

(2015) 05 AHC CK 0253
In the Allahabad High Court
Case No : Writ C. No. 26881 of 2015

Dan Bahadur Yadav

APPELLANT

Vs

Addl. Commissioner (Judicial), Gorakhpur and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2015) 128 RD 793

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : R.C. Singh, for the Appellant

Final Decision : Disposed off

Judgement

Ran Vijai Singh, J—Heard Sri R.C. Singh, learned Counsel for the petitioner and learned Standing Counsel appearing for the State-respondents. This writ petition has been filed for issuing a writ of certiorari quashing the order dated 29.11.2014 passed by the learned Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur in Revision No. 2014050001610/G/2014 (Dan Bahadur Yadav v. Anil Kumar Tripathi) and order dated 10.1.2014 passed by the Naib Tehsildar, Pipraich, Sadar, Gorakhpur in case No. 2148 of 2013 (Dan Bahadur Yadav v. Amresh Singh and others).

2. Vide order dated 10.1.2014, the restoration application filed by the respondent No. 4 seeking recall of the order dated 1.8.2013 passed by the Naib Tehsildar has been dismissed, whereas by the subsequent order dated, 29.11.2014, the revision filed against the order dated 10.1.2014 has been dismissed.

3. The facts giving rise to this case are that in a proceeding under section 34 of the U.P. Land Revenue Act, 1901, being case No. 2148 of 2013 (Dan Bahadur Yadav v. Amresh Singh and others), in which respondent No. 3 was a party, the mutation application was allowed vide order dated 1.8.2013. Seeking recall of this order, respondent No. 4, claiming himself to be the partner of M/s. Bhavya

Colonizers, Gorakhpur, filed an application on the ground that with respect to the aforesaid land, a mutation application is already engaging attention of the Naib Tehsildar, in which objection was filed, but leaving the same, a fresh mutation application was filed in which the order dated 8.1.2013 was obtained. The application was barred by time. This application was allowed by the Tehsildar vide order dated 10.1.2014. Aggrieved petitioner, filed revision against the said order on the ground that while passing the impugned order dated 10.1.2014, the petitioner was neither noticed, nor heard.

4. Learned Counsel for the petitioner contends that M/s. Bhavya Colonizers, Gorakhpur has no right and interest in the aforesaid land, therefore, his application ought to have been rejected. The learned Additional Commissioner, in the impugned order, observed that with respect to the same land, in another mutation case between the same parties, the objection was filed, which is pending and pending that, another application was filed by the petitioner and the petitioner was successful in getting the order dated 1.8.2013 by concealing the facts. It has also been observed that pending one mutation application, another mutation application cannot be maintained.

5. Learned Counsel for the petitioner vehemently contended that there was no such case pending and the learned Additional Commissioner, while passing the impugned order has neither disclosed the number of the case, which is alleged to be pending before the Naib Tehsildar, nor given the description of the parties, nor its contents have been disclosed and the bald allegation of the other side has been believed and on that basis, the impugned order has been passed, which cannot be sustained in the eye of law.

6. Prima facie, there appears to be some substance in the submissions of learned Counsel for the petitioner. From the perusal of the order of the learned Additional Commissioner (Judicial), it transpires that neither the case number, nor the name of the parties, nor its contents have been disclosed in the impugned order, which has been made basis for dismissing the revision and recalling the order dated 1.8.2013 vide order dated 10.1.2014.

7. However, considering the nature of the controversy involved in the present case, I am not inclined to call for counter affidavit and keep the writ petition pending.

8. The writ petition is disposed of with the liberty to the petitioner to seek recall of the order dated 29.11.2014 passed by the learned Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur in Revision No. 2014050001610/G/2014 (Dan Bahadur Yadav v. Anil Kumar Tripathi) within a period of two weeks from today along with the certified copy of the order of this Court. In case such an application is filed, learned Additional Commissioner (Judicial), Gorakhpur Division, Gorakhpur shall record a specific finding on the grounds taken by the petitioner in the recall application with regard to non-filing of objection and non-pendency of the earlier case alleged to be pending before the Naib Tehsildar, of

which notice has been taken in the impugned order passed by him, expeditiously within a period of three months from the date of filing of the application in accordance with law, after hearing all concerned, without granting any unnecessary adjournments to the learned Counsel for the parties. In case any adjournment is sought for, that may be granted only after imposing cost of not less than Rs. 500/- per adjournment upon the party seeking adjournment with the direction to deposit the cost by the next date fixed. It is provided that in case there was any interim order operating in the revision that will remain operative till the fresh order is passed on the petitioner's recall application.