

Court No. - 18

Case :- WRIT - C No. - 7276 of 2023

Petitioner :- Intaj Ali

Respondent :- Additional Commissioner, Iii, Devi Patan Mandal, Gonda And 7 Others

Counsel for Petitioner :- Pawan Kumar Mishra

Counsel for Respondent :- C.S.C.,Ashish Raman Mishra

Hon'ble Saurabh Lavania,J.

Heard Sri Pawan Kumar Mishra, learned counsel for the petitioner, Sri Hemant Kumar Pandey, learned counsel for the State as also Sri Ashish Raman Mishra, learned counsel for the opposite party Nos.2 to 6.

No one appeared on behalf of opposite party Nos.7 and 8, though, as per Office report dated 16.10.2023, the service upon these opposite parties are sufficient.

In view of aforesaid as also in view of the issue involved, this Court proceeded to decide present petition at admission stage.

By means of this petition, the petitioner has challenged the order dated 14.06.2022 passed by the opposite party No. 1- Additional Commissioner, III, Devi Patan Mandal, Gonda, in a revision registered as Case No. 1061/2021, Computerized Case No. C202108000001061 (Meraj Ahmad vs. Intaj Ali), which was filed under Section 219 of U.P. Land Revenue Act, 1901 (in short "Act of 1901").

Upon due consideration, this Court protected the interest of the petitioner vide order dated 24.08.2023.

Assailing the order dated 14.06.2022, learned counsel for the petitioner says that on the one hand, the respondent No. 1

directed the Naib Tehsildar concerned to hear the parties on the application for restoration dated 27.02.2012 and on the other hand, he has also directed to decide the case on its own merits after allowing the restoration application, though, if the respondent No. 1 was of the view that the case should be restored then he should have restored the case to its original number and directed the Naib Tehsildar concerned to decide the case on merits and if he was of the view that the matter requires consideration afresh then the direction for allowing/accepting the application for restoration is unjustified, as such, interference of this Court is required in the matter.

In support of his case, the learned counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Madan Mohan vs. State of Rajasthan And Others; reported in (2018) 12 SCC 30** and based upon the same, he says that higher authority or superior Court cannot issue a direction to subordinate authority or Court to 'allow' the case or 'reject' it and if such directions are issued, it would amount to usurping the power of that Court and would amount to interfering in the discretionary powers of the subordinate Court. Such order is, therefore, not legally sustainable. In the instant case, the revisional authority has directed the subordinate authority i.e. Nayab Tehsildar, to allow the restoration application and the decide the case on merits. As such, indulgence of this Court is required in the matter.

Sri Ashish Raman Mishra, learned counsel for the opposite party Nos.2 to 6 could not dispute the aforesaid and the law laid down by the Hon'ble Apex Court.

Considered the submissions advanced by the learned counsel for the parties and perused the record.

Admittedly, by means of the order dated 14.06.2022 a direction has been issued by the higher authority to subordinate authority i.e. Nayab Tehsildar, Bahraich, to allow the restoration application and decide the case on merits, which is not permissible in view of the law laid down by the Hon'ble Apex Court.

For the reasons aforesaid, the direction of the revisional authority to subordinate authority to allow the restoration application and decide the case on merits is hereby set aside. Rest part of the order dated 14.06.2022 shall remain intact.

In view of the aforesaid, the Nayab Tehsildar, Bahraich, is directed to first consider and decide the application for restoration on its own merits within a period of three months from the next date fixed in the case and thereafter, if required, decide the case on its own merits expeditiously.

The writ petition is **allowed** in aforesaid terms.

Order Date :- 19.10.2023

Vinay/-