

(2015) 01 AHC CK 0095
In the Allahabad High Court
Case No : Writ-B No. 65146 of 2014

Ramdev Pandey

APPELLANT

Vs

Dy. Director of Consolidation, Varanasi and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 126 RD 499

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Shamimul Hasnain and Dharendra Kr. Srivastava, for the Appellant;
S.N. Pandey and S.P. Pandey, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Sri Shamimul Hasnain, learned Counsel for the petitioner and Sri S.P. Pandey, who has filed caveat on behalf of respondent No. 2. The writ petition has been filed challenging the order dated 28.8.2014, whereby the parties had been directed to maintain status quo till such time the respondent in the restoration application puts in appearance.

2. This restoration application has been filed by the respondents in this petition while the petitioner before this Court is the respondent in the said restoration application.

3. The dispute between the parties pertains to plot No. 68 of Village Osari, Tehsil Chakiya, District Varanasi. The petitioner filed an objection under section 9-A(2) claiming on the basis of a registered sale-deed dated 11.4.1934 alleged to have been executed by the ancestors of respondents 2 and 3 in favour of his father. The objection was allowed by the Consolidation Officer, and the Settlement Officer, Consolidation affirmed the same. The revision filed by the contesting respondents was allowed by the Deputy Director of Consolidation. Against the revisional order, the petitioner preferred a writ petition, which was allowed on 4.8.1994 and the matter was remanded back for a fresh decision by the

revisional authority.

4. It appears that after the matter was remanded, the petitioner initiated proceedings under Rule 109-A for Amaldaramad of the orders passed by the Consolidation Officer and Settlement Officer, Consolidation in his favour. The Consolidation Officer directed that necessary Amaldaramad be made. The appeal of the contesting respondents against the order passed by the Consolidation Officer under Rule 109 was dismissed as not maintainable. The consequential revision filed by the contesting respondents was entertained and by an order passed on 24.2.1998, an interim order was also granted by the Deputy Director of Consolidation staying operation of the order passed under Rule 109-A. This stay order was passed on the reasoning that the revision, pursuant to the order of remand passed by the High Court was still pending consideration and the dispute between the parties had not attained finality.

5. Subsequently, the revision of the contesting respondents, which stood revived consequent to the order of remand of the High Court, was dismissed for default on 16.1.2007. The contesting respondents filed a restoration application on 3.7.2014 for recall of the order dismissing their revision in default. In this restoration application, it was alleged that the pairvi of the revision was done by their father, who fell ill in 2005 and ultimately died in 2012. They were not aware of the pendency of the revision and for the first time came to know of the same when on 1.7.2014 the petitioner tried to take forcible possession over the land in dispute.

6. It further appears from the record that the contesting respondents preferred Writ Petition No. 42317 of 2014 seeking expeditious disposal of their restoration application. This writ petition was disposed of directing the Deputy Director of Consolidation to decide their pending restoration expeditiously, preferable within a period of two months from the date of production of the certified copy of the order before the Deputy Director of Consolidation.

7. It further appears that in the pending restoration application, a prayer for interim protection was made on the ground that the petitioner is raising constructions and thereby trying to change the nature of the land in dispute. On this stay application, an interim order has been passed directing maintenance of status quo till such time the petitioner, who is the respondent in the Court below, puts in his appearance in the restoration.

8. The contention of learned Counsel for the petitioner is that the revision filed by the contesting respondents stood dismissed for default. The restoration application filed for recall of this order has not yet been allowed and yet an interim order has been granted, which is not permissible under law.

9. In paragraph 23 of the writ petition, it has been averred that the Apex Court in the case of Ragho Singh v. Mohan Singh has clearly held that where an appeal is pending which is time barred and as such is defective it cannot be decided without condoning the delay. It is therefore the case of the petitioner that no

injunction could be granted till such time the revision had been restored.

10. Learned Counsel for the respondents on the other hand has supported the impugned order. He has stated that the petitioner is raising constructions over the land in dispute, which fact has been admitted in paragraph 26 of the writ petition and at the same time is not putting in appearance in the restoration application. He submits that the moment the petitioner puts in his appearance, the order of status quo would come to an end, as has been observed in the order itself.

11. Upon hearing learned Counsel for the parties and upon a perusal of the record, it is clear that the order of status quo has been passed to preserve the nature and identity of the property in dispute. Admittedly, the petitioner is raising construction over the land, which is the subject-matter of dispute between the parties.

12. Under the circumstances, in my considered opinion, the interim order of status quo has rightly been passed. Instead of putting in appearance before the Deputy Director of Consolidation the petitioner has rushed to this Court and has filed this writ petition on technicalities. The conduct of the petitioner pink jack is not bona fide. It is settled law that nature and identity of the property in dispute should be preserved. One party cannot be permitted to change the nature of the land in question during the pendency of the litigation as has been held by this Court in the case reported in Ram Kalap Vs. IV Additional Dist. Judge, Gorakhpur and Another, . The principle laid down is that while a matter is being heard, propriety demands that strict status quo be maintained between the parties.

13. Even otherwise there is already a direction of this Court whereunder the Deputy Director of Consolidation is required to dispose of the restoration application of the contesting respondents expeditiously.

14. I, therefore, find no justification to entertain this writ petition and to keep the matter pending. Interest of justice would stand served in case the Deputy Director of Consolidation is directed to dispose of the restoration application expeditiously and the earlier direction of this Court contained in the order dated 14.8.2014 is reiterated. Accordingly and subject to the directions/observations as aforesaid, this writ petition is dismissed.