

Neutral Citation No. **2023:AHC:231683**

Reserved on: 28.11.2023

Delivered on: 07.12.2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 48

Case :- Civil Misc. Review Application No. - 435 of 2023

Shri Kashi Nath

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Applicant

Through :- Sri R.C. Singh, Sr. Advocate
N.D. Shukla, Satendra Kumar
Singh, Advocates

Vs.

D.D.C. And Others

.....

Opposite Parties

Through :- S.C., Pradeep Kumar Rai,
Advocate

Hon'ble Saurabh Shyam Shamshery, J.

1. Sri R.C. Singh, learned Senior Counsel assisted by Sri Narayan Dutt Shukla, learned counsel for applicant, Sri Satendra Kumar Singh, learned counsel for petitioner and Sri Pradeep Kumar Rai, learned counsel for contesting respondents.

2. This is a review petition filed by subsequent purchasers of some part of land which was in dispute in writ petition.

3. This Court by a detailed order dated 31.7. 2023, passed on an application for withdrawal of recall application filed on behalf of some of petitioners to withdraw an order passed by this Court on 18.11.2016, whereby writ was dismissed as withdrawn was allowed.

4. The review applicants have declared that they have purchased some part of land in dispute in the year 1979 and for first time they entered into litigation by way of filing an impleadment application, when a withdrawal application was filed to withdraw an earlier order dated 18.11.2016 passed by this Court, though later on, that application for withdrawal was

allowed by a detailed order dated 31.7.2023, which is reproduced hereinafter:-

“Order on Withdrawal Application No. 19/2023

1. This writ petition was initially filed by one Sadho S/o Budhar and accompanied affidavit was sworn by one Raj Narayan declaring himself to be pairokar being grandson of petitioner. This writ petition remained pending for many years.
2. During pendency of this writ petition, original petitioner Sadho died and in his place, his legal heirs Shaligram and Chhedilal were substituted. Later on, Shaligram also died and in his place, his legal heirs Raj Narain, Satya Narain and Shanker Lal were substituted. Later on, Chhedilal also died and in his place, his legal heirs Vijay Kumar and Ajay Kumar were substituted.
3. On 23.08.2016, a withdrawal application being No. 262624 to withdraw present writ petition was filed accompanied by an affidavit of petitioner no. 1/1/1 (Raj Narain) declaring that it was filed on behalf of all petitioners. This application was allowed by this Court on 18.11.2016 and writ petition was dismissed as withdrawn.
4. On 10.12.2017, Satya Narain and Shanker Lal, (petitioners no. 1/1/2 and 1/1/3) filed a recall application along with delay condonation application being nos. 413658 and 413660. This application was accompanied by their joint affidavit and pleadings are exchanged on this application.
5. During pendency of above application, an impleadment/intervention application being no. 8 of 2018 was filed by one Kashinath S/o Bechan Yadav stating that he has interest in litigation since he has purchased some part of land in dispute by original petitioner no.1 on 25.09.1979 though such averment was missing in writ petition.
6. On 17.04.2018, though no notice was issued on impleadment application, it appears that a counter affidavit to it was filed. This Court has issued notices on delay condonation application as well as on substitution application of proposed legal heirs of respondent no. 4/1, 6/1 and 7 and order was also passed to maintain status quo on 21.05.2018.
7. During pendency of above proceedings, on 04.07.2023, another application being no. 19 of 2023 was filed on behalf of petitioners (Satya Narain and Shanker Lal Gupta, petitioners no. 1/1/2 and 1/1/3) to withdraw the recall application being nos. 413658 and 413660. This application was accompanied by their common affidavit.
8. Sri Satendra Kumar Singh holding brief of Sri Santosh Kumar Singh, learned counsel for petitioners submits that recall application filed on 10.12.2017 may be dismissed as withdrawn.
9. Sri Pradeep Kumar Rai, learned counsel appearing for respondent No. 5/1 has no objection.
10. Sri R.C. Singh, Senior Advocate assisted by Sri S.N. Singh, Advocate appearing for applicant who has filed impleadment application has objected withdrawal application on the ground that he has purchased some part of land in question way back in the year

1979, however, admittedly, he has not tried to become a party before Deputy Director of Consolidation or in present writ petition which was kept pending for many years till an application for impleadment was filed in the year 2018 i.e. after this writ petition was dismissed as withdrawn by order dated 18.11.2016.

11. At this stage, learned Senior Advocate submits that better recourse is to file a substantive review application in order to show that there was a fraud played as well as that applicants have still a right to contest the case.

*12. There is an application to withdraw the recall application and this Court cannot force the petitioners to continue with the application, therefore, present withdrawal application is **allowed**.*

13. Accordingly, earlier recall application being No. 413660/2017 is dismissed as withdrawn and consequence shall follow.

14. However, the applicants who have filed impleadment application shall have liberty to take other recourse available in accordance with law. ”

5. In pursuance of above order, the review applicants have filed the present review application mainly on grounds that:-

(i) That they were bonafide purchasers and that they were in bonafide impression that their interest was suitably protected by vendor since they have filed writ petition, however, later on it was dismissed as withdrawn.

(ii) At that stage, they approached to this Court and were granted liberty to file a Review Application.

6. Learned Senior Counsel for review applicants has placed a judgment passed by Supreme Court that subsequent purchasers are a relevant party and their interest be protected and prayed that review application be allowed and matter be heard at instance of review applicants by treating them writ petitioners.

7. The aforesaid submissions were opposed by learned counsel for contesting respondent that at belated stage, prayer of review applicants may not be accepted.

8. From the records, it would be evident that review applicants are agitating their right on basis of registered sale-deed executed in the year 1979, when a revision petition was pending before the Revisional

Authority, whereby at instance of respondents, order dated 29.06.1979 passed by the Settlement Officer Consolidation was under challenged, therefore, the petitioners would have knowledge that a litigation was pending in regard to land in dispute.

9. I have carefully perused typed copy of sale-deed annexed along with impleadment application, however, therein nothing was mentioned about any pending litigation. Admittedly, the review applicants have never tried to become a party before the Revisional Authority. The Revisional Authority, by order dated 15.04.1980, allowed the revision petition filed at behest of respondents. This led to filing of a writ petition at the instance of a writ petitioner, way back in the year 1980.

10. This writ petition remains pending for almost 36 years. When it was dismissed as withdrawn on 18.11.2016, writ petitioners have never tried to become a party therein and they cannot deny that they have no knowledge of order passed by the Revisional Authority as well as filing of above referred writ petition before this court, since they were enjoying fruits of an interim order of this Court on 30.05.1980, whereby implementation of order passed by the Deputy Director of Consolidation was stayed.

11. It is well settled that in order to agitate a right, an aggrieved person has to be active and cannot sit at fence, waiting for outcome of litigation pursued by its vendor as in the present case. The review applicants could not take a plea that they were under bonafide impression that their interest would be protected by writ petitioners being their vendor. If a valuable right was accrued to review applicants, they have to take steps to protect it, and for that, they could not be in a long slumber for a period of more than two and a half decades.

12. The judgments placed on behalf of review applicants in regard to specific performance of an agreement where subsequent purchasers were impleaded as interested party and effective party, either at the instance of parties or by subsequent purchasers but in present case, as referred above,

review applicants remained in a very long slumber and there is no bonafide reason for not approaching before this Court, when writ petition was pending for a very long time, therefore, this review application at the instance of review applicants being subsequent purchasers and not a party in a writ petition at a very belated stage is not maintainable and, therefore, accordingly, this review application is **dismissed**.

Order Date :- 07.12.2023

P. Pandey

[Saurabh Shyam Shamsbery, J.]