
(2006) 07 AHC CK 0217
In the Allahabad High Court

Dinesh Kumar

APPELLANT

Vs

Asstt. Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A
Constitution of India, 1950 — Article 226

Citation : (2007) 1 AWC 277 : (2006) 2 RD 428

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Judgement

S.N. Srivastava, J.—The real focus of challenge in the instant petition is on the order dated 10.6.1999 passed by Asstt. Consolidation Commissioner. Agra whereby order dated 28.10.1989 passed by Asstt. Consolidation Officer in case No. 5492 u/s 9 of the U.P.Z.A. and L.R. Act Dinesh Kumar v. State of U. P., was set aside.

2. Before delving in to the merit of the case, this Court feels called to delve in to the aspect how the petitioner employed every device and tactic to ward off the final hearing and how the counsel permitted himself to be over-persuaded for the cause of his client.

3. A brief summary of the course of this petition since its institution in the year 2000 may be recapitulated here. The petition having been instituted in the year 2000, after the order dated 6.7.2000, issuing notice to the opposite party No. 3, and granting interim order, the case was taken up on 14.5.2004 on which date it was adjourned for being put up on 25.5.2004 on the request of Sri U.K. Misra, learned Counsel for the petitioner. The case was next listed on 17.7.2004 on which date, again on the request of learned Counsel for the petitioner, two weeks time was granted to file rejoinder-affidavit. The case again came on board on 5.1.2005. On this date, rejoinder-affidavit stated to have been filed by the learned Counsel for the petitioner, being not available on record, the case was directed to be listed in the next cause list. On 18.10.2005, the case was again

passed over on the illness slip of Sri U.K. Misra, learned Counsel for the petitioner. On 20.12.2005 the case again suffered adjournment by reason of illness slip of Sri U.K. Misra, learned Counsel for the petitioner. On 27.2.2006, the case was again passed over on the illness slip of Sri U.K. Misra. On 28.3.2006, the case was directed to be put up next day. On 30.3.2006, the case was heard in part and it was directed to be put up/listed on 4.4.2006. On 4.4.2006, after hearing the case in part, the case was again postponed to 13.4.2006 for further arguments. On 13.4.2006, the case was directed to be listed in the next cause list. On 21.4.2006, the case was directed to be put up on 24.4.2000 attended with direction to the learned Counsel for the opposite party to give written notice to the learned Counsel for the petitioner. On 24.4.2006, the case was directed to be put up on 2.5.2006 on the request of Sri U.K. Misra. On 2.5.2006, the case was again directed to be listed in the next cause list. On 23.5.2006, the case was ordered to be passed over on the illness slip of Sri U.K. Misra. On 4.7.2006, stop order was passed and the case was directed to be listed on 18.7.2006. It would transpire from the record that on 17.7.2006, Sri Kamlesh NarainPandey, filed power on behalf of the petitioner armed with a letter of Sri U.K. Misra and Sri A.K. Misra to the effect that they had no objection to his being engaged by the petitioner. However, there appears to be no application on behalf of Sri U.K. Misra or Sri A.K. Misra of the intention of reclusing themselves from the briefs. On 18.7.2006, the case was taken up. Since there was no appearance for any of the three counsels for the petitioner, learned Counsel for the opposite parties was heard at prolix length. The crux that crystallizes from the above summary is that the case suffered adjournments for the causes attributable to reluctance of the petitioner for expeditious disposal of the petition.

4. Coming to the facts of the case, it would transpire from a perusal of the record that one Subedar son of Karan Singh was recorded as bhumidhar of Khata No. 558. An application came to be made by the petitioner stating therein that the name of the petitioner recorded in Khata No. 558 as Subedar son of Karan Singh is in correct and his correct name is Dinesh son of Ramesh Chandra and it was prayed that the name of Subedar son of Karan Singh be inked out and in his place, the name of the petitioner namely, Dinesh Kumar son of Ramesh Chand be entered in the revenue record against Gata No. 2184/1 admeasuring 1.87 acres. Pursuant to this application, Asstt. Consolidation Officer passed the order dated 28.10.1989 directing to substitute the name of Dinesh Kumar by annihilating the name of Subedar. It further transpires from the record that objection filed by petitioner on the dint of sale deed dated 19.4.1986 under Section-9A of the U.P.C.H. Act claiming to have been executed by Subedar had already been dismissed in default on 30.5.1990. It also transpires from the record that against the order dated 28.10.1989, the contesting opposite party No. 3 namely, Manoj preferred an appeal on 22.11.1995 founded on the ground that he was the adopted son of Subedar, that on the basis of the application made by Dinesh, the name of Subedar was illegally inked out without any valid basis. It would further appear from the record that Manoj came to know of the order belatedly and soon

after coming to know of the order and its incorporation in C.H. Form No. 23 on 29.8.1995, he instituted an appeal on 22.11.1995 attended with application for condonation of delay. The said appeal, it would appear, culminated in being allowed. It is against this order that the petitioner preferred a revision before the Asstt. Director Consolidation which was dismissed vide order dated 10.7.1999 whereby order dated 28.10.1989 was set aside on the ground that the order in question was an illegal order obtained by the petitioner without any valid basis. If petitioner has filed any application for recall of the order dated 30.5.1990 and if the same is still pending, this order will not impinge upon petitioner's right to pursue the matter on objection u/s 9A of the U.P.C.H. Act.

5. Having bestowed my anxious consideration to the submissions advanced across the bar, what would crystallize is that the name of opposite party No. 3, he being the adopted son of Subedar, came to be mutated in place of Sri Subedar in Khata No. 684 which consisted of four plots including plot No. 2184 vide order dated 20.3.1995 as would be clear from C.H. Form No. 23 and hence appeal was rightly filed by the opposite party No. 3 after gaining knowledge of the order dated 28.10.1989 passed by Asstt. Consolidation Officer which was incorporated on 29.8.1995 in revenue record. From the materials on record, it is fully established that name of Subedar son of Karan Singh was duly recorded and there is no indicium on record to prop up the fact that the correct name of petitioner, i.e., Dinesh son of Ramesh Chandra is wrongly recorded as Subedar son of Karan Singh in the Khata aforesaid. By all reckoning, the order was a wholly illegal order and it was obtained by Dinesh Chand in his favour behind the back of Subedar or his heirs without any valid grouting and in this view of the matter, the Deputy Director Consolidation rightly set aside the said order dated 28.10.1989.

6. Coming to the facts of the present petition, the stand taken by the petitioner in the instant petition is that Subedar had executed a registered sale deed in favour of petitioner on 19.4.1986. It seems to me to be a peculiar and contradictory stand by all appearances. From a close scrutiny of the order dated 28.10.1989, it also crystallises that the order came to be passed on the basis of application of Dinesh Kumar the text of which may be abstracted below:

Gram Dakhinara Ke Khata No. 558 Par Mera Nam Subedar putra Karan Singh Galat Darj Hai. Mera Sahi nam Dinesh Kumar son of Ramesh Chand. Ateh Nivedan Hai Ki Khata No. 558 Me Subedar Ke Isthana Par Sahi Nam Dinesh Kumar Putra Ramesh Chandra Gata No. 2184/1 Rakba 1.87 par Darj Kiya Jave. Ati Kripa Hogi.

In my considered view the order passed by Asstt. Consolidation Officer is absolutely in correct and the correctness of the approach of the authority is open to doubt. in case there was any genuine registered sale deed executed by Subedar in his favour, the appropriate course open to the petitioner was to move objection u/s 9 (A) of the U.P. Consolidation of Holdings Act. in fact objection of the petitioner u/s 9 (A) of the U.P.C.H. Act had come to be rejected on

30.5.1990. The text of application made by the petitioner amply gives the impression that the name of Subedar son of Karan Singh had been mistakenly recorded in place of name of Dinesh son of Ramesh Chandra. It rather appears to me that the petitioner took recourse to the device of moving application and illegally obtained order dated 28.10.1989 in ignorance of Subedar or his heirs as the case may be. The approach of the authority does not appear to be fair and reasonable which to all appearances was obtained on the basis of mis-statement and there is not a shred of evidence on record to prove that correct name of Subedar son of Karan Singh was Dinesh son of Ramesh Chandra. It would appear from the record that petitioner obtained the order by committing fraud upon Asstt. Consolidation Officer behind the back of Subedar. Further, it passes my comprehension, how, out of four plots, the correction of name has been sought only against plot No. 2184/1/1.87 acres to the exclusion of three other plots. Besides the above, it would also transpire from certified copy of the supplementary affidavit that objection u/s 9A of the U.P. Consolidation of Holdings Act made by the petitioner for incorporation of his name in the record on the basis of alleged sale deed had already met the fate of dismissal on 30.5.1994.

7. In the above conspectus, the order passed by Deputy Director Consolidation was rightly passed. The order dated 29.10.1989 at its face value appears to be erroneous order and it was rightly set aside by the Deputy Director Consolidation. In this view of the matter, the petition being devoid of merit falls short of acceptability and therefore, it fails and is accordingly dismissed.

8. Coming to the part of tampering with the record of the Court, it is quite obvious that in the cause list of the Court dated 18.7.2006, name of Kamlesh NarainPandey appearing for the petitioner though not printed was scribed in handwriting both in the list meant for the Judge and also in the list meant for use by the Reader of the Court though his Vakalatnama was filed on 17. 7.2006, i.e., one day before the date fixed for hearing. On being queried, the Reader of the Court informed that the name appears to have been scribed by someone either at the behest of the petitioner or his counsel without his notice though the fact remains that Kamlesh NarainPandey, besides the two other counsels appearing for the petitioner, also did not appear at any point of time before the Court on that date to assist the Court. The cause list of the Court is a Court record and any tampering with it amounts to tampering with the record of the Court. The matter attains gravity particularly regard being; had to the fact that Sri Kamlesh NarainPandey had been engaged one day before the date fixed and on the date fixed his name was scribbled on the cause list against the case in the cause list although he did not appear at any point of time in the course of the day to assist the Court. Any writing on the cause list without the authority or permission of the Court may amount to misconduct in certain cases. In this connection it is also worthy of notice that the Court also compared signatures of Sri Kamlesh NarainPandey affixed on the Vakalatnama filed by him with the hand-written name scribbled on the cause-list, and ex facie, both the hand-writing seem to be

matching and appear to have been written by one and the same person. Be that as it may, it is a serious matter, and this Court is of the view that a comprehensive enquiry be held in the matter as to who and how the name of Kamlesh NarainPandey, counsel for the petitioner came to be scribbled on the cause list of the Court. in this view of the matter, the enquiry is entrusted to the Registrar General attended with the direction that he shall take the enquiry to some completion within a period not exceeding three months and submit the report accordingly before the Court.

9. It is disquieting that the case suffered repeated procrastination on account of ostensibly evasive attitude of the petitioner and lastly, a ploy was adopted by the petitioner of engaging Sri Kamlesh NarainPandey ostensibly to delay hearing and protract disposal of the writ petition and also regard being had to the fact that despite stop order of the Court fixing the case for 18.7.2006, a peculiar device was adopted to set up Sri Kamlesh NarainPandey by filing his Vakalatnama with a view to further procrastinate the matter. in this connection, it would be useful to draw attention of the learned members of the Bar to what was said by Madras High Court in 1935, See N. Thangavelu Mudaliar v. Chengalvaroya Gurukul AIR 1935 Mad 578. The relevant excerpts of the observation made in the aforesaid case are to the effect that "members of the legal profession are not puppets compelled to obey the dictates of their clients where matters of good faith and honourable conduct are conferred. They are responsible to the Court for the fair and honest conduct of a case. They are not mere agents of the man who pays them but are acting in the administration of justice and in matters of this kind they are bound to exercise an independent Judgment and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution, they are unfit to enjoy the privileges conferred upon them by law and serious breaches must be visited with punishment". in Harbans Lal Arora v. Divisional Supdt Central Railway AIR 1960 SC , the Apex Court observed that "It is the duty of counsel to be satisfied beyond all reasonable doubt that the charge is true. The very impunity enjoyed by counsel places upon him a self imposed standard of care much higher than in normal cases just as gentleman is supposed to pay of his debts of honour before he satisfies those enforceable in law. The code of chivalry at the bar must be higher and never lower than that prevailing elsewhere". The other cases on the point are as under; the Apex Court in Noorduiddin Vs. Dr K.L. Anand, , has observed as under:

...Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice.

Similarly, in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, the Supreme Court gave vent to following observation.

The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point... the interest of justice and public interest coalesce....

In T. Arivandandam Vs. T.V. Satyapal and Another, the Supreme Court professed that "the Court should remind itself Section 35A of the CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives. In such a case, the lawyer also owes a duty not to present such a case". The Apex Court further observed:

We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case, which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. Remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady action.... A Judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process....

10. In Dr. Buddhi Kota Subbarao Vs. K. Parasaran and others, the Apex Court held as under:

No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions.

The crux of above quoted observations appears to be that the members of this noble profession should not over-persuade themselves to obey the dictates of their clients and they are responsible to the Court for the fair and honest conduct of a case. In the instant case, as observed above, the Vakalatnama filed one day before the date fixed by the Court by stop order is eloquent of the fact that the petitioner engaged the third counsel namely, Kamlesh Narain Pandey to frustrate final hearing and disposal of the case on the date fixed. The subsequent conduct of scribbling the name of counsel on the cause list of the case and also that none of the three counsels appeared to assist the Court on the date fixed, are also eloquent of the ploy designed to frustrate the hearing and disposal of the case. In the circumstances, the Court is constrained to record severe disapproval of the conduct of the counsel who appeared to be obeying the dictates of their clients particularly regard being had that Vakalatnama was filed one day before the date fixed by the stop order and also that he did not appear before the Court either to seek time or to assist the Court. The Court is obliged to record severe condemnation of the conduct of the counsel for the petitioner at the same time, observing that the conduct of the learned Counsel did not comport well with the conduct expected of a member of noble profession. Since I am directing enquiry into the entire episode, it would be appropriate to direct the case to be listed after two months for appropriate action/direction pursuant to the outcome of the enquiry.

11. Now the Court reverts to agony and harassment suffered by the opposite

party No. 3 for long period on account of disingenuous ploy adopted by the petitioner in delaying disposal of the case which is amply established from the above discussion and in the circumstances, the Court is satisfied beyond any manner of doubt that the petitioner was motivated to derive the personal benefits and his idea seems to be to paralyze further hearing of the matter on the date fixed despite stop order and benefit from the delay at the cost of the other party. This, in my considered view, is a glaring case of abuse of the process of the court and such person should not be allowed to get away unscathed and he must be saddled with exemplary cost to repair the harassment and agony suffered by opposite party No. 3. As stated supra, the conduct of the petitioner was such which protracted expeditious disposal of the writ petition and in the circumstances this Court awards cost, which is quantified at Rs. 20,000. The cost shall be realized from the petitioner and paid over to the opposite parties within a period not exceeding three months. in case, the amount is not deposited for being paid over to the opposite parties, the authorities shall not hesitate to recover the amount as arrears of land revenue.