

Court No. - 51

Case :- WRIT - C No. - 39513 of 2023

Petitioner :- Gaurav Arora

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Mehul Khare, Anil Kumar Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Mr. Anil Mehrotra, Advocate, assisted by Mr. Mehul Khare, learned counsel for the petitioner, Mr. O.P. Sharma, learned Additional Chief Standing Counsel for the State-respondents.
3. With the consent of learned counsel for the parties, the instant petition is being heard and disposed of without inviting counter affidavit.
4. The instant writ petition has been filed for the following relief:

*"(I) Issue a writ, order or direction in the nature of 'certiorari' or any other proper writ, order or direction to quash the order date 01.11.2023 passed by Deputy Commissioner-II, Kanpur Division' Kanpur/ Respondent No.5 passed in '**Civil Revision No.2320 of 2023' Gaurav Arora Vs. Shyamlal and others** or in the alternate, issue a writ order or direction in the nature of Mandamus or any other proper writ, order or direction directing the stay of the further proceeding of **Case No.114/959 of 2022: State of U.P. Vs. Shyamlal and others**' during the pendency of '**Civil Revision No.2320 of***

2023: Gaurav Arora Vs. Shyamlal and others' before the Deputy Commissioner-II Kanpur Division, District:Kanpur/ Respondent No.5.

(II) Issue a writ, order or direction in the nature of Mandamus or any other proper writ, order or direction directing the revival of the order dated 27.10.2023 passed by the Deputy Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5 in "Civil Revision No.2320 of 2023; Gaurav Arora Vs. Shyamlal and others'."

5. Learned counsel for the petitioner submitted that proceeding under Section 49 of U.P. Revenue Code, 2006 being Case No.114/959 of 2022 has been initiated in arbitrary manner accordingly, petitioner filed an application dated 10.10.2023 that proceeding under Section 49 of U.P. Revenue Code, 2006 is not maintainable. He further submitted that application regarding maintainability of the proceeding was rejected by the court concerned vide order dated 10.10.2023 and against the same, petitioner filed a revision under Section 210 of U.P. Revenue Code, 2006 which was registered as Case No.2320 of 2023. He further submitted that *Additional Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5* vide order dated 27.10.2023 registered the revision, summoned the records of the courts below and issued notice to the other side fixing 16.11.2023. He further submitted that the same *Additional Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5* without any basis and without any notice or opprotuity to the petitioner passed another order dated 01.11.2023 by which earlier order dated 27.10.2023

was set aside and order dated 16.11.2023 was fixed for hearing of the revision on the maintainability. Learned counsel for the petitioner submitted that subsequent order order 01.11.2023 is wholly illegal and is liable to be set aside as well as Additional Commissioner-II, *Kanpur Division, District: Kanpur/Respondent No.5* be directed to proceed with the matter in accordance with earlier order dated 27.10.2023.

6. Mr. O.P. Sharma, learned Additional Chief Standing Counsel for the State-respondent submitted that order impugned is interlocutory order as such no interference is required in the matter. He further submitted that since revision is pending before Additional Commissioner-II, *Kanpur Division, District: Kanpur/Respondent No.5*, as such petitioner should approach the revisional court rather writ petition before this Court under Article 226 of the Constitution of India.

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

8. There is no dispute about the fact that Revision No.**2320 of 2023; computerized Case No.C20230300002320 Gaurav Arora Vs. Shyamlal and others'** under Section 210 of U.P. Revenue Code, 2006 filed by the petitioner is pending before **Additional Commissioner/ respondent No.5** arising out of proceeding under Section 49 of U.P. Revenue Code, 2006.

9. Perusal of the order dated 27.10.2023 passed by the Additional Commissioner/ respondent No.5 will be relevant

for consideration, which is as under:

आदेश पत्रक
न्यायालय:- अपर आयुक्त, द्वितीय
मण्डल:- कानपुर
वाद संख्या: 2320/2023
कम्प्यूटरीकृत वाद संख्या:- C20230300002320
गौरव अरोरा बनाम श्यामलाल आदि
उत्तर प्रदेश राजस्व संहिता 2006, अंतर्गत धारा: 210

आदेश

पत्रावली ग्राह्यता स्तर पर सुनवाई हेतु पेश हुयी। पुकार करायी गयी। निगरानीकर्ता के विद्वान अधिवक्ता उपस्थित आये। बहस सुनी गयी। निगरानी पंजीकृत की जाय। अवर न्यायालय की पत्रावली तलब हो। विपक्षीगण की सम्मन/नोटिस जारी हों। पत्रावली अग्रिम कार्यवाही हेतु दिनांक 16.11.2023 को पेश हो।

दिनांक 27.10.2023

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7.10.2023

प्रेम प्रकाश उपाध्याय
अपर आयुक्त न्यायिक II
कानपुर मण्डल, कानपुर।

10. Perusal of the impugned order dated 01.11.2023 passed by Additional Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5 will also relevant which is as under:

आदेश पत्रक
न्यायालय:- अपर आयुक्त, द्वितीय
मण्डल:- कानपुर
वाद संख्या: 2320/2023
कम्प्यूटरीकृत वाद संख्या:- C20230300002320
गौरव अरोरा बनाम श्यामलाल आदि
उत्तर प्रदेश राजस्व संहिता 2006, अंतर्गत धारा: 210

अंतरिम आदेश

आदेश तिथि: 01.11.2023

प्रार्थना पत्र व पत्रावली का अवलोकन किया गया। आदेश दिनांक 10.10.2023 अन्तर्वर्ती प्रकृति का आदेश है। जिसे पहले ग्राह्यता पर सुना जाना आवश्यक है। पत्रावली तलब करने की आवश्यकता नहीं है। अतः आदेश दिनांक 27-10-2023 निरस्त किया जाता है। पत्रावली वास्ते ग्राह्यता पर सुनवाई हेतु दिनांक 16.11.2023 को पेश हो।
दिनांक: 01.11.2023

(प्रेम प्रकाश उपाध्याय)
अपर आयुक्त न्यायिक (II),
कानपुर मण्डल, कानपुर।

11. The procedure has been prescribed for deciding the revision under Section U.P. Revenue Code, 2006 and Rules framed thereunder. The revisional Court once entertained

the revision, summoned the record and issued notice to the other side vide order dated 27.10.2023 which is proper exercise of jurisdiction prescribed under the law, the same cannot be recalled or modified in arbitrary manner. There is no doubt that revision can be dismissed at the admission stage but once the court has entertained the matter, summoned the record and issued notice to the other side as such, the Court should not interfere with the earlier order.

12. Considering the facts and circumstances of the case, the impugned 01.11.2023 passed by Additional Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5 is liable to be set aside and is hereby set aside. **Writ petition is allowed** and Additional Commissioner-II, Kanpur Division, District: Kanpur/Respondent No.5 is directed to decide the pending Revision No.**2320 of 2023: Computerized Case No. C20230300002320 Gaurav Arora Vs. Shyamlal and others'** under Section 210 of U.P. Revenue Code, 2006 in pursuance of the order dated 27.10.2023 in accordance with law expeditiously preferably within a 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.

13. Office is directed to provide the certified copy of this order to learned counsel for the petitioner as per Court Rules.

Order Date :- 9.11.2023

PS*