
(2015) 06 AHC CK 0031
In the Allahabad High Court
Case No : W.P. (M/S) No. 3340 of 2015

Hadisul Nisha

APPELLANT

Vs

Addl. Commissioner (J), Faizabad Division and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Citation : (2015) 129 RD 473

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Suresh Kumar Upadhyay, for the Appellant; B.K. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Rajan Roy, J.—Short counter-affidavit filed on behalf of opposite party No. 3 is taken on record. The petitioner does not propose to file a rejoinder affidavit. Heard Sri S.K. Upadhyay, learned Counsel for the petitioner as well as Sri B.K. Singh, learned Counsel for opposite party No. 3.

2. The husband of the petitioner was Bhumidhar with transferable rights of the land in question. After his death, the name of the petitioner is said to have been recorded in Form P.A. 11, being wife of the erstwhile tenure holder. Opposite party No. 3 is said to have moved an application for mutation of his name in respect to the same also, based on an alleged Will-Deed executed by the petitioner's husband in his favour. It is relevant to mention here that the petitioner's husband and the opposite party No. 3 were real brothers. The application of the opposite party No. 3 was dismissed. Subsequently a recall application was filed by the opposite party No. 3 allegedly on the ground that the petitioner herein had re-married and, therefore, she was not entitled to get her name mutated in respect of the land in question. The Tehsildar rejected the second application for mutation filed by the opposite party No. 3 vide order dated 8.11.2013 wherein it was held that the re-marriage had not been proved. An appeal was filed by the opposite party No. 3 on 20.11.2013. The said appeal was

allegedly decided ex-parte on 23.1.2014 against the petitioner. With lightening speed the order dated 23.1.2014 was implemented and the name of the opposite party No. 3 was mutated in the revenue records in pursuance thereof on the same date i.e. 23.1.2014.

3. The petitioner contends that in a short span of two months the said appeal was hurriedly decided without the notice having been served upon her. She submits that the wrong address was mentioned in the appeal i.e. address of the place where she is said to have been re-married, therefore, naturally the notices could not be served. The gazette publication was hurriedly made which also did not come to the knowledge of the petitioner.

4. On the other hand, opposite party No. 3 submits that the gazette publication having been made the Appellate Court rightly allowed the appeal.

5. On coming to know about the appellate order dated 23.1.2014 the petitioner herein filed an application for restoration of the appeal and recall of order dated 23.10.2014 and the Appellate Court on 14.2.2014 stayed its order dated 23.1.2014.

6. Being aggrieved, the opposite party No. 3 challenged the said order before the Commissioner, Faizabad. The petitioner herein filed a writ petition before this Court bearing Writ Petition No. 2720 (MS) of 2014. *Hadisul Nisha v. State of U.P. and others*, challenging the correctness of order dated 23.1.2014 passed by the Appellate Court, which was disposed of vide judgment dated 16.6.2014 with a direction to the appellate authority to decide the restoration application expeditiously within two months. Thereafter; the Appellate Court decided the application vide order dated 3.6.2014 and remanded the matter back to the Court below for consideration afresh. However, on account of this, stay order dated 14.2.2014 is said to have become inoperative. Consequently, being aggrieved by the aforesaid order dated 3.6.2014 the petitioner filed a writ petition before this Court bearing Writ Petition No. 3267 (MS) of 2014 which was disposed of on 16.6.2014 directing disposal of the restoration application by the Sub-Divisional Magistrate, Sadar Sultanpur. The said application dated 3.2.2014 was rejected vide order dated 13.4.2015. Being aggrieved against the same, a revision has been preferred by the petitioner, which is still pending before the Additional Commissioner (Judicial) Faizabad, however, vide order dated 22.5.2015 the revisional authority has rejected the application of the petitioner for stay of the impugned judgment dated 13.4.2015 passed by the appellate authority rejecting the restoration. Being aggrieved against the said order dated 22.5.2015, this writ petition has been filed.

7. Contention of the learned Counsel for the petitioner is that the petitioner is in possession of the land in question and the opposite party No. 3 is trying to usurp the same. The opposite party No. 3 has sold some land thereby causing grave prejudice, as such till disposal of the revision further alienation of the land in dispute should be restrained and the revision should be ordered to be decided at

the earliest, preferably on the next date fixed i.e. 26.6.2015.

8. Sri B.K. Singh, learned Counsel for opposite party No. 3, on the other hand, submits that the mutation has already been carried out in favour of opposite party No. 3 in the revenue records in pursuance to the appellate order dated 23.1.2014. He admits that the opposite party No. 3 has sold out the land. He further submits that the order dated 23.1.2014 has not been challenged on merits in the revision pending before the revisional authority nor before this Court. Therefore, it is not open for the petitioner to maintain this writ petition. He further submits that, even otherwise, the writ petition arising out of even mutation proceedings is not maintainable. He relies upon *Ram Bahadur v. Nayab Tehsildar* and another. 2013 (31) LCD 657.

9. In rejoinder, learned Counsel for the petitioner submits that the manner in which the appeal was decided in two months as also the speed with which the mutation entry was made in favour of the opposite party No. 3 on the same day on which Appellate Court's order was passed i.e. 23.1.2014, clearly shows that the opposite party No. 3 is a powerful person who wants to usurp the property of the petitioner. The mala fide of the opposite party No. 3 is evident from the fact that initially he moved an application for mutation based on a Will-Deed, alleged to have been executed by husband of the petitioner, but realizing the shallow ground on which he stood he allowed the said application to be dismissed. Thereafter, the recall application was also not pressed by him. He again filed a second application based on the alleged ground of remarriage, which was not accepted by the mutation Court of the Tehsildar, but in the appeal an ex-parte order dated 23.1.2014 was passed to the prejudice of the petitioner without hearing her. This order dated 23.01.2014 is also under challenge in the revision pending before the revisional authority and the assertion of the opposite party No. 3 to the contrary, is incorrect.

10. Having considered the facts and Circumstances of the case, the arguments of the rival parties and perused the records, I am of the view that as the order dated 23.1.2014 and 13.4.2015 have already been implemented and the entry in the revenue records has been made in favour of the opposite party No. 3, therefore, the operation of the order dated 23.1.2014 or the order dated 13.4.2015 could not have been stayed. Therefore, to this extent the impugned order dated 22.5.2015 passed in the pending revision does not suffer from any illegality. However, considering the undisputed fact that petitioner is wife of the erstwhile tenure holder and also the admitted fact that the opposite party No. 3 has sold some of the property in dispute, if not all, the ends of justice would be met if the Revision No. 2719 pending before the Revisional Court is decided on the next date fixed i.e. 26.6.2015 and the parties are restrained from alienating the land in dispute till the disposal of the revision. This will avoid further complications and will facilitate the smooth adjudication of the dispute.

11. So far as objection of Sri Singh that writ petition arising out of mutation proceedings is not maintainable, is concerned, this is a Rule of Self-Restraint, but

there is no such absolute bar, as is evident from the decision, Smt. Durgawati Vs. Additional Commissioner, Azamgarh Division, Sub-Divisional Magistrate, U.P. Zila Adhikari, Tehsildar and Naresh, The facts of the case are such that a limited interference to the extent mentioned hereinabove, is necessary to avoid multiplicity of litigation and further entanglement of the issue.

12. In view of the above, considering the facts and circumstances of the case, the revisional authority/Court is directed to decide the aforesaid revision on the next date fixed i.e. 26.6.2015 positively.

13. The parties are present before this Court and agree to cooperate in the hearing of the case before the revisional authority on the said date.

14. It is further provided that till the disposal of the revision the parties shall not alienate/transfer the land in dispute in any manner.

15. It is made clear that if the petitioner herein does not cooperate in the hearing, the benefit of this interim order shall not be available to her.

16. It is also provided that if for some unavoidable reason, not attributable to the petitioner and the opposite party No. 3, the revision can not be heard and decided on 26.6.2015, then it shall be taken up on the very next working day and so on and so forth till it is finally decided. With the aforesaid observations, the writ petition is disposed of.