons & Ors. vs. Madhukar Raghunath Bhave AIR 2007 SC 3037, relevant paragraph of which reads as under:

"A perusal of the impugned judgment passed by the High Court does not show that any substantial question of law has been formulated or that the second appeal was heard on the question, if any, so formulated. That being so, the judgment cannot be maintained."

Ambika Prasad and others vs. Kamla Prasad and another 1972 RD 77. In this case, the question for consideration before the Full Bench of five Hon'ble Judges was "Whether Explanation III of Section 20 of the U.P.Z.A. and L.R. Act applies only in the case of an order or decree of a competent court commanding or directing correction in records or

whether it applies also in the case of an order or decree of a competent court necessitating correction in records as a consequence of the passing of such an order or decree?"

In this case, the appellants filed three suits in revenue courts against the respondents under Sections 175/179, U.P. Tenancy Act for the latter's ejection from the plots in dispute. These suits were compromised on March 27, 1948. The case of the plaintiff-appellant was that they took possession of the plots in dispute in terms of the compromise and they were in actual possession of the same in the year 1356F. As a consequence of the compromise decree the revenue authorities ought to have corrected the entry in the records of 1356F. by striking off the names of the defendant-respondents as subtenant. Even if the entry of 1356F. was not actually corrected it shall be deemed to have been corrected by virtue of Explanation III to Section 20 of the U.P. Z.A. And L.R. Act (hereinafter referred to as the Act.). The case of the defendant-respondents was that as they were recorded as occupants of the plots in dispute in the Khasra and Khatauni of 1365F. They had acquired Adhivasi Rights under Section 20(b) of the Act. Since the compromise decree did not in terms require any correction to be made in the said entry Explanation III would have no application.

"9. A decree is a final adjudication of the rights of the parties and is enforceable by virtue of its own authority. Under the provisions of the U.P. Land Revenue Act and the Land Records Manual it is the duty of the revenue authorities to correct entries in terms of the decree passed by a competent court relating to agricultural land. Inasmuch as, the law does not envisage any class of decrees in which it is specifically to be mentioned that the village records be corrected in accordance with the decree, it cannot be held that the legislature intended by the words 'requiring any correction' the existence of decrees where there is such a specific mention. I am of the opinion that the words 'requiring any correction in records' only mean that the consequence of the decree is that the record should be corrected in order to bring the records in line with the decree and to give effect to it."

In the said case, it has been observed that law does not require that any decree should clearly state that effect to its terms shall be given by correcting the revenue records in accordance with it. The correction of revenue records in accordance with the decree is a natural and logical consequence of the decree itself, the decree being the command of the court that the rights of the parties had been finally adjudicated upon by the court as stated in the decree. The words 'requiring correction' must, therefore, be read in a wider sense and should be held to lay emphasis on the nature of the decree. In my opinion the effect of these words is that the nature of the decree should be such that correction of records should follow. With the observation, the question has been answered in the manner that Explanation III to Section 20 of the Act applies not only to cases where the decree states that the revenue records be corrected accordingly (the law does not require the decree stating so and if it is ever done it is by practice), but also to cases where the nature of the decree is such that correction of records becomes a necessary consequence in order to obey the command of the court contained in the decree.

Nanhun vs. Dy. Dir. of Consolidation 1973 RD 146, the relevant paragraph of which reads as under :

"3. Rule 39 of the Revenue Court Manual lays down that in any case in which the effect of the order or decree passed by a court involves a change in the Patwari's records other than a change in the Khewat the court shall draw up a separate order in the prescribed form giving full details of the entries to be made and the entries to be expunged and direct the Tehsildar to have the new entries recorded in the Patwari's papers. The decree under Section 175 was for the ejection of the appellant. The appellant was actually ejected and on his ejection it was incumbent upon the authorities to have got the necessary corrections made in the village papers. The Dakaldihani which was carried out in pursuance of the decree for ejection involved a change in the Patwari's record as contemplated by Rule 39 of the Revenue Court Manual. It is true that the entries were not actually corrected and consequently Explanation II to Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act may not apply. But, in our opinion, the provisions of Explanation III to Section 29(b)(i) are clearly attracted. Explanation III lays down that for the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order requiring any correction in records had been made before the said date and it became final even if the correction may not have been incorporated in the records. In the instant case, it has not been stated in the Writ Petition that no order as required by Rule 39 aforesaid was issued. The provisions of said rule are mandatory and in view of illustration (e) to Section 114 of the Evidence Act it can safely be presumed that such an order was issued. The decree and the order issuing Parwana for delivery of possession read with the mandatory requirements of Rule 39 aforesaid had the effect of requiring necessary correction being made in the records as contemplated by Explanation III aforesaid. Consequently even if the correction may not have been incorporated in the records it would be immaterial and the entry of 1356F. Would be deemed to have been corrected before the date of vesting. Such an entry on the face of it could not confer any Adhivasi rights on the appellant."

Subhana and another vs. Dy. Director of Consolidation and others 1973 A.L.J. 375. In this case, this Court held that it can be presumed that on the passing of the compromise decree, orders in accordance with paragraph 39 must have been passed and the correction done. The existing entries showed Subhana as the occupant. That clearly required correction in accordance with the declaratory decree. In this context the decree in favour of Mohammad Ahmad in the declaratory suit must be deemed to have corrected the entry of 1356F., within meaning of Explanation III to Sec. 20(b).

In reply, Mr. Anoop Kumar, learned counsel for the opposite parties has placed reliance upon the following judgment.

Ram Chandra and others vs. Dy Director of Consolidation, Jaunpur and others 1984 RD 435. In this case, the question for consideration was 'whether the decree obtained in suit

under Section 202 of U.P.Z.A. & L.R. Act, I of 1951 stood executed by filing of application so as to prevent accrual of Sirdari rights under Section 204 of the Act.' This Court observed that Section 204 of U.P.Z.A. & L. R. Act provides that if a decree has been obtained or if it has been obtained but has not been executed within period of limitation then the Asami acquires rights of Sirdar. The Hon'ble Supreme Court has held as under :

"Rights are lost if the rightful owner fails to obtain possession within time. After dismissal of appeal opposite party continued in possession till consolidation was enforced. Their possession was contrary to law. By inaction and lapse of time petitioner lost his rights.

The controversy was very narrow whether this decree was executed so as to prevent accrual of Sirdari right under Section 204. It depends as to what meaning should be given to the word 'executed'. According to dictionary, meaning of 'execution' is, 'to carry', 'to perform'. In other words the decree passed in favour of petitioner should have been carried out or enforced before it could be held that it was executed. Carry out of a decree for possession of agricultural land naturally means its exhaustion by obtaining possession, symbolical or otherwise. It is well settled that an act of Court or authority does not act prejudicially to any of the parties.

This fact is not disputed that after dismissal of the second appeal No. 128 of 198384Gonda by the Board of Revenue instead of challenging the order passed by the Board of Revenue, the petitioners adopted recourse to file a suit for declaration of occupancy right before the court of Civil Judge, which was dismissed in default. He moved an application for restoration of the same. In the meantime, under the advice of learned counsel, he challenged the order of Board of Revenue through the instant writ petition before this Court. The petitioners have given an explanation of laches in the manner that he filed the suit under bona fide belief that this is an appropriate remedy. However, when he was advised properly to file the present writ petition against the order of Board of Revenue, he filed the the present writ petition.

Indisputedly, the order dated 25.04.2001 passed by the Board of Revenue has been challenged through the present writ petition filed in the year 2002 but since the petitioner adopted the said course under the advice of learned counsel, that can be said a proceeding under the bona fide belief of the petitioners.

After perusal of the record, I also find that the petition has already been admitted by this Court by means of an order dated 10.10.2002 and this Court proceeded to pass interim order on the same very date. Therefore, in the light of the decision of the Hon'ble Supreme Court cited on this point, I am of the view that the delay in filing the writ petition is liable to be condoned and now at this stage, the present petition cannot be thrown out on this very point. Thus, the objection raised by the opposite party against the maintainability of the writ petition on the ground of delay is hereby overruled.

Before entering into the merits of the case, one more point has to be considered as to

whether the order of the Board of Revenue passed in second appeal without formulating substantial question of law can be maintained ?

Since the proceeding has taken place under U.P.Z.A. & L. R. Act, 1950 before the court below, it is necessary to reproduce Section 341 of U.P.Z.A. & L.R. Act, 1950, which reads as under:

"341. Application of certain Acts to the proceedings of this Act. Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fess Act, 1870, the Code of Civil Procedure, 1908 and the [Limitation Act, 1963][including section 5 thereof] shall apply to the proceedings under this Act.

Further, subSection (4) of Section 331 which speaks for cognizance of suits, etc under this Act, is also reproduced as under:

"331(4). A second appeal shall lie on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908 from the final order or decree, passed in an appeal under subsection (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

SubSection (1) of Section 100 of C.P.C. is also reproduced as under :

"100(1). Second appeal.(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

Thus, provisions of subsection (1) of Section 100 C.P.C. Speaks that Court has to show its satisfaction that the case involves substantial question of law. Therefore, in the light of the judgment of Hon'ble Supreme court rendered in the case of M/s Wyawahare & sons vs. Madhukar Raghunath Bhave (supra), and after reading the judgment of the Board of Revenue, I am of the considered opinion that since the Board of Revenue did not formulate the substantial question of law and has failed to show its satisfaction on any of the substantial question of law, if any, involved therein, the judgment and order passed by the Board of Revenue is unsustainable. Therefore, without entering into the merit of the controversy involved in the present case, I hereby quash the order dated 25.4.1991 passed by the Board of Revenue, U.P. in second appeal No. 128 of 198384gonda and remit the matter to the Board of Revenue to decide the same afresh after framing substantial question of law as well as after providing opportunity of hearing to the parties.

The writ petition is allowed.