

Court No. - 18

Case :- WRIT - C No. - 10280 of 2023

Petitioner :- Peskar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue, Lucknow And Others

Counsel for Petitioner :- Nagendra Pratap Singh, Aman Kumar Shrivastav

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh, J.

Heard Sri Nagendra Pratap Singh, learned counsel for the petitioner, Sri Hemant Pandey, learned Standing Counsel for the State and perused the material placed on record.

The instant petition under Article 226 of the Constitution of India has been filed with the prayer to quash the impugned order dated 20-07-2023, passed by the opposite party no. 2 and the impugned order dated 27-06-2023 passed by opposite party no. 3.

Learned counsel appearing for the petitioner submits that one Durga Baksh Singh, uncle of the petitioner was the original tenure holder of the land in question and he executed a will deed on 05-03-1999, in favour of the petitioner and died on 10-06-1999. He submitted that the petitioner filed a mutation case, which was allowed vide order dated 02-09-1999 and his name was recorded in revenue record. Thereafter, on 27-06-2023, against the mutation order, the opposite parties filed the restoration application after lapse of 16 years, on the basis of false facts and without any substantial and cogent piece of evidence. The aforesaid application was allowed and the mutation order was recalled. He added that against the aforesaid order, the petitioner moved a revision, which was decided by the revisional court vide order dated 20-07-2023, that too, without considering the fact that after lapse of about 16 years, the court below i.e. the Tehsildar, had allowed the restoration application and recalled the order.

Adding his arguments, he submits that infact,

there is no finding so far as condonation of delay is concerned and the inordinate delay of 16 years has been condoned without recording any finding and this fact has also been ignored by the revisional court. Therefore, submission is that the order impugned dated 20-07-2023 assails erroneousousness and is liable to be set aside.

On the other hand, learned Standing Counsel appearing for the State has vehemently opposed the contentions aforesaid and has drawn attention of this court towards the order passed by the Tehsildar dated 27-06-2023 and submits that the application for condonation of delay has been allowed, while imposing a fine of Rs. 1,000/- and it has been recorded in the finding that the order by which the land in question was mutated in favour of the present petitioner, was passed on a Holiday i.e. on the day of 'Krishna Janmashtami' (02-09-1999). He also added that behind the back of the heirs, the land in question was got mutated on the basis of an unregistered will deed and therefore, learned Tehsildar as well as the learned revisional court have rightly passed the orders while recalling the order of mutation.

Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires that after the death of original tenure holder namely, Durga Baksh Singh on 05-03-1999, the mutation was applied on the basis of an unregistered will deed and the order was passed and the land in question was recorded in the name of the petitioner. The alleged heirs of the deceased/original tenure holder moved a recall application alongwith an application for condonation of delay, which was allowed by the Tehsildar while imposing a fine of Rs. 1,000/.

This court has noticed the fact that while recording the findings in the order, the revisional court has noted the argument of the learned counsel for the parties that the order by virtue of which the property in question was mutated in favour of the petitioner, was passed on a Holiday of 'Krishna Janmashtami'. Further the opposite parties or their natural legal heirs, when came to know, they filed a recall application alongwith an application for

condonation of delay. Thus, there seems to be no unlawfulness or erroneousness in the order passed by the learned Tehsildar as well as the learned revisional court.

Resultantly, the instant petition is hereby **dismissed**.

However, it is provided that the case pending before the Tehsildar shall be decided within a period of three months from the date a certified copy of this order is produced before it, after affording opportunity of hearing to all the parties concerned.

The aforesaid order is subject to the cooperation of the petitioner.

Order Date :- 23.11.2023

AKS