
(2009) 08 AHC CK 0048
In the Allahabad High Court

Jitendra Singh alias Guddan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Citation : (2010) 1 AWC 619

Hon'ble Judges : Satyapoot Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Judgement

Satyapoot Mehrotra and Pankaj Mithal, JJ.—It appears that by the order dated 15.1.2009, the Court has, inter alia, directed as under:

Until further orders of this Court, the effect and operation of direction issued by the concerned Minister on 16.12.2008, the respondent No. 2 as mentioned in paragraph 16 to the writ petition shall remain stayed. The respondents are directed not to interfere in the functioning of the petitioner as President of Nagar Panchayat, Akbarpur, district Kanpur Dehat.

2. By the order dated 15.5.2009, the writ petition was dismissed in default by a Division Bench consisting of Hon''ble Yatindra Singh and Hon''ble Anil Kumar, JJ. The said order dated 15.5.2009 is reproduced hereinbelow:

List is revised. No one is present on behalf of the petitioner. The standing counsel and Sri K.K. Tripathi are present on behalf of the respondents. The writ petition is dismissed for default.

A restoration application being Civil Misc. Restoration Application No. 158820 of 2009 was filed on behalf of the petitioner. By the order dated 16.7.2009, the Division Bench consisting of Hon''ble Yatindra Singh and Hon''ble S.S. Tiwari, JJ. recalled the said order dated 15.5.2009 and restored the writ petition. It is further directed that the case be listed before the appropriate Bench. The said order is quoted below:

This writ petition was dismissed for default on 15.5.2009. The petitioner has filed

an application to recall this order.

The cause shown is sufficient. The order dated 15.5.2009 is recalled. List this writ petition before the appropriate Bench in the next cause list.

3. We have heard Sri Pradeep Chauhan, learned Counsel for the petitioner, Sri M.B. Yadav, learned Counsel of the newly impleaded respondent Nos. 5, 6 and 7 and the learned standing counsel appearing for respondent Nos. 1, 2, 3 and 4.

4. It is submitted by Sri Pradeep Chauhan that despite the fact that the order dated 15.5.2009 dismissing the writ petition in default has been recalled on 16.7.2009, the respondents are not treating the interim order dated 15.1.2009 to have revived.

5. In the circumstances, Sri Chauhan prays that necessary clarification be made by the Court. He has placed reliance on Para 17 of the decision of the Supreme Court in Vareed Jacob Vs. Sosamma Geevarghese and Others,

6. Civil Misc. Application No. 201688 of 2009 has also been filed on behalf of the petitioner for restoration of the interim order.

7. We have considered the submissions made by the learned Counsel for the petitioner.

8. In Vareed Jacob case (supra) their Lordships of the Supreme Court have laid down (paragraph 17 of the said S.C.C.) that the question whether the restoration of the suit revives ancillary orders passed before the dismissal of the suit depends upon the terms in which the order of dismissal is passed and the terms in which the suit is restored. If the Court dismisses the suit for default, without any reference to the ancillary orders passed earlier, then the interim orders shall revive as and when the suit is restored. However, if the Court dismisses the suit specifically vacating the ancillary orders, then restoration will not revive such ancillary orders.

9. Keeping in view the principles laid down in the above decision, let us consider the present case.

10. In the present case, by the order dated 15.5.2009, the writ petition was dismissed in default. However, no specific order was passed vacating the interim order dated 15.1.2009. Consequently, when by the order dated 16.7.2009, the order dated 15.5.2009 dismissing the writ petition in default was recalled by the Court, not only the writ petition stood restored but the interim order dated 15.1.2009 also stood revived. Therefore, the interim order dated 15.1.2009 is continuing in the writ petition.

11. In view of the above, no further order is required to be passed on the aforesaid Civil Misc. Application No. 201688 of 2009 filed on behalf of the petitioner for the restoration of the interim order. The said application stands disposed of.