

(2014) 03 AHC CK 0073
In the Allahabad High Court
Case No : Writ B No. 15220 of 2014

Shivnath

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2014) 123 RD 105

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ajay Kumar Srivastava and Anand Priya Singh, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

Ran Vijai Singh, J.—Heard Sri Ajay Kumar Srivastava, learned Counsel for the petitioner and learned Standing Counsel for the State respondents. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 26.11.2013 passed by Uppar Ayukt (Administration) Azamgarh Division, Azamgarh in Revision No. 9/9/M (Devnath v. Shiv Nath and others) and judgment and order dated 21.2.2014 passed by the learned Member Board of Revenue in Revision No. 13 of 2013-2014 (Shiv Nath v. State of U.P. and others).

2. Vide order dated 26.11.2013, the learned Additional Commissioner has set aside the order dated 19.10.2011 passed by the Sub-Divisional Officer Mau on an application for compliance according the order, in the revenue record, in Suit No. 37 of 2003 (Shiv Nath v. Jagarnath and others). Whereas by the subsequent order dated 21.2.2014, the petitioner's revision against the order dated 26.11.2013 has been dismissed holding it to be not maintainable.

3. The facts giving rise to this case are that it appears a suit for partition was

filed by the plaintiff/petitioner u/s 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950. In the aforesaid suit, the respondents No. 5 and 6 were defendants. In spite of sufficient service of notice, they had not appeared before the Court concerned and the preliminary decree in the suit was passed on 7.3.2005. The suit was decreed and the final decree was also made on 6.6.2005. Seeking recall of the aforesaid order, the respondents, herein, have filed an application for setting aside the ex parte decree on 28.6.2005. The application was rejected by the Sub-Divisional Officer, Mau vide order dated 27.6.2006.

4. Aggrieved by this order, the other side has filed Appeal No. 47/M (Jagarnath v. Shiv Nath). The aforesaid appeal was allowed on 4.10.2008 by setting aside the order dated 27.6.2006 with the direction to the Court below to allow the restoration application in accordance with law on merit. Pursuant thereto, the Sub-Divisional Officer, vide order dated 12.10.2011, has allowed the restoration application and set aside the preliminary decree dated 7.3.2005 and final decree dated 6.6.2005 with the direction to put up this case on 19.10.2011. On 19.10.2011 the other side has filed an application for implementation of the order dated 12.10.2011. On that application, the Sub-Divisional Officer on that date itself has passed an order for considering the same at the time of deciding the case on merit.

5. Challenging this order, the other side has filed Revision No. 9/9/M (Dev Nath v. Shiv Nath and others). The revision was allowed by the Additional Commissioner, Azamgarh Division, Azamgarh by setting aside the order dated 19.10.2011 with the direction to record the order dated 19.10.2011 in the revenue record.

6. Aggrieved petitioner filed Revision No. 13/2013-14 (Shiv Nath v. State of U.P. and others). The revision has been dismissed with cost of Rs. 500/- holding it to be not maintainable.

Learned Counsel for the petitioners" contends that there was no occasion for the learned Member Board of Revenue to dismiss the revision after imposing the cost of Rs. 500/-. In case, the revision was not maintainable, it was sufficient to dismiss the same holding it to be not maintainable.

7. On being confronted that as to whether the petitioner has challenged the order dated 4.10.2008 passed by the Additional Commissioner, Azamgarh Division, Azamgarh in Appeal No. 46/M (Jagarnath v. Shiv Nath) by which the Additional Commissioner has directed to allow the restoration application, or not, learned Counsel for the petitioner has very fairly submitted that the aforesaid order was not challenged.

8. Vide order dated 4.10.2008, since the Additional Commissioner has directed to allow the restoration application, therefore in my opinion, there was no scope for the Sub-Divisional Officer to reject the restoration application.

9. Learned Counsel for the petitioner contends that the application was time

barred and without condoning the delay, restoration application could not be allowed. The learned Counsel for the petitioner may be right in his submissions but the proper course was to challenge the order dated 4.10.2008, which he has not challenged. The other orders are consequential orders, therefore those orders cannot be faulted with.

10. In the last, learned Counsel for the petitioner contended that during the pendency of these proceedings, the respondents have executed four sale-deeds with respect to property in dispute. In his submissions, the respondents have deliberately got absented themselves and not participated in the partition proceeding and once the ex parte decree was passed, that was set aside by a cryptic order. Now they are taking advantage of the petitioners omission not to challenge the order dated 4.10.2008 and successive sale-deed has been executed, which may ultimately defeat the justice.

11. Considering the facts and circumstances of the case, the parties to the proceedings are restrained from creating any third party right and changing the nature of the land pending suit proceedings. The Sub-Divisional Officer is also directed to decide the suit in accordance with law expeditiously without granting any unnecessary adjournments to the learned Counsel for the parties. In case, adjournment is sought by either of the parties, that may be allowed only after imposing the cost with the direction to deposit the cost by the next date fixed. With the aforesaid observation/direction, this writ petition is disposed of.