
(2014) 09 AHC CK 0242

In the Allahabad High Court

Case No : Writ B Nos. 29469 and 29481 of 2014

Bhanu Pratap Singh Yadav Degree College

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 4, 4(2), 4(20)

Citation : (2014) 09 AHC CK 0242

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : G.C. Dwivedi and Sandhya Dwivedi, Advocate for the Appellant

Judgement

Anjani Kumar Mishra, J.—After hearing the learned counsel for the parties, I had passed an order on 1.8.2014, which is being quoted herein under:

"This writ petition has been filed seeking a writ of mandamus directing respondent nos. 2 and 3 to decide the mutation application with regard to plot no. 896/1 situate in village Basahara, Tappa Daiya, Tehsil Meja, district Allahabad filed claiming on the basis of a registered sale deed dated 12.9.2013 said to have been executed in favour of the petitioner.

I have heard Sri G.C. Dwivedi, learned counsel for the petitioner and learned standing counsel.

In this case the learned standing counsel was directed to obtain instructions as to why the mutation application was not being decided. Instructions were received to the effect that notification u/s 4(2) of the UP Consolidation of Holdings Act whereby village in question brought under consolidation operation, has been stayed by this court in WP No. 25702 of 1999 vide order dated 30.12.1999. Initially this interim order was passed for a limited period. Subsequently, by order dated 6.4.2000 this interim order was extended till further orders. This order is operating even today, as is clear from the perusal of the record of the writ petition no. 25702 of 1999 which has been summoned and placed before the

Court.

At this juncture Sri G.C. Dwivedi, counsel for the petitioner has submitted that notification u/s 4(2) of the Act was issued on 14.10.1983. He further states that as per instructions received by the standing counsel itself, the chaks were carved out and possession has been delivered to the tenure holders. It is after these proceedings have been completed that the interim order was granted on 6.4.2000 staying the operation of the notification u/s 4. He, therefore, submits that the interim order has no meaning and therefore is liable to be ignored.

He further submits that in pursuance of order dated 21.12.2012 passed in WP No. 67699 of 2012, Shyams Charan Vs. State of UP and others, the name of Shyama Charan, who had also obtained a sale deed of certain land in the unit in question, was mutated. This sale deed in favour of Shyama Charan has been executed by one Smt. Shyam Kali. Subsequently, Smt. Shyam Kali purchased another piece of land in this village and after obtaining a direction from this Court in WP No. 58342 of 2013 dated 30.9.2013. Shyam Kali was also mutated in pursuance of the sale deed executed in her favour. On the strength of these two proceedings, learned counsel for the petitioner has submitted that the name of the petitioner is also liable to be mutated and necessary directions should be issued by this Court as has been issued in WP No. 67699 of 2012 and WP No. 53842 of 2013.

Counsel for the petitioner has also placed before the Court the order dated 19.5.2014 passed by me in WP No. 25303 of 2014; Santosh Kumar Singh Vs. State of UP and others. This writ petition had been filed seeking a direction similar to the one that is sought in the instant writ petition. However, since the copy of order sheet had not been filed, therefore, I had disposed of the writ petition with the direction to the Consolidation Officer concerned to dispose of the pending objection as expeditiously as possible in accordance with law after hearing all necessary parties. No specific time frame had been fixed. This writ petition was disposed of on the first date of hearing itself without calling for any counter affidavit. It appears that even the other two writ petitions had been similarly disposed of without calling for counter affidavits. It is on account of this fact that the operation of the interim order whereby notification u/s 4(20) has been stayed, was not brought to the notice of the court. It is thus clear that by three orders relied upon by the counsel for the petitioner, appear to have passed by the Court in ignorance of the interim order of WP No. 25702 of 1999.

In the aforesaid facts and circumstance, the learned standing counsel is called upon to address the court as to whether this Court has jurisdiction to pass orders directing the authorities to expunge or reverse the entries that may have been made in the revenue records in pursuance of the direction issued by this Court in the aforesaid three writ petitions, which directions are clearly in ignorance of the interim order which is operating since the year 2000 and for this purpose the matter may be put up in the additional cause list tomorrow.

At this juncture, counsel for the petitioner Sri Dwivedi has prayed that he may be permitted to withdraw this writ petition. Since several orders have been passed by this Court in ignorance of an interim order which is still operative and about which, it is safe to assume, was within the knowledge of the petitioners of the various petitions mentioned above. In any case, there is no doubt that any mutation orders passed by the consolidation authorities after 30.12.1999 are in the teeth of the interim order of the said date in WP No. 25702 of 1999. I, therefore, refuse to permit withdrawal of this writ petition.

This writ petition shall now be decided after considering the submissions made by the learned standing counsel as also such other submissions that may be made by counsel for the petitioner.

Let this matter be put up tomorrow alongwith the record of WP No. 67699 of 2012, Shyam Charan Vs. State of UP and others decided on 2.12.2012."

2. On the next date, i.e. 2.8.2014, the following order was passed, which is being reproduced below:

"Heard Sri Sanjai Goswami, who has appeared for the State and Sri G.C. Dwivedi who has appeared for the petitioner.

In pursuance of the order passed by me yesterday i.e. 1.8.2014, Sri Dwivedi has made a request to file supplementary affidavit to verify the facts. He states that this affidavit is required to clarify the situation as the court is under the impression that the petitioner has concealed material facts. I have considered this request and I reject the same for the reasons that no orders have been passed on merits in this writ petition. The relief that has been claimed cannot be granted in view of the admitted legal position that proceedings for consolidation pursuant to the notification u/s 4(2) of the UP Consolidation of Holdings Act have been stayed by this court by the interim order dated 30.12.1999 in WP No. 25702 of 1999.

Since relief prayed for cannot be granted till such time the interim order is vacated or modified, I see no justification to grant any time for clarifying the averments that have been made in the writ petition.

Since I have heard Sri Sanjai Goswami on merits on the issue as indicated in the order passed yesterday (1.8.2014), the orders are reserved."

3. Thereafter, in pursuance of the said order dated 2.8.2014, I heard Sri Sanjai Goswami, who appeared for the State-respondents, as also the learned counsel for the petitioner. I perused the record of the instant writ petition, as also the records of the Writ Petition Nos. 25702 of 1999, 5384 of 2013, 29481 of 2014 and Writ Petition Nos. 67699 of 2012 and 25702 of 2000.

4. In so far as WRIT-A No.-25702 of 2000: Home Chandra vs. U.P.S.R.T.C. and another is concerned, this writ petition is a service writ and has been dismissed as not pressed vide order dated 20.7.2000. This writ petition is in no way

connected with the other writ petitions of this bunch. It is, therefore, de-tagged from the bunch.

5. I had also summoned the record of Writ Petition no. 25303 of 2014 which had been disposed of by me on 19.5.2014 as copy of the passed therein had been produced by the learned counsel for the petitioner Mr. G.C. Dwivedi. This petition is also connected with this bunch.

6. Insofar as the instant writ petition, as also the Writ Petition Nos. 53842 of 2013, 29481 of 2014, 25303 of 2014 and 67699 of 2012 are concerned, they have all been filed seeking identical relief's. The allegation in all these writ petitions is that the petitioners therein had purchased certain land by means of registered sale-deeds. The mutation applications have been filed for mutating the names of the petitioner-purchasers, which proceedings are pending and, therefore, directions for expeditious disposal of such mutation applications was prayed for.

7. Writ Petition Nos. 25303 of 2014, 53842 of 2013 and 67699 of 2012 were all disposed of by separate orders, directing the respondents therein to dispose of the applications u/s 12 of the U.P. Consolidation of Holdings Act (for short, the "CH Act") within a specified period.

8. It is the case of the learned counsel for the petitioner in the instant writ petition, and which is not disputed by Sri Sanjai Goswami, that in pursuance of the directions issued by this Court for expeditious/time bound disposal of the mutation applications, mutation order have been passed and the purchasers have been mutated over the land purchased by the respective petitioners.

9. Examination of the records of the writ petitions in the bunch reveals that in none of these petitions, the petitioners have averred that the mutation applications were not being considered on account of the interim order operating in Writ Petition No. 25802 of 1999, whereby the notification u/s 4(2) of the CH Act had been stayed by this Court. It is also clear from the perusal of the orders passed by the writ Courts that the directions was only for expeditious disposal of the mutation applications. No direction had been issued for actually mutating the names of the petitioners in these writ petitions.

10. The consolidation authorities concerned were well aware of the stay order operating in Writ Petition No. 25702 of 1999; yet, as admitted between the parties, in compliance of such directions for expeditious disposal and taking shelter of such directions, the consolidation authorities are said to have passed orders on mutation applications filed u/s 12 of the CH Act, which they could not have done since the notification, whereby the unit was brought under consolidation operations, had been stayed by this Court. Since the stay order was operating, the authorities, at best, could have passed an order staying such proceedings and/or deferring the disposal of the mutation applications till Writ Petition No. 25702 of 1999 was decided or the interim order operating therein was vacated. They could not, taking shelter of the directions for expeditious

disposal, have passed the orders on the mutation applications allowing them. Any such order, therefore, is wholly without jurisdiction and has been fraudulently and collusively obtained and must therefore necessarily be set aside.

11. It is also clear that all the petitioners in these writ petitions did not approach this Court with clear hands. They failed to disclose that the consolidation operations had been put in abeyance on account of the interim order staying the notification u/s 4(2). In such circumstances, the orders passed for mutating the various petitioners over the land purchased by them in proceedings u/s 12 of the CH Act are wholly without jurisdiction and are liable to be set aside.

12. The matter, therefore, is remitted to the Collector, Allahabad, for ensuring that all such orders, which have been passed pursuant to the directions of this Court for expeditious disposal of the mutation cases in Writ Petition Nos. 53842 of 2013, 29481 of 2014 and 67699 of 2012, and which have been held to be fraudulent and without jurisdiction by me hereinabove, be expunged forthwith. The Collector, Allahabad, after expunging the names of the persons entered in pursuance of such illegal orders, will issue notices to such persons, whose names are expunged, affording them a post-decisional hearing.

13. The said approach is being adopted in view of the law laid down in U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others, wherein it has been held that no opportunity of hearing is required before cancelling an admission obtained by fraud.

14. Subsequently, this Court in the case reported in AIR 1996 Allahabad 88: Muzeeb Vs. D.D.C. Azamgarh and others has held that in cases of fraud, it is enough to afford post-decisional hearing to the concerned parties. The relevant portion of the judgment is extracted below:

"... This will also exclude possibility of error, which may arise due to want of opportunity of hearing and a possible error will also stand rectified in maintenance of correct revenue entries. For said reason a post order opportunity of hearing is necessary to person adversely affected in cases where an entry is expunged or corrected in revenue records and order correcting entry is passed without affording opportunity of hearing to person adversely affected. Correcting an entry to be based on forged or non-existing order, to which person aggrieved raises an objection that the order of correction has been wrongly passed, the aggrieved person is entitled to be heard after correction being done."

15. The Collector, Allahabad, is further directed to conduct a detailed enquiry in the matter and to identify the persons who have passed orders, which are wholly without jurisdiction, fraudulent and collusive taking shelter of directions issued by this Court, which were directions only for expeditious disposal of the applications for mutation. The fact that such directions have been construed as directions for allowing the mutation applications, lead to only one conclusion, namely that the authorities passing the orders colluded with the applicants (petitioners) and passed an order for which such authorities had no jurisdiction at all. Once such

persons have been identified, the Collector shall take appropriate action against them and shall furnish a report to this Court within 2 months from the date of this order being served upon him. A copy of this order shall be given to the learned Standing Counsel within 3 days for being transmitted to the Collector, Allahabad forthwith.

16. In so far as the instant writ petition and Writ Petition No. 29481 of 2014 are concerned, the relief claimed therein cannot be granted in view of the interim order passed in Writ Petition No. 25702 of 1999. The consolidation authorities cannot proceed with the application of the petitioners as the notification u/s 4(2) of the CH Act, bringing the unit under consolidation operations, has been stayed. No mandamus can, therefore, be issued to the consolidation authorities to dispose of the mutation application filed by the petitioners u/s 12 of the Act. However, the writ petitions are kept pending and the same be listed at the top of the list as the first case on 1.12.2014 on which date the Learned Standing Counsel shall file an affidavit of a responsible officer, not below the rank of a Sub-Divisional Magistrate, intimating the actions taken by the Collector, District Magistrate, Allahabad, respondent no. 2, in compliance of this order.

17. List on 1.12.2014 at the top of the list as the first case, as directed above.