

Court No. - 48

Case :- WRIT - B No. - 1116 of 2023

Petitioner :- Bilal

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Pradeep Kumar Rai, Prajyot Rai

Counsel for Respondent :- C.S.C., Kaushal Kishore Mani, U.C. Chaturvedi

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Pradeep Kumar Rai, learned counsel for petitioner, Sri Kaushal Kishore Mani, learned counsel for Gaon Sabha and learned Standing Counsel for State.

2. This Court has passed following order on 28.11.2023 :-

"This Court has passed following order on 9.11.2023:-

"This Court has passed an order dated 28.10.2023 which has not been complied, wherein it is directed that Gram Pradhan- Satish Kumar of concerned village shall remain present on the next fixed.

Sri Kaushal Kishore Mani, learned counsel for Gaon Sabha is present. It has not been denied that Gram Pradhan has information of the referred order and that no application for exemption from appearance is also filed.

It is prima facie a contemptuous act, therefore, let aailable warrant be issued through C.J.M., Saharanpur against Gram Pradhan-Satish Kumar of concerned village to ensure his presence before this Court on next date of hearing and he shall also file a personal affidavit that during his tenure whether Gram Panchayat discharged function enumerated in Section 15 of U.P. Panchayat Raj Act, 1947.

In default, this Court may take an adverse view.

Gram Pradhan is further directed to deposit Rs.10,000/- before District Legal Services Authority, Saharanpur before next date fixed.

List on 20.11.2023.

Registrar (Compliance) to take steps. "

This order has been communicated to C.J.M., Saharanpur, however, it appears that order has not been complied with.

Let fresh aailable warrant be issued through C.J.M. Saharanpur, fixing date 01.12.2023.

List on 01.12.2023 at 10.00 a.m.

C.J.M., Saharanpur is directed to comply/execute aforesaid orders, and in case of default, this Court may construe it as a serious default/derelection of duty on his part and may take an adverse view.

Registrar (Compliance) to take steps. "

3. Today, Gram Pradhan-Satish Kumar, Village Khairasal, Pargana- Gangoh, Tehsil- Nakur, District Saharanpur is present and has tendered unqualified apology and undertakes to deposit the cost imposed by above referred order dated 09.11.2023 within two days.

4. Since I have heard counsel for parties on merit of case, therefore, direction passed by this Court to file a personal affidavit is exempted, however, in case, Gram Pradhan-Satish Kumar is failed to honour his undertaking, the Registrar General is directed to initiate proceeding immediately to recover the amount in accordance with law after expiry of aforesaid period of two days. The receipt of deposit of cost shall be placed on record within one week from the date of deposit.

5. The issue involved in present case is squarely covered by judgment passed by this Court in **Ram Sundar and Another Vs. State of U.P. and 6 others, 2023:AHC:224846** and relevant paragraphs thereof are mentioned hereinafter:-

"4. It appears that till date, Larger Bench have not decided the above issue.

5. At this juncture, it would be relevant to mention relevant paragraph of Ashok Sadarangani and another vs. Union of India and others, (2012) 11 SCC 321 is quoted below -:

"29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

6. This Court has liberty to follow the judgment of Division Bench in Ram Bahadur vs. Deputy Director of Consolidation, 1974 RD 53, Gopi Singh and another vs. Deputy Director of Consolidation, Bulandshahar, 1967 RD 214 and relevant paragraph 8 of a judgment passed by coordinate Bench of this Court in case of Ramveer Kashyap vs. DDC Bareilly and 3 others, 2015:AHC:122784 is quoted below -:

"8. A bare reading of the provision shows that it has override effect over all the provisions of this Act as well as other law. In case any mistake has been committed by the consolidation authorities then they can correct the same in spite of the notification under Section 52 of the Act. Division Bench of this Court in the case of Ram Bahadur (supra) and Gopi Singh (supra) has held that right and liability accrued under the Act therefore recall application is maintainable even after notification under Section 52 of the Act, is fully applicable in the facts of the case. As in this case mistake has been committed

during consolidation proceeding as such it can be corrected by the consolidation authorities in spite of the notification under Section 52 of the Act. In such circumstances, the order of Deputy Director of Consolidation does not suffer from any jurisdictional error."

7. In aforesaid legal position and by impugned orders, objections filed by petitioners that no correction could be made was rightly rejected, therefore, this Court does not find any illegality or perversity in impugned orders.

8. Accordingly, writ petition being sans merit is liable to be dismissed, hence, dismissed. "

6. This writ petition is accordingly, **dismissed**.

Order Date :- 1.12.2023

P. Pandey