

Court No. - 51

Case :- WRIT - C No. - 16125 of 2023

Petitioner :- Shivpoojan And 6 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashok Kumar Singh, Anoop Singh

Counsel for Respondent :- C.S.C., Bala Nath Mishra, Ram Vishal Mishra, Sachin Mishra

Hon'ble Chandra Kumar Rai, J.

1. Counter affidavit as well as Supplementary counter affidavit filed today on behalf of respondent nos. 3 to 5 are taken on record.

2. Heard Mr. Ashok Kumar Singh, learned counsel for the petitioners, Mr. Abhinav Ojha, learned Standing Counsel for the State-respondents and Mr. Bala Nath Mishra, assisted by Mr. Sachin Mishra, learned Counsel for respondent Nos. 3, 4 and 5/private respondents.

3. Brief facts of the case are that Smt. Patti wife of Sahadeo inherited Plot Nos.- 949, 994, 996 & 1161 situated in Village- Kabirpur Mugara, Tahsil- Machhlisahar, District- Jaunpur from her father Bhagan. Smt. Patti expired on 22.8.1992 accordingly respondent no. 4 & 5 (Smt. Lalmani and Smt. Phoolmani) being daughter of Smt. Patti inherited as successors. Three sets of claim were setup under Section 34 of U.P. land Revenue Act 1901 to record their name in the place of Smt. Patti. First set of claim was setup by Deena Nath son of Ram Khelawan on the ground that he is step son of Patti and his name has been recorded through P.A.1. Second set of claim was set up by one Ram Lakhan on the basis of will deed alleged to be executed in his favour by Smt. Patti and third set of claim was setup by respondent nos. 4 & 5 being daughters of Smt. Patti. Naib Tehsildar vide order dated 25.5.2007 ordered to record the name of Ram Lakhan on the basis of will deed. respondent nos. 4 & 5 alleged to have executed registered agreement to sale in favour of predecessor of petitioners as well as power of attorney in favour of Hari Shanker (Father of Petitioner Nos. 2 & 3). Respondent Nos. 4 & 5 were alleged to execute a sale deed on 3.12.2012

in favour of respondent no.3 (Smt. Indu Devi). Petitioners have filed a Civil Suit No.95 of 2013 for specific performance of contract against respondent nos.3,4&5 which is pending before Civil Court. Tehsildar finally vide order dated 13.3.2019 under Section 34 of U.P. Land revenue Act has ordered to record the name of respondent no. 4&5 in the place of Smt. Patti and on the basis of sale deed ordered to record the respondent no.3 after expunging the name of respondent nos. 4&5. Petitioners challenged the order dated 13.3.2019 through Appeal No.201914360300693 under Section 210 of U.P. Land Revenue Act before Sub Divisional Officer who has granted interim order dated 19.2.2020 during pendency of appeal. One Saroj Devi daughter of Ram Lakahan filed a Revision No. 201914000000462 of 2019 under Section 219 of U.P. Land Revenue Act before commissioner against the order dated 13.3.2019 which is stated to be pending and record of the Court of Tehsildar as well as of Appellate Court in respect to Appeal No. 201914360300693 are stated to be summoned in pending Revision No.201914000000462 Respondent Nos.4&5 have challenged the order dated 19.2.2020 passed in appeal filed by petitioners through Revision No. 1969 of 2022 which was heard and allowed by respondent no.2 vide order dated 15.3.2023 setting aside the order dated 19.2.2020 and remanded the matter before Appellate Court to pass fresh order after considering the ingredients for grant of interim injunction/order as well as other aspect of the case hence this writ petition on behalf of the petitioners for quashing the order dated 15.3.2023 passed by respondent no.2.

4. This court has entertained the matter on and passed the following order dated 19.5.2023:-

"Heard learned counsel for the petitioners and learned Standing Counsel for the State.

The present writ petition has been filed challenging the order dated 15.3.2023 passed by respondent No.2 - Additional Commissioner, Judicial Ist Varanasi in Revision No.1969 of 2022, Smt. Indu Devi vs. Shivpoojan and others, being Computerized Case No.C202214000001969, under Section 219 of U.P. Land Revenue Act, 1901.

The contention of learned counsel for the petitioners is that from the perusal

of order itself, it is clear that the order impugned has been passed only after hearing the revisionist. It is further stated by learned counsel for the petitioners that petitioners have not been given notice and the revision was filed against the dead person.

Matter requires consideration.

Learned Standing Counsel has accepted notice on behalf of respondents No.1 and 2.

Issue notice to the respondents No.3 to 5, returnable at an early date.

Counter affidavit shall be filed within four weeks. Rejoinder affidavit, if any, be filed within two weeks thereafter.

List this matter on the date fixed in the notice.

Until further orders of this Court, parties are directed to maintain status quo.
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5. In pursuance of the order dated 19.5.2023, respondent nos.3,4&5 have put in appearance and have filed their counter affidavit along with stay vacation application as well as Supplementary Counter Affidavit.

6. Learned standing counsel has also filed counter affidavit along with stay vacation application and petitioners have filed their rejoinder affidavit.

7. Learned counsel for the petitioners submitted that revision/filed after 2 years and 8 months at the instance of respondent no.3 against the interim order dated 19.2.2020 impleading dead person as opposite parties was not maintainable. He further submitted that aforementioned revision has been illegally allowed against the dead person as well as in ex-parte manner. He next submitted that revisional court has exceeded his revisional jurisdiction while passing the impugned order, as such impugned revisional order be set aside. He further submitted that record of appellate was summoned in another revision filed by Ram Lakahan as such exercise of another revisional jurisdiction at the instance of contesting respondent is abuse of process of law.

8. Mr. Bala Nath Mishra, learned counsel for respondent No.3, 4 and 5 submitted that interim order was passed without affording opportunity of

hearing as such the revision was entertained and interim order passed in appeal has been set aside remanding the matter back before the appellate court to pass the fresh order after affording opportunity of hearing to the parties. He further submitted that petitioner's have no right and title to file appeal as petitioners are claiming themselves to be holder of agreement to sale and power of attorney which is sub-judice in civil suit. He further submitted that power of attorney executed in favour of Hari Shanker has been cancelled on 16.4.2012 as such no interference is required in the matter and writ petition is liable to be dismissed. He further submitted that application for interim injunction (6-C) filed by petitioners in the Civil Suit No.95 of 2013 has been dismissed vide order dated 24.1.2014 as such petitioners are not entitled to any interim order in the summary proceeding.

9. I have considered the argument advanced by learned counsel for the parties and perused the record.

10. There is no dispute about the fact that appeal arising out of mutation proceeding is pending before the appellate Court and interim order was granted which has been set aside in revision by the Additional Commissioner and matter has been remanded back before the appellate court to pass fresh order in pending appeal.

11. The impugned order passed in revision by Additional Commissioner will be relevant for perusal, which is as under:

"आदेश पत्रक
न्यायालय: अपर आयुक्त, न्यायिक (प्रथम)
मण्डल: वाराणसी, जनपद: जौनपुर, तहसील: मछली शहर
वाद संख्या: **1969/2022**
कंप्यूटरीकृत वाद संख्या:-**C202214000001969**
श्रीमती इन्दू देवी बनाम शिवपूजन आदि
अंतर्गत धारा:- **219**, अधिनियम:उ०प्र० भू-राजस्व अधिनियम,**1901**

आदेश
निगरानीकर्ता के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों के आलोक में प्रकरण के तथ्यों पर विचार किया गया तथा पत्रावली का अवलोकन किया गया, जिससे विदित होता है कि परीक्षण न्यायालय के समक्ष धारा-34 उ०प्र० भू- राजस्व अधिनियम के

अन्तर्गत योजित वाद में पारित आदेश दिनांक 13-03-2019 के विरुद्ध अवर अपीलीय न्यायालय/ उपजिलाधिकारी, मछलीशहर, जौनपुर के न्यायालय में शिवपूजन हरिशंकर व अर्जुनराम द्वारा अपील प्रस्तुत की गयी है। उक्त अपील में श्रीमती लालमनी, श्रीमती फूलमनी व श्रीमती इन्दू देवी आदि विपक्षी है। अवर अपीलीय न्यायालय द्वारा प्रश्नगत अपील में आक्षेपित आदेश दिनांक 19.02.2020 इस आशय का पारित किया गया है कि न्यायहित में सुनवाई तक किसी प्रकार के कब्जा परिवर्तन एवं विवादित भूमि का क्रय-विक्रय निषिद्ध किया जाता है। इस निगरानी में निगरानीकर्त्ता की ओर से साक्ष्य के रूप में वाद संख्या-95/13 हरिशंकर बनाम लालमनी में मा० न्यायालय सिविल जज सी०डि०, जौनपुर के आदेश दिनांक 24.01.2014 की प्रमाणित प्रति दाखिल की गयी है। उक्त आदेश द्वारा मा० न्यायालय ने वादी अर्थात् हरिशंकर का प्रथम दृष्टया मामला न पाये जाने के कारण, सुविधा का तुला का संतुलन और अपूर्णनीय क्षति पर कोई अभिमत देना उचित न पाते हुए प्रार्थना-पत्र 6(ग) निरस्त कर दिया गया है। अवर अपीलीय न्यायालय द्वारा पारित प्रश्नगत आदेश निषेधाज्ञा की श्रेणी में आता है। निषेधाज्ञा के बिन्दु पर निर्णय लेने के पूर्व न्यायालय को प्रथम दृष्टया केस, सुविधा का संतुलन तथा अपूर्णनीय क्षति के बिन्दु पर अपनी संतुष्टि व्यक्त करते हुए स्पष्ट अभिमत व्यक्त करना चाहिए था, परन्तु विद्वान अवर अपीलीय न्यायालय द्वारा उक्त तीनों बिन्दुओं में से किसी एक पर भी अपनी कोई अभिमत व्यक्त नहीं किया गया। ऐसी स्थिति में विद्वान अवर अपीलीय न्यायालय का प्रश्नगत आदेश न्याय की दृष्टि में स्थिर बनाये रखने योग्य नहीं हैं। फलस्वरूप ग्राह्यता स्तर पर ही यह निगरानी यथोचित निर्देश के साथ निस्तारित किये जाने योग्य है।

5- उपर्युक्त विवेचना एवं वर्णित तथ्यों के परिप्रेक्ष्य में प्रश्नगत आदेश दिनांक 19.02.2020 निरस्त करते हुए विद्वान अवर अपीलीय न्यायालय को निर्देशित किया जाता है कि वह गत प्रस्तर में की गयी विवेचना के दृष्टिगत अन्तरिम निषेधाज्ञा के बिन्दु पर पुनः उभयपक्ष को सुन लिया जाय तथा मा० न्यायालय सिविल जज सी०डि० जौनपुर के आदेश दिनांक 24.01.2014 के आलोक में तथ्यात्मक उपपत्ति अंकित करते हुए विधि सम्मत आदेश पारित किया जाय। तदनुसार निगरानी निस्तारित की जाती है। बाद आवश्यक कार्यवाही निगरानी पत्रावली दाखिल दफ्तर की जाय।

दिनांक: मार्च 15, 2023 (राजेन्द्र सिंह सेंगर)

अपर आयुक्त(न्या०-प्रथम),
वाराणसी मण्डल, वाराणसी।

यह आदेश मेरे द्वारा हस्ताक्षरित, दिनांकित एवं खुले न्यायालय में उद्घोषित।

दिनांक: मार्च 15, 2023 (राजेन्द्र सिंह सेंगर)

अपर आयुक्त(न्या०-प्रथम),
वाराणसी मण्डल, वाराणसी।”

12. In view of the above quoted remand order passed in revision by the Additional Commissioner remanding matter for passing fresh order in pending appeal, no interference is required in the matter.

13. It is also material that this in the case reported in 1985 R.D. Page 71 Paras Nath Singh versus Deputy Director of Consolidation and others this Court has held that if by quashing the impugned order another illegal order is restored then

writ Court should not exercise his jurisdiction even the impugned order is illegal. Paragraph No. 21 of judgment rendered in Paras Nath Singh (Supra) will be relevant for perusal which is as under:-

"21. It is, no doubt, correct to say that any order passed without jurisdiction is a nullity and deserves to be quashed. But if as a result of quashing that order another wrong and illegal order would be restored, this Court would refuse to interfere with the impugned order which appears to be quite proper equitable and just order. As mentioned above, the power under Article 226 of the Constitution is devised to advance justice and not to thwart it. To me it appears to be well settled that an order which is illegal cannot be quashed or set aside in writ jurisdiction if quashing of it results in bringing on record another illegal order."

14. It is also material that civil Suit is pending between parties as such continuance of the mutation proceeding for such a long period is abuse of process of law. Petitioner should get their right and title determined in pending Civil Suit No.95 of 2013 which will be the final adjudication of the dispute rather pursuing remedy in mutation court under Section 34 of U.P. Land Revenue Act.

15. considering the entire facts and circumstances of the case as well as ratio of law laid down by this court in Paras Nath Singh (supra) writ petition is dismissed. However, appellate court is directed to proceed and decide the pending appeal after affording opportunity of hearing to the parties in accordance with law expeditiously preferably within period of three months from the date of production of certified copy of this order after giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties.

Order Date :- 27.10.2023

PS*