

Court No. - 48

Case :- WRIT - B No. - 1019 of 2023

Petitioner :- Kamla (Dead) And Another

Respondent :- The Deputy Director Of Consolidation And 13 Others

Counsel for Petitioner :- Shravan Kumar Mishra

Counsel for Respondent :- C.S.C.,Rajiv Kumar Mishra

Hon'ble Saurabh Shyam Shamshery,J.

1. This Court is not pleased the way order passed by this Court is not followed. The conduct of authority concerned is not appreciated.

2. This is second round of litigation. Earlier petitioners have approached this Court by way of filing a writ petition bearing No. 15569 of 1989, which was allowed by a reasoned order dated 13.11.2019 and matter was remanded to Deputy Director of Consolidation to decide it afresh. The Court has made following observations in the said order :-

"This Court thinks that there is many a gap of grave consequence in the reasoning adopted by the Deputy Director of Consolidation. The foremost fact that the Deputy Director of Consolidation has ignored is that the petitioner and respondent nos. 3 to 6 are descended of a common ancestor, who would logically be in joint holdings. There is no case set up by respondent nos. 3 to 6 that down the three to five generations from Payag Mishra to the parties here, there is ever a partition of holdings. This material fact and the lack of evidence about it, have been totally ignored from consideration by the Deputy Director of Consolidation. Likewise, the Deputy Director of Consolidation has ignored from consideration the proceedings of compromise taken before the Assistant Settlement Officer of Consolidation in appeal, where plot no. 1902 is claimed to be divided between the petitioner and respondent nos. 3 to 6, to the extent of 140 links each, and sub divided numbers of the plot are assigned there. There is simply no finding about this compromise, either in the impugned order passed by the Deputy Director of Consolidation, or even in the reference, made by the Settlement Officer of Consolidation. It cannot be ignored that the Settlement Officer of Consolidation has taken note of the fact that proceedings between parties were in the nature of title objection under Section 9 of the Act and that is inferable, looking to the fact that there is mention of two Appeals, bearing numbers 301 and 302, under Section 11(1) of the Act, mentioned by the Consolidation Officer in his report dated 23.11.1986 that he submitted to the Settlement Officer of Consolidation, while he was inquiring into the complaint on the basis of which the reference was made.

It is noteworthy that the record of compromise annexed by the petitioner, entered into between parties before the Assistant Settlement Officer of Consolidation, shows the same to be recorded in Appeal No. 301 'Bhairo vs. Ayodhya and others'. The reference made by the Settlement Officer of Consolidation clearly mentions, that the fact that these appeals were filed between parties finds mention in the the goswara. It was looking to the said facts that the Settlement Officer of Consolidation has recommended an equal division of Plot No. 1902, between parties, in terms of the compromise arrived at between them. The Deputy Director of Consolidation in writing the impugned order has not considered these very relevant facts and evidence about the rights of parties. He has written a judgment that is utterly mechanical and shows non application of mind. There is also this question that once CH Form-23 was issued to the parties, which showed the petitioner's rights with regard to the plot no. 1902/2 to the extent of 140 links, there is no good reason why respondent nos. 3 to 6 waited 18 long years to take action.

This Court does not intend to express any final opinion about these issues, for that is the province of the Deputy Direction of Consolidation, under Section 48(3) of the Act. This Court, however, is equally clear in its opinion that the Deputy Director of Consolidation has written too casual and cursory a judgment to stand to the requirements of its jurisdiction as the last Court of fact, under Section Section 48 of the Act. The Deputy Director of Consolidation must carefully look into all these aspects, and must do so after summoning relevant records, before he enters judgment in the matter that would draw curtains on valuable civil rights of parties.

In the result, the writ petition succeeds and is allowed. The impugned order dated 26.07.1989 is hereby quashed. The matter stands remanded to the Deputy Director of Consolidation, Azamgarh for decision afresh, within a period of six months from the date of receipt of a certified copy of this order, bearing in mind the guidance in this judgment.

Status quo as obtains today with regard to possession, nature and character of the land in dispute shall be maintained till decision afresh by the Deputy Director of Consolidation, Azamgarh.

Costs easy. "

3. In pursuance of above order, Deputy Director of Consolidation on remand has decided the case as fresh and rejected the revision petition filed by petitioners.

4. I have found merit in argument of Sri Shravan Kumar Mishra, learned counsel for petitioners that above referred observations were not followed. No consideration or finding was returned in regard to compromise as well as other aspects of case. Learned counsel has drawn attention of this Court on paragraph No.19 of writ petition which is reproduced hereinafter:-

"That this Hon'ble Court has remanded the case before respondent No.1 for

decision of the case along with observation but the respondent No.1 has not recorded finding about the observation of the order on 13.11.2019 passed by this Hon'ble Court so the order dated 17.6.2022 passed by respondent no.1 Deputy Director of Consolidation, Azamgarh is illegal and liable to be quashed by this Hon'ble Court."

5. Learned counsel for contesting respondent is not present, therefore, I have perused counter affidavit and reply to above referred paragraph mentioned in paragraph No.18 of counter affidavit which is reproduced hereinafter:-

"That the contents of paragraph no.14, 15, 16, 17, 18 and 19 of the writ petition are matters of record hence as alleged are denied. Correct facts can be seen by perusal of the record itself. It is settled law that to undo fraud there is no question of limitation since a fraudulent document is a non-est order and cannot be validated by lapse of time. The void order can be set aside at any time."

6. From the bare reading of above referred part of counter affidavit, the referred averment in writ petition has been vaguely denied. In order to scrutinize above referred argument. I have carefully perused the impugned order and relevant part thereof is mentioned hereinafter :-

"उभय पक्षों के लिखित बहस एवं पत्रावली का अवलोकन किया गया। उदय नरायन के प्रार्थना पत्र का तत्कालीन उप संचालक चकबन्दी द्वारा सहायक बन्दोबस्त अधिकारी चकबन्द एवं चकबन्दी अधिकारी की आख्या को दृष्टिगत रखते हुए दिनांक 26.07.1989 को आदेश किया गया, जिसके अनुसार संदर्भ स्वीकार करते हुए गाटा संख्या 1902 का सम्पूर्ण रकबा 280 कड़ी आधार वर्ष के अनुसार उदय नरायन आदि के नाम अंकित किया गया। उक्त आदेश से क्षुब्ध होकर कमला द्वारा मा० उच्च न्यायालय में रिट याचिका संख्या 15539/1989 प्रस्तुत की गयी। जिसमें मा० उच्च न्यायालय में दिनांक 13.11.2019 को आदेश पारित करते हुए आदेश दिनांक 26.07.1989 निरस्त कर दिया तथा उभय पक्ष को सुनकर गुणदोष पर निस्तारण करने का निर्देश दिया। उक्त के क्रम में संदर्भ का पुनः निस्तारण किया जाना न्यायोचित है।

पुनः चकबन्दी अधिकारी की आख्या दिनांक 29.12.1986 का संज्ञान लिया गया। जिसके

अनुसार चकबन्दी अधिकारी द्वारा न्यायालय को अवगत कराया गया कि गाटा संख्या 1902/0.280 कड़ी आधार वर्ष खतौनी में श्री उदय नरायन पुत्र हरिहर तथा उनके सहखातेदारों के नाम भूमिधर अंकित था। कमला प्रसाद आदि ने बिना किसी आदेश के गाटा संख्या 1902/0.140 कड़ी पर अपना नाम अभिलेखों में अंकित करा लिया, जिसकी अमलदरामद नहीं की गयी। आकार पत्र 11 में लाल रोशनाई से कमला आदि के नाम गाटा संख्या 1902/1/0.070 अंकित कर दिया गया है। आकार पत्र 23 में कमला आदि के नाम गाटा संख्या 1902/0.140 कड़ी अंकित कर दिया गया है। आकार पत्र 41 व 45 में हाल गाटा संख्या 658 एवं 659 अंकित किया गया है। उदय नरायन द्वारा शिकायत की गयी थी कि आकार पत्र 45 में उनके नाम बने खाते में गाटा संख्या 658 को 659 बना दिया गया तथा कमला के नाम बने खाते में गाटा संख्या 659 को 658 बना दिया गया। उदय नरायन का कहना है कि गाटा संख्या 1902/0.280 कड़ी से कमला आदि का सम्बन्ध नहीं था। सम्पूर्ण क्षेत्रफल का एक ही गाटा उदय नरायन आदि के नाम दर्ज होना चाहिए था। अतः कमला आदि का नाम गाटा संख्या 1902/0.280 कड़ी से निरस्त करके उदय नरायन का नाम दर्ज किया जाय। चकबन्दी अधिकारी की उक्त आख्या के बाद प्रकरण के सम्बन्ध में सहायक बन्दोबस्त अधिकारी चकबन्दी द्वारा दिनांक 18.02.1987 के न्यायालय में आख्या प्रस्तुत की गयी, जिसके अनुसार गाटा संख्या 1902/0.280 कड़ी का सम्पूर्ण रकबा उदय नरायन व उनके सहखातेदारों का है, जो आधार वर्ष की खतौनी में उनके नाम अंकित है। उक्त गाटे के सम्बन्ध में कोई मुकदमा नहीं चला और न ही कोई अमलदरामद है, परन्तु कमला प्रसाद आदि ने फर्जी तौर पर गाटा संख्या 1902 के रकबा 0.070 कड़ी पर अपना नाम अंकित करा लिया तथा उसी आधार पर आकार पत्र 23, 41 व 45 भी बनवा लिया।

उक्त दोनों आख्याओं के अवलोकन से स्पष्ट होता है कि गाटा संख्या 1902/0.280 कड़ी उदय नरायन व उनके सहखातेदारों के नाम खतौनी पर अंकित है। चकबन्दी अधिकारी की

आख्या से स्पष्ट है कि विवादित गाटा संख्या 1902/0.070 कड़ी आकार पत्र 11 में कमला आदि के नाम अंकित है, किन्तु इसके पूर्व के अभिलेखों से स्पष्ट नहीं है कि यह रकबा कमला आदि के नाम कहा से आया। सहायक बन्दोबस्त अधिकारी चकबन्दी द्वारा गाटा संख्या 1902/0.140 कड़ी पर कमला आदि के नाम अंकित करने की संस्तुति की गयी , जिसका कोई अभिलेखीय आधार नहीं है। अतः गलत ढंग से अंकित गाटा संख्या 1902/0.070 कड़ी जो फर्जी रूप से कमला आदि के नाम अंकित है , निरस्त करके गाटा संख्या 1902 के सम्पूर्ण रकबा 0.280 कड़ी पर उदय नरायन आदि का नाम अंकित किया जाना आवश्यक है। उक्त आधार पर उदय नरायन का प्रार्थना पत्र स्वीकार किये जाने योग्य है।"

7. From the bare reading of above referred analysis and conclusion, there is no doubt that various observation made by this Court in earlier round of litigation were not followed, therefore, not only impugned order is set aside but matter is also remanded back to concerned authority for fresh consideration with observation that concerned authority is under legal obligation to follow the order passed by this Court in its letter and spirit.

8. This writ petition is accordingly, **disposed of** with further direction that Revisional Authority will decide the case afresh within six weeks from today, if there is no legal impediment.

Order Date :- 13.12.2023

P. Pandey