

(2011) 10 AHC CK 0010
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58827 of 2011

Surajbhan Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154(2),
167, 341

Citation : (2011) 10 ADJ 296

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : S.D. Kautilya, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The petitioner has come up praying for quashing of the order dated 6.9.2011 passed by the Collector, Gautam Budh Nagar, refusing to entertain the restoration application of the petitioner for correction/rectification of the order dated 7.4.1993 on the ground that the correction sought is time barred, and secondly in view of the orders passed by the High Court and the Apex Court, the Collector will have no authority to carry out corrections in the order dated 7.4.1993 which was subject matter of controversy before the said Courts and has been affirmed. The petitioner has further prayed for a mandamus directing the respondents to dispose of the petitioner's application dated 22.2.1995 which had been filed for rectification of the order dated 7.4.1993 in terms of the directions of the High Court dated 22.9.2004 passed in Writ Petition No. 31741 of 1598 as referred to in the letter of the State Government dated 13.5.2011.

2. A further prayer has been made that a mandamus be issued directing the respondents not to alter the status of the petitioner's land in dispute or transfer the same to any other agency. This apprehension has been expressed on the

ground that the entire land which was subject matter of the order dated 7.4.1993, is sought to be handed over to NOIDA authority for allotment.

3. In view of the nature of the allegations made in the writ petition, this Court passed an order on 13.10.2011 calling upon the District Magistrate to explain as to why the impugned order dated 6.9.2011 be not treated to be a malicious order in the background of the case and as to why costs be not imposed in this regard. The order dated 13.10.2011 is reproduced hereunder:

Heard Sri S.D. Kautilya, learned counsel for the petitioner and the learned Standing Counsel.

This writ petition is another glaring example of executive insensitiveness of an ordinary litigant of this country.

The petitioner's case is that he has never parted with his land, which was subject matter of proceedings against Pragatisheel Samuhik Sahakari Krishi Samiti Limited, which came to be finalized by the Apex Court after the dismissal of the SLP on 7.12.2010.

The main issue is that an order was passed on 7th of April, 1993 vesting the property in the State in a proceeding against the said Samiti, The petitioner moved an application for correction/modification of the said order on the ground that the petitioner's land in dispute to the extent of the area claimed had been wrongly included in the proceedings and it was a pure arithmetical error. This error was sought to be rectified through the said application, which remained pending.

The application could not be disposed of on account of the pendency of the litigation of the aforesaid Samiti. The application came to be rejected in the year 1998 and one of the aggrieved persons namely Sohan had filed Writ Petition No. 44406 of 1997, which was disposed of on 6.1.1998 directing the authorities to consider the said grievance. The petitioner also challenged the order passed against him and the writ petition filed by the petitioner was disposed of on 22.9.2004, a copy whereof is Annexure 6 to the writ petition. The order passed against the petitioner dated 19.2.1998 was quashed.

The matter again remained pending on the pretext of the pendency of litigation of the Samiti. The petitioner's application was again processed and the District Magistrate on 13.10.2008 without passing any order on the application of the petitioner consigned the file. The petitioner again approached the authorities and as a matter of fact, after the dismissal of the special leave petition, the petitioner approached the Collector, who in turn dispatched a letter on 7th of January, 2011 to the Principal Secretary, Government of Uttar Pradesh informing him that on the basis of the report, it appears that such applications as moved by the petitioner, are still pending and, therefore, appropriate directions should be issued for their disposal. This letter of the District Magistrate to the Principal Secretary, Revenue Government of Uttar Pradesh (Annexure 9 to the writ

petition) in detail indicates the status of affairs and which clearly acknowledges the pendency of such applications relating to corrections that were sought in the order dated 7.4.1993.

The petitioner, therefore, again moved an application in 2011. With the change of guard, the present District Magistrate, Mr. Hridesh Kumar, appears to have constituted a committee which also submitted a report indicating that the claim of the petitioner appears to be correct. The District Magistrate, however, inspite of the said report has rejected the application of the petitioner on the ground that it is highly time barred. It is this order dated 6th of September, 2011 which is assailed before this Court.

In the aforesaid background, Sri Kautilya submits that this is a clear case of harassment of the petitioner and the District Magistrate has simply brushed aside the directions of this Court as also the report of the committee itself. The order, therefore, is not only illegal but is also contemptuous.

The contention raised by the petitioner appears to be correct and in the opinion of the Court, such an executive insensitiveness calls for imposing a heavy exemplary cost on the District Magistrate for having dealt with the matter so casually. The issue of applying Section 5 of the Limitation Act to the proceedings or treating the same to be highly time barred appears to be preposterous as noted herein above. The petitioner has been continuously pursuing his matter. On the contrary the authorities have failed to discharge their duties as is evident from the letter of the Collector dated 7.1.2011.

Accordingly, this Court is of the opinion that this petition prima facie deserves to be allowed with a cost of Rs. 1 lac on the District Magistrate/Collector, G.B. Nagar for having passed the order dated 6th of September, 2011 which clearly reflects malice in law.

Learned Standing Counsel, however, prays that the matter be adjourned in order to enable him to obtain instructions from the concerned District Magistrate by the next date fixed.

Put up on Tuesday i.e. 18.10.2011 to enable the learned Standing Counsel to do so.

4. The matter was adjourned on the request of Sri S.G. Hasnain, learned Addl. Advocate General, who made a request on 18.10.2011 on behalf of the District Magistrate/Collector for filing an Affidavit in response to the aforesaid order. Today when the matter was taken up, a short-counter-affidavit has been filed sworn by Sri Satish Shukla, Tehsildar - Dadri, Gautam Budh Nagar, on behalf of the District Magistrate. Sri S.D. Kautilya, learned counsel for the petitioner, states that the said short-counter-affidavit only narrates facts and proceeds to defend the impugned order on the pretext that the Collector cannot pass an order of any rectification or correction of the order dated 7.4.1993, which has been upheld up to the Supreme Court. This pretext in the submission of Sri Kautilya is a cloak to

avoid decision in the matter as the Collector appears to be apprehending violation of the orders of the High Court and the Supreme Court or in the alternative is unable to cater to the directions issued by the State Government.

5. He submits that the petitioner being a humble litigant, he has been tossed from one place to another for no valid reason and he further relies on the decisions in the case of L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, , and the case of B. Shivananda Vs. Andhra Bank Ltd. and Another, , to contend that this was a simple case of rectification invoking the provisions of Sections 151 and 152 of CPC, and instead of carrying out the rectifications which are practically admitted by the respondents, the Collector has shelved his responsibility on an altogether erroneous approach, hence the impugned order deserves to be quashed. He contends that the obligation of the Collector was to hear and decide the application on merits but the same has been conveniently avoided in the circumstances indicated above which is a complete failure to exercise his discretion, more so in the light of the judgment of the Division Bench of this Court dated 22.9.2004.

6. Replying to the said submissions, Sri Hasnain contends with the aid of the order dated 7.4.1993 that Plot No. 860, which is subject matter of controversy, was mentioned in the Schedule appended to the order dated 7.4.1993 and since the entire order has been upheld, then the Collector cannot exercise any further powers under the garb of rectification or correction. He submits that the High Court, having upheld the order dated 7.4.1993 and confirmed by the Supreme Court, cannot be a subject matter of correction by the Collector. He has invited the attention of the Court to internal page 23 of the Schedule appended to the order dated 7.4.1993 to point out that an area of 9 Bighas 10 Biswas was shown to have been sold in favour of Pragatisheel Samuhik Sahkari Krishi Samiti Limited vide sale-deed dated 10.11.1982 and, accordingly, it would not be possible to carry out the corrections in the said Schedule in the circumstances indicated above.

7. He further contends that the Collector himself had looked into the matter where after he has passed the order on the basis of the record available and accordingly the application which was moved by the petitioner on 6.6.2011 has been rejected in the aforesaid circumstances. He, therefore, submits that in the aforesaid background, the Collector passed the impugned order on 6.9.2011.

8. Having heard learned counsel for the parties and having perused the Affidavit filed on behalf of the State, the background in which the entire proceedings have commenced indicates that the order dated 7.4.1993 came to be passed by the Collector in proceedings against the Pragatisheel Samuhik Sahkari Samiti Limited, an Agriculture Cooperative Society, in proceedings u/s 154 (2) read with Section 167 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. The said provisions create an embargo for purchase of land by any tenure holder beyond 12.5 acres. There are exceptions to the said embargo namely that certain class of persons have been given the liberty to purchase land beyond the said limit

prescribed only with the permission of the Collector/State Government. The Agriculture Co-operative Society in violation of the said provisions had purchased the land in excess of the limit to the extent of 802 acres. Accordingly, the then Collector passed the order on 7.4.1993 divesting the Society of the said excess land and vesting it in the State under the aforesaid provisions.

9. The land in dispute being Plot No. 860 was recorded in the name of several persons including one Muse S/o Ram Lal. The extract of the revenue record has been filed as Annexure-3 to the writ petition which reflects that an area of 9 Bighas 10 Biswas of Plot No. 860 was entered in the name of several persons as co-tenure holders including Muse S/o Ram Lal.

10. The case of the petitioner is that the sale-deed dated 10.11.1982 which is referred to in the order dated 7.4.1993 wrongly refers to the entire area of 9 Bighas 10 Biswas, inasmuch as, it was only Shiv Charan and Ram Chandra sons of Ram Lal, brothers of Muse, who had sold their share of the land to the Agriculture Cooperative Society referred to herein above, it is the categorical case of the petitioner that Muse had not sold his share of 1/4th land in the said holding to the extent of 2 Bighas 7 Biswas and 10 Biswansis of the Society. The petitioner - Suraj Bhan Sharma purchased the share of Muse under a registered sale-deed dated 17.1.1987/7.1.1988 and mutation in favour of the petitioner was carried out by the authorities on 25.4.1988. This order is endorsed on the Khatauni, Annexure-3 to the writ petition.

11. The petitioner on coming to know of the discrepancy and error of the area mentioned in the Schedule appended to the order dated 7.4.1993 filed an application on 22.2.1995; copy whereof is Annexure-4-A to the writ petition. A categorical plea pointing out the said error about the extent of area mentioned in the Schedule was raised and it was also stated therein that the name of the petitioner had already been mutated in 1988 which has been overlooked, A prayer was, therefore, made to set aside the said order which was ex-parte to the petitioner and to dispose of the matter in the light of the said objections.

12. In essence, the application was to rectify the said error in the description of area to the extent as mentioned herein above. It was, therefore, a case of correction of the area that was subject matter of dispute between the Collector and the petitioner. In essence, the entire area of Plot No. 860 could not have been subject matter of divesting from the Co-operative Society as the entire area had not been sold and the Schedule had been incorrectly prepared.

13. The said application of the petitioner dated 22.2.1995 was disposed of on 19.2.1998 by the Addl. District Magistrate/Addl. Collector (Finance and Revenue) and a copy of the said order is Annexure-5 to the writ petition, A perusal thereof would indicate that by that time the Agriculture Co-operative Society had already challenged the order dated 7.4.1993 before the High Court and after the writ petition had been dismissed, a Special Appeal had also been filed which was pending and an interim order had been passed on 29.10.1997. In the aforesaid

circumstances, the Addl. Collector came to the conclusion that the application for rectification/correction moved by the petitioner cannot be entertained and has to remain in abeyance till the matter is decided by the High Court. The Addl. Collector also opined that if the parties want any clarification, they should approach the High Court for the said purpose.

14. On such an order being passed, the petitioner was left with no option and he assailed the order dated 19.2.1998 by filing Writ Petition No. 31741 of 1998. The other tenure holders, who were equally affected, also filed writ petitions which were heard together. The writ petitions were allowed on 22.9.2004 and the order dated 19.2.1998 was quashed holding that the controversy raised in the Special Appeal or the writ petition filed by the Agricultural Society is an entirely different controversy in the sense that the same related to vesting of the property in the State due to the violation of the provisions referred to herein above. The restoration application/correction application filed by the petitioner was held to be outside the scope of the said proceedings. The judgment is on record as Annexure-6 to the writ petition. The Addl. District Magistrate was, therefore, directed to decide the merits of the restoration application of the petitioner dated 22.2.1995 afresh in the light of the conclusions drawn in the judgment dated 22.9.2004. The said judgment dated 22.9.2004 became final and has not been stated to be made subject matter of any further appeal or review.

15. Armed with the said judgment, the petitioner filed a fresh application on 17.12.2004 making a request to decide his application. The Addl. Collector vide order dated 13.2.2006 made a query from the Sub-Registrar, Dadri, Gautam Budh Nagar, to the effect that a report be submitted as to whether Muse had sold his 1/4th share to the Agricultural Society or not and further as to whether any such transaction had been carried out or not in favour of the Agricultural Society. An inquiry was also made in relation to the other tenure holders with which the present case is not concerned. On having received this query, the Sub-Registrar, Dadri, Gautam Budh Nagar, responded vide communication dated 20.3.2006 clearly stating that no such sale stands recorded in the records of the Sub-Registrar's office by Muse in favour of the Society.

16. The matter remained pending inspite of the said inquiry as after the decision in the Special Appeal by the High Court, the matter was pending before the Supreme Court in Civil Appeal No. 5063 of 2007 filed by the Agricultural Society. It appears that under the said pretext no orders came to be passed when ultimately the Supreme Court dismissed the Appeal filed by the Society vide judgment dated 7.12.2010. The short-counter-affidavit also indicates that the Agricultural Society had also filed a curative petition before the Supreme Court which has been dismissed on 28.7.2011.

17. The petitioner and other affected persons appear to have approached the Collector again, who wrote a letter to the State Government on 7.1.2011 indicating the aforesaid background of the pending restoration/correction applications and sought the opinion of the State Government through the legal

department for taking appropriate action; the said letter is Annexure-9 to the writ petition.

18. The State Government vide reply dated 13.5.2011, copy whereof is Annexure-10, communicated to the Collector that there is no option left except to comply with the judgment dated 22.9.2004 and dispose of the restoration applications in accordance with law. The said decision of the State Government is extracted here under:

19. Accordingly, the District Magistrate had to comply with the judgment of the High Court dated 22.9.2004 as directed by the State Government.

20. The petitioner again moved an application on 25.5.2011 which went before the Addl. District Magistrate, who passed an order on 23.8.2011 that this application has to be dealt with by the District Magistrate himself as it requires correction of the order dated 7.4.1993 which was also an order passed by the District Magistrate.

21. The petitioner had moved another application on 6.6.2011 before the District Magistrate on which the District Magistrate constituted a Committee and called for a report consisting of the Sub-Divisional Magistrate, Dadri, Tehsildar, Dadri, Naib Tehsildar, Dadri, and Sub-Registrar, Dadri. On having received the said report the District Magistrate in the impugned order recorded a clear finding that the said Committee had found the contention raised in the restoration applications to be correct yet the District Magistrate proceeded to reject the application on the ground that the petitioner has moved the application in the year 2011 for rectification of an order dated 7.4.1993 and it appears that the petitioner did not take care to pursue his restoration application, therefore, the claim is time barred. The District Magistrate further took shelter of the judgment of the Supreme Court and the High Court referred to herein above to hold that since the order dated 7.4.1993 has been upheld, it will not be possible for him to carry out any correction in the same as it will be beyond his jurisdiction.

22. As noted above, Sri Kautilya has assailed the said order as per the submissions noted herein above and the learned Addl. Advocate General has defended the order, accordingly.

23. The short-counter-affidavit filed by the Tehsildar in paragraph Nos. 11 and 12 states as under:

11. That, in the meantime the petitioners had already moved an application under Sections 151 and 152 CPC dated 25.5.2011 for modification of the order dated 7.4.1993 before the Additional District Magistrate (Finance and Revenue), Gautam Budh Nagar, on which the Additional District Magistrate passed order dated 23.8.2011, and referred to the Collector and the Collector again vide order dated 23.9.2011 directed the Additional District Magistrate (Finance and Revenue) to decide the matter in the light of directions issued by this Hon'ble Court in the order dated 22.9.2004 passed in Writ Petitioner No. 17350 of 1998

"Bhagmal and others v. State of U.P. and others". True copies of the orders dated 23.8.2011 passed by the ADM (Finance and Revenue) and the order dated 23.9.2011 passed by the Collector, are being annexed herewith and marked as Annexure Nos. SCA-03 and SCA-04 respectively to this Affidavit.

11. That, the Additional District Magistrate (Finance and Revenue) registered the application and issued notice to the parties and fixed the case for 21.10.2011, vide order dated 10.10.2011. A copy of the order dated 10.10.2011 passed by the ADM, is being annexed herewith and marked as Annexure SCA-05 to this Affidavit.

24. A perusal of the said averments indicates that the Addl. District Magistrate is proceeding to decide the applications for restoration and that the next date fixed is 21.10.2011. This was being done in terms of the order passed by the District Magistrate/Collector dated 23.9.2011, who has passed the impugned order dated 6.9.2011. The order dated 23.9.2011 passed by the Collector and as contained in the short-counter-affidavit of the respondents is quoted here under:

25. Needless to emphasize that both the impugned orders as well as the order dated 23.9.2011 have been passed by the same Collector.

26. Having considered the submissions raised and the documents on record and the Affidavit on behalf of the State, it is clear that the petitioner was not a party to the proceedings that were initiated against the Agricultural Society under the order dated 7.4.1993. He was not even a party in the writ petition filed by the Society either before the High Court or before the Supreme Court. His application for restoration was rejected on 19.2.1998 which was assailed in Writ Petition No. 31741 of 1998 that came to be allowed on 22.9.2004. The Division Bench, while allowing the writ petition, did not accept the request of the respondents therein to treat it as an application in the writ petition filed by the Society as the cause of the petitioner was different.

27. In my opinion, once the Division Bench had allowed the writ petition and commanded the District Magistrate to decide the matter, then the District Magistrate had to decide the same on merits in view of the directions issued in the said writ petition which have also been indicated in the letter of the State Government dated 13.5.2011 quoted herein above.

28. The District Magistrate fell in error in treating the proceedings to be time barred. There was absolutely nothing to treat the application moved by the petitioner to be impeded by any latches. The petitioner had been pursuing his remedy and it is the respondents, who kept on avoiding the decision which they were obliged to take in terms of the judgment of the High Court dated 22.9.2004. They had no option at least after the dismissal of the SLP on 7.12.2010, except to decide the claim on merits. The District Magistrate, therefore, committed a manifest error by treating the subsequent applications moved by the petitioner in the year 2011 to be barred by time. These applications moved by the petitioner were nothing else but a continuity of the

proceedings in relation to his restoration application and the rectification of the error to the extent of the area of the land purchased by the petitioner of Plot No. 860. The simplest course that ought to have been undertaken by the District Magistrate was to have perused the records relating to the sale-deed in favour of the Agricultural Society dated 10.11.1982 and to tally the extent of the area sold. He had to only verify as to whether Muse had sold his share or not. The report that was submitted by the Sub-Registrar in the year 2006 also does not indicate that Muse had sold his property to the Society. If the land was never sold to the Society, which is being claimed by the petitioner, then the same cannot be subject matter of any finality in the proceedings against the Society. The error in the order dated 7.4.1993 to that extent, therefore, deserved to be corrected if the aforesaid facts as stated by the petitioner are accepted by the respondents as is reflected in the orders referred to herein above. What appears to be that in order to avoid an order in relation to the said rectification sought by the petitioner after 18 years and in the background of the litigation, the Collector resorted to conveniently take the ground of laches, which, in the opinion of the Court, is nowhere even remotely attracted in these proceedings. The ground of limitation was, therefore, an unwarranted excuse taken to reject the claim of the petitioner.

29. The second ground relating to the proceedings in relation to the Society are also misplaced inasmuch as this position had been clarified by the Division Bench judgment in favour of the petitioner dated 22.9.2004. It is for this reason that the State Government in its letter dated 13.5.2011 clearly indicated that there was no option except to decide the claim of the petitioner on merits. There should have been no confusion in the mind of the District Magistrate and as a matter of fact, it is strange that the District Magistrate has not referred to any of these communications which have been quoted herein above in the impugned order. The said ground also taken by the District Magistrate is legally unsustainable.

30. Apart from this, the decisions, which have been relied upon by the learned counsel for the petitioner clearly lay down the law that a correction which is either clerical or an accidental slip or omission can be corrected even without the authority requiring the party to file an appeal or a review. If the mistake of the area mentioned in the order dated 7.4.1993 is attributable solely to the respondent, then the Collector being the highest authority in the district empowered under the U.P. Land Revenue Act, 1901, to correct entries was bound to exercise his powers in relation to the order dated 7.4.1993 which was a proceeding under the U.P. Zamindari Abolition & Land Reforms Act, 1950, to which the provisions of 1901 Act apply. Not only this, Section 341 of the 1950 Act applies the provisions of the CPC to the proceedings under the 1950 Act. Accordingly, the principles of Section 151 and Section 152 of CPC also apply which has to be invoked by the Collector to rectify the error for disposing of the application of the petitioner. The Collector, in my opinion, failed to exercise his jurisdiction in accordance with law and in the light of the observations made

herein above and hence the order dated 6.9.2011 is unsustainable on this score as well.

31. The argument, as contained in the Affidavit of the State that the Addl. District Magistrate is yet to proceed and decide the restoration application, needless to mention that once the order dated 6.9.2011 stands, the Addl. District Magistrate cannot proceed against the same. This stand, therefore, taken in the short-counter-affidavit cannot be appreciated and as a matter of fact the District Magistrate ought to have disposed of the entire matter himself in the background of the case and in the light of the observations made herein above. The suggestion by the respondents is as if the matter is still pending before the Addl. District Magistrate. This, in my opinion, is a mere eye-wash and the petitioner is to gain nothing by this procedural shuttling. Learned Addl. Advocate General states that the matter will be decided in accordance with law once the legal impediment as being experienced by the Officer is clarified.

32. In view of the conclusions drawn herein above, there is no impediment in the passage of the District Magistrate to decide the application of the petitioner and to carry out the rectification after verifying the status of the land which is claimed by the petitioner to be not a part of the transaction covered by the order dated 7.4.1993. The Collector, therefore, has to carry out this exercise in the light of the observations made herein above and pass orders objectively without allaying any affairs in this regard. Consequently, the order dated 6.9.2011 is quashed. The Collector, Gautam Budh Nagar, will proceed to pass an order within 6 weeks of the date of presentation of a certified copy of this order before him after allowing the petitioner an opportunity in case the petitioner has to provide any information in this regard. The writ petition is, accordingly, allowed.