

Court No. - 18

Case :- WRIT - C No. - 337 of 2023

Petitioner :- Shambhoo Lal

Respondent :- Addl. Commissioner Devipatan Division Gonda And 3 Others

Counsel for Petitioner :- Surya Kant Singh

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Shree Prakash Singh, J.

Supplementary affidavit filed today by counsel for the petitioner is taken on record.

Heard Sri Surya Kant Singh, learned counsel for the petitioner, Sri Hemant Pandey, learned standing counsel for the State and perused the record.

By means of the instant petition, the petitioner has assailed the orders dated 31.08.2022 and 28.02.2005 passed by the opposite party no. 1 and opposite party no. 3, respectively.

The contention of learned counsel for the petitioner is that the land Khasra No. 470, measuring area of 0.267 hectares, situated at village- Jhapatpur, Pargana, Hishampur, Tehsil- Kaisarganj, District-Bahraich was recorded in the name of the petitioner in the revenue record as per the decision dated 01.11.1996, wherein, the petitioner was given the benefit of provisions of section 122-B(4F) of the 'Act, 1950'. He added that in fact the aforesaid order was passed on a suit of the petitioner, under section 229(B) of the The U.P. Zamindari Abolition and Land Reforms Act, 1950, (herein after referred to as 'Act, 1950.' before the opposite party no. 3 and it was allowed on 01.11.1996, but behind the back of the petitioner, the recall application was filed by the Gaon Sabha on 23.09.1997 and the court below without condoning the delay, recalled the order dated 01.11.1996 and allowed the same exparte vide order dated

25.02.2005 and when this fact came into the knowledge of the petitioner, he moved the revision before the revisional court, under section 333 of the Act, 1950, which too was dismissed, without considering the fact that without issuance of notice and serving the same as per the law, upon the petitioner, the court below has recalled the order dated 01.11.1996. He pointed out that there is no single whisper with respect to finding regarding the legal question raised/agitated by the petitioner before the revisional court that without condoning the delay and without service of notice upon the petitioner, the order which was passed earlier could not have been recalled.

He has also drawn attention towards annexure no. 6 page 18 and submitted that the report of process server is evident that the same was not served upon the petitioner as he was reported to live in Mumbai. He further contended that even after the aforesaid facts, that the service of notice was not sufficient and the delay too was not condoned, the order dated 28.02.2005 was passed while recalling the earlier order dated 01.11.1996. He added that in view of the aforesaid, the order dated 28.02.2005 passed by opposite party no. 3 and order dated 31.08.2022 passed by opposite party no. 1 are erroneous and against the settled proposition of law and the same are unsustainable.

Learned counsel appearing for the State rebutted the aforesaid facts and further submits that the petitioner admittedly was given the benefit of provisions of section 122-B(4F) of the Act, 1950 but thereafter, the order dated 01.11.1996 has been recalled.

Having heard learned counsel for the parties and after perusal of the material placed on record, it transpires that in way back year 1996, in a suit instituted under section 229(B) of the act, 1950, the benefit of section 122B(4F) of the Act, 1950 was granted in

favour of the applicant, with the non-transferable right over the land and thereafter, behind the back of the petitioner, the said order was recalled in the year 2005, without condoning the delay and service of the notice upon the petitioner, whereafter the said order was challenged by the petitioner before the revisional court while moving the revision under section 333 of Act, 1950, but the same was dismissed in a cursory manner, without giving any finding on the issue agitated before the revisional court, regarding the service of notice as well as the condonation of delay.

From the supplementary affidavit, this Court has also noticed the fact that the process server has given its report that since the petitioner is residing at Mumbai and therefore, the service of notice could not be served upon him and except apart the said report, there is no other contrary fact regarding service of notice. Further, the order dated 01.11.1996 has been recalled, without condoning the delay which goes against the settled proposition of law.

In view of the aforesaid submissions and discussions, the order dated 28.02.2005 passed by the opposite party no. 3 as well as the order dated 31.08.2022 passed by opposite party no. 1 are hereby set aside.

Matter is transmitted back to the court below to decide the matter afresh after affording the opportunity of hearing to the parties concerned and also due opportunity on application for condonation of delay, in accordance with law.

The instant petition is **allowed** accordingly.

Order Date :- 28.11.2023/Mayank