Court No. - 51

Case :- WRIT - B No. - 31654 of 2014

Petitioner :- Shafiqurrahman
Respondent :- B.O.R. U.P. And 7 Others
Counsel for Petitioner :- Vijay Singh,B.D. Pandey,Rajiv Shukla,Rashid Ali,Satish Chand
Counsel for Respondent :- C.S.C.,Subhash Rathi

Hon'ble Chandra Kumar Rai,J.

In Re: Civil Misc. Delay Condonation Application No. 16 of 2023/ Civil Misc. Restoration Application No. 17 of 2023

1. Heard Mr. B.D. Pandey, Counsel for the petitioner, Mr. Rashid Ali, Counsel for the proposed respondents and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. In view of the facts mentioned in the affidavit filed in support of the application, the application for condonation of delay is allowed. The cause shown for non-appearance on the date fixed is also sufficient accordingly order dated 12.9.2022 passed by this Court is hereby recalled and writ petition is restored to its original number.

Order on Writ Petition

1. Heard Mr. B.D. Pandey, Counsel for the petitioner, Mr. Rashid Ali, Counsel for the proposed respondents and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant writ petition has been filed by petitioner for the

following relief:

> ***"(i) issue, a writ, order or direction in the nature, summon the records and quash the auction proceedings and impugned orders dated 7.1.2009 and 30.12.2011 passed by respondent no. 1.***
>
> ***(ii)issue, a writ, order or direction in the nature of mandamus commanding the respondent no.4 to pass a fresh order on mutation proceeding U/S 34 of L.R. Act on the application of respondent no.5 and the petitioner.***
>
> ***iii) issue any other writ, order or direction as this Hon'ble Court deems fit and proper under the facts and circumstances of the case and in the interest of justice.***
>
> ***(iv) award cost of petition to petitioner."***

3. Brief facts of the case are that petitioner and respondent No.6 had taken a agricultural loan amounting of Rs. 76,000/- in the year 1982 from UCO Bank mortgaging the Khasra No. 164 area 1.6280 hectare situated at village-Kuran, Pargana-Vijaygarh, Tehsil-Robertsganj, District-Sonbhadra and auction proceeding had taken place on 30.11.1984 in respect to the aforementioned loan advanced by the UCO Bank which was settled in favour of respondent No.7. Against the aforementioned auction proceeding, respondent No.6 filed a revision before respondent No. 2, which was registered as case No. 2/18 of 1984 under Rule 285-I of U.P. Z.A. and L.R. Rules. Respondent No.2 rejected the aforementioned case No. 2/18 of 1984, vide order dated 17.03.1992. Against the order dated 17.03.1992 respondent No.6 filed a revision, which was registered as Revision No. 08,

(sale)/91-92/Sonbhadra before Board of Revenue, U.P. Lucknow. The aforementioned revision was decided on the basis of compromise vide order dated 07.01.2009. Against the order dated 07.01.2009, respondent No.6 filed restoration application, which was registered as Restoration Application No. 2349/2008-09/Sonbhadra. The aforementioned restoration application was dismissed vide order dated 30.12.2011. Petitioner challenged the order dated 09.01.2009 and 30.12.2011 by filing Writ B, No. 38873 of 2013. Relief claimed in Writ B, No. 38873 of 2013 was as follows:

> ***"(i) issue, a writ, order or direction in the nature, summon the records and quash the impugned orders dated 7.1.2009 and 30.12.2011 passed by respondent no.1.***
>
> ***(ii) issue, a writ, order or direction in the nature of mandamus commanding the respondent no.4 to pass a fresh order on mutation proceeding U/S 3 of L.R. Act on the application of respondent no.5 and the petitioner.***
>
> ***(iii) issue any other writ, order or direction as this Hon'ble Court deems fit and proper under the facts and circumstances of the case and in the interest of justice.***
>
> ***(iv) award cost of petition to petitioner"***

4. The aforesaid writ No. 38873 of 2013 was disposed of by this court, vide order dated 19.07.2013, with the observation that petitioner has confined his prayer in respect to the mutation proceeding only, as such direction was issued while disposing of the writ petition directing the petitioner to approach respondent No.4 for finalization of mutation proceeding in accordance with

law. The order dated 19.07.2013 passed by this court in writ B, No. 38873 of 2013 runs as follows:

> ***"After the matter was heard at length, learned counsel for the petitioner confined his prayer that a direction be issued for finalization of mutation proceedings that are pending before the respondent No.4.***
>
> ***Without entering into the merits of the claim of the petitioner and without examining any further claim of the respondents, this writ petition is disposed of with liberty to the petitioner to approach the respondent No.4 for finalization of the mutation proceeding in accordance with law provided there is no legal impediment."***

5. Same petitioner again filed instant writ petition No. 31654 of 2014 challenging the same order without disclosing the fact of filing of earlier Writ B, No. 38873 of 2013, which was reported to be barred by laches of 3 years and 53 days. The fact of filing and disposal of earlier Writ-B No.38873 of 2013 has been mentioned in the instant writ petition by way of supplementary affidavit filed by petitioner on 09.03.2016.

6. On 27.02.2020, on the objection of Mr. Rashid Ali Advocate, learned counsel for the proposed respondent, following order was passed by this Court:

> ***"It is argued by the learned counsel for the proposed respondents that this is the second writ petition filed by the petitioner.***
>
> ***Due to paucity of time, the case could not be taken up today.***

List on 17.3.2020."

7. The Writ B No.31654 of 2014 remained pending before this Court since 2014. Impleadment Application No. 13 of 2018 filed on behalf of Hafizulrahman, son of Shafiqurrahman, claiming right from respondent No. 7 remained pending in the aforementioned writ petition. Amendment Application No. 156777 of 2016, filed on behalf of petitioner, also remained pending in the aforementioned writ petition in which petitioner has prayed for quashing the auction proceeding dated 30.11.1984 as well as sale-certificate dated 22.12.2014.

8. Learned Standing Counsel for the State-respondent has also filed counter-affidavit in aforementioned Writ B No. 31654 of 2014.

9. Learned counsel for the petitioner submitted that auction proceeding was held in arbitrary and illegal manner. He further submitted that no opportunity of hearing was afforded to the necessary parties as such entire proceeding is vitiated. He further submitted that compromise alleged to take place in the revision was fraudulent as such the order passed on the basis of compromise in the revision cannot be sustained. He further submitted that petitioner is in possession of the land in dispute and the entire auction proceeding is vitiated by manifest error of law.

10. On the other hand, Mr Rashid Ali, Advocate appearing for the proposed respondent, who is claiming right from respondent No. 7 submitted that instant second writ petition is barred in view of the provisions contained under Chapter-XXII Rule 7 of the Allahabad High Court Rules,1952 as instant Writ B No. 31654 of 2014 has been filed by the same petitioner, who has filed first Writ B No.

38873 of 2013 which has already been disposed of vide order dated 19.07.2013. He further submitted that petitioner is challenging the auction sale proceeding which has taken place long back on 30.11.1984. He further submitted that the sale certificate has already been issued, as such, auction proceeding cannot be reopened at the instance of the petitioner after such a long period. He further submitted that once petitioner has not pressed the relief for quashing the same impugned orders in earlier Writ B No. 38873 of 2013 as such he cannot be permitted to pray for quashing the same impugned order by way of the instant writ petition. He further submitted that instant Writ Petition filed by the petitioner be dismissed with heavy cost against the petitioner as petitioner is abusing the process of law.

11. Mr Abhishek Shukla learned Additional Chief Standing Counsel for the State-respondents also submitted that Writ Petition for the same cause of action is barred under the Allahabad High Court Rules, 1952 and same cannot be maintained at the instance of the petitioner. He further submitted that proceeding relating to auction sale has been finalized in accordance with law, as such, the same cannot be reopened at the instance of the petitioner.

12. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

13. There is no dispute about the fact that earlier Writ B No. 38873 of 2013 filed by petitioner (Shafiqurrahman) was disposed of by order dated 19.07.2013. There is also no dispute about the fact that subsequent Writ B No. 31654 of 2014 has been filed by the same petitioner (Shafiqurrahman) for quashing the same impugned order.

14. In order to appreciate the controversy involved in the matter, the perusal of provisions contained under Chapter XXII Rule 7 of the Allahabad High Court Rules, 1952 will be necessary for perusal, which is as follows:

> ***Chapter XXII Rule 7 of the Allahabad High Court Rules, 1952***
>
> ***"7. No second application on same facts.-***
>
> ***Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."***

15. The perusal of the provisions as quoted above fully demonstrate that instant Writ Petition for quashing the same impugned orders cannot be entertained after disposal of earlier writ petition against the same impugned orders. It is also material that earlier Writ Petition filed by petitioner was disposed of with observation that petitioner is not pressing relief No.1 regarding quashing of the impugned order rather relief No.2 with respect to mutation matter was pressed. The practice adopted by the petitioner is unfair which disentitle the petitioner to claim any relief in the matter before this Court under Article 226 of the Constitution of India.

16. Considering the entire facts and circumstances as well as the prayer made in the earlier Writ Petition and prayer made in the instant Writ Petition along with the order passed in the earlier Writ Petition, petitioner is not entitled to any relief in the matter and Writ Petition is dismissed.

Order Date :- 17.10.2023/PS*

Digitally signed by :-
PRITI SHARMA
High Court of Judicature at Allahabad