

Court No. - 48

Case :- WRIT - B No. - 3675 of 2023

Petitioner :- Rishipal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jitendra Pal Singh Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Jitendra Pal Singh Chauhan, learned counsel for the petitioner and Sri A.C. Nishad, learned Standing Counsel.

2. How an ambiguity is created and perpetuated in subsequent proceedings would be explicit in facts of present case.

3. In present case, it is not under dispute that petitioner before this Court was not a party in the two revision petitions bearing Nos.3 and 129 filed by respondents and others.

4. Learned counsel for the petitioner has drawn attention of this Court towards order dated 16.2.2000 passed by Deputy Director of Consolidation whereby both the aforesaid revision petitions were allowed and amended chak table was prepared. Relevant part of the order is mentioned hereinafter:

"दोनों निगरानियां स्वीकार की जाती हैं। संलग्न तालिका जिस पर मेरे हस्ताक्षर हैं, आदेश का अंग होगी। संशोधित आकार पत्र 23 वितरित किया जावे। स्थल पर सीमांकन किया जावे। बाद अमलदरामद पत्रावली दा०द० की जावे।

यही आदेश नि० सं० 129 पर भी लागू होगा। "

5. Learned counsel for the petitioner has further drawn attention of this Court that subsequently restoration application was filed in one of the Revision Petition i.e. No.129. Said restoration application was allowed vide order dated 25-07-2001.

6. Later on, aforesaid Revision Petition was rejected vide order dated 12.11.2002. Both the orders are mentioned hereinafter:

"Order dated: 25-07-2001:

"श्री घिस्सा पुत्र मक्खन निवासी -जहानाबाद बी०ए० द्वारा प्रस्तुत पुर्नस्थापन प्रार्थनापत्र दिनांकित 6-3-2000 स्वीकार किया जाता है तथा निगरानी सं० 129 में पारित आदेश दिनांक 16-02-2000 निरस्त किया जाता है। पत्रावली गुण दोष के आधार पर सुनवायी हेतु दिनांक 01-08-2001 को प्रस्तुत की जाये। ग्राम अभिलेख तलब किये जाये ।"

Order dated: 12-11-2002:

"उक्त विवेचना के अनुसार नत्थू चकदार 348 की निगरानी बलहीन होने के कारण निरस्त की जाती है पत्रावली बाद अमलदरामद दाखिल दफतर हो।"

7. Learned counsel for the petitioner at this stage further submitted that effect of rejection of Revision Petition No.129 on amended chak table was not taken note of and no further amended chak table was prepared. It was neither mentioned in order passed in revision petition no.129 nor whether it would have effect on amended chak table.

8. In aforesaid circumstances since petitioner's chak was affected, he filed a restoration application, but the same was dismissed vide order dated 12.11.2002 and it was clarified that said order has not made any affect on allotment of chak of the petitioner.

9. The petitioner has filed an application under Rule 109 (2) of Uttar Pradesh Consolidation of Holdings Rules, 1954 for complying the order dated 16.2.2000 (after connected revision was later on dismissed) which was disposed of vide order dated 24.3.2015 with direction to decide the same expeditiously with an observation that petitioner's chak was prior to the order dated 16.2.2000 therefore, liable to be restored and he was entitled for demarcation of chak as well as delivery of possession over it.

10. Learned counsel for the petitioner further submits that despite aforesaid clarification, direction and observation, the Consolidation Officer concerned has rejected above referred application vide order dated 14.8.2015 by observing that since revision petition no.129 has already been rejected vide order dated 12.11.2002, therefore, there is no order to comply with. However, despite taking note that order qua to revision petition no.3 still exists, no reference was made of it in the said order nor it was mentioned that there was any ambiguity.

11. Counsel for petitioner further submits that aforesaid approach was perpetuated by Appellate Authority and by the Revisional Authority.
12. From the above it is clear that Deputy Director of Consolidation, while rejecting the revision petition no.129 vide order dated 12.11.2002, ought to have clarified the effect of common order passed on 16.2.2000, whereby a common order, both the revision petitions i.e. revision petition nos.3 and 129 were allowed and the amended chak table was prepared. However, no such clarification was incorporated in the order, therefore, ambiguity perpetuated.
13. Learned Standing Counsel submits that such ambiguity may be removed and appropriate direction/ order may be passed by this Court, in this regard.
14. In the aforesaid circumstances in order to remove aforesaid ambiguity and to give clarity to the amended chak table, petitioner is granted an opportunity to file a restoration/clarification application in both the revision petitions nos. 129 and 3. The Deputy Director of Consolidation is directed to consolidate both the restoration applications and pass an order clarifying position in respect of amended chak table related to petitioner, so that it would be clear as to whether petitioner's chak was affected or not and in case it was affected, the Deputy Director of Consolidation shall clarify as to what would be the position of the allotted chak.
15. The petitioner undertakes to file a restoration/clarification application within a period of three weeks from today and Deputy Director of Consolidation will decide both the restoration/clarification applications within a period of 8 weeks thereafter.
16. It is made clear that restoration/clarification applications would not be dismissed on ground of maintainability and all legal consequence of order passed in restoration/clarification applications, will follow and in case any chak is affected in amended chak table, it would give a fresh cause of action to the petitioner to file an application under Rule 109 of Uttar Pradesh Consolidation of Holdings Rule, 1954.
17. With the aforesaid direction/observation, this writ petition is disposed of.

Order Date :- 31.10.2023-SB