

Court No. - 8

Case :- CONTEMPT APPLICATION (CIVIL) No. - 71 of 2024

Applicant :- Abhaya Pratap Singh

Opposite Party :- Sri Amit Tripathi, Nayab Tehsildar, Tehsil-Sadar, Lko.

Counsel for Applicant :- Pashu Pati Pratap Singh, Ankit Tiwari, Rita Singh

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant.

2. Present application has been with the prayer to summon and prosecute the opposite parties for deliberate and willful contempt of order of Writ Court dated 20.09.2023 passed in petition under Article 227 No.1687 of 2023; *Abhay Pratap Singh Vs. State of U.P. and Ors.*

3. Learned counsel for the applicant submitted that Mohd. Siraj was recorded tenure holder of Gata No.89 and he executed sale deed in favour of Ram Kesh on 14.01.2010 and on the basis of aforesaid sale deed, the name of Ram Kesh was mutated in the revenue record on 26.02.2010, thereafter, Ram Kesh sold his property to Abhay Pratap Singh (applicant) and Jitendra Kumar Verma on 14.02.2014 and 07.05.2014 respectively and their names were mutated in the revenue record on 05.04.2014 and 26.06.2014. Thereafter, one mutation suit was filed by Ajay Kumar Singh which was recorded as Case No.3878 of 2018; *Ajay Kumar Singh Vs. Mohd. Siraj* on the ground that Mohd. Siraj recorded tenure holder executed registered agreement to sell on 27.09.2008 in favour of Ajay Kumar Singh but the sale deed was not executed then the Suit No.1012/2011 was filed before the Competent Court which was allowed on 24.07.2013 and thereafter, execution case was filed then the Munsarim executed the sale deed on 20.02.2018 on the basis of aforesaid judgment and decree of the Competent Court in favour of Ajay Kumar Singh. The aforesaid case No.3878 of 2018; *Ajay Kumar Singh Vs. Mohd. Siraj* was dismissed on 5.5.2018 by Naib Tehsildar, Sadar, Lucknow. Feeling aggrieved by the aforesaid order, Ajay Kumar Singh filed another application for recall of mutation order dated 26.02.2010 by which the name of Ram Kesh was mutated in the place of Mohd. Siraj which was registered as Case No.15873 of 2019; *Ajay Singh Singh Vs. Mohd. Siraj and Anr.*, and it was also dismissed on 15.11.2021. Later on, one application was filed by Ajay Kumar Singh on 01.12.2021 before the Naib Tehsildar (*supra*) for clubbing of

the Case Nos.3878/2018 (*supra*) and 15873/2019 (*supra*) in relation to the mutation of name in the property which was recorded in the name of Mohd. Siraj. Thereafter, Naib Tehsildar (*supra*), vide order dated 02.09.2022 restored the proceedings of Case No.3878/2018 (*supra*) and 15873/2019 (*supra*) and also ordered for clubbing both the proceedings. The order dated 28.02.2023 was also passed for mutating the name of Ajay Kumar Singh in Case No.3878/2018 (*supra*). Feeling aggrieved by the said order, the applicant preferred petition under Article 227 No.1687/2023; *Abhay Pratap Singh vs State of U.P. and Ors.* which was allowed by the Writ Court vide judgment and order dated 20.09.2023.

4. The order dated 20.09.2023 passed under Article 227 No.1687/2023; *Abhay Pratap Singh vs State of U.P. and Ors.* is quoted as under:

"Heard.

By means of the present petition, the petitioner has assailed the order dated 28.02.2023 passed in Case No. RST/03878 of 2018, Computerized Case No. P2018104G0203878 (Ajay Kumar Singh vs. Mohammad Siraj), under Section 34/35 of the U.P. Revenue Code, 2006 (in short "Code of 2006"), by the opposite party No.2-Nayab Tehsildar, Chinhath, Tehsil-Sadar, District-Lucknow as also the order dated 02.09.2022 passed in Case No.RST/15873/2019 filed under Section 209(Ja) of the Code of 2006 by the opposite party No.2.

On 06.04.2023 this Court, after considering the submissions of the learned counsel for the parties present before this Court, passed the following order:-

"The submission of learned counsel for the petitioner is that the Case No. RST/03878 of 2018, Computerized Case No. P2018104G0203878 (Ajay Kumar Singh vs. Mohammad Siraj) was finally decided on 05.05.2018 rather dismissed on 05.05.2018 and the said order was neither recalled nor set-aside by any competent forum and despite the same, the impugned order dated 28.02.2023 has been passed by the respondent No. 2/Nayab Tehsildar, Kshetra Chinhath, Tehsil Sadar, Division and District Lucknow. In nutshell, the submission of learned counsel for the petitioner is that in a dismissed case, an order on merits has been passed.

Considering the aforesaid, learned State counsel is directed to seek instructions in the matter as also place the relevant record of the case before this Court by the next date of listing.

List/put up this case on 13.04.2023 as fresh.

Till the next date of listing, the implementation and operation of the impugned order dated 28.02.2023 shall remain stayed."

The aforesaid order indicates that the learned counsel for the State was directed to seek instructions in the matter.

It further appears from the record that the service upon opposite party Nos.4 and 5 is sufficient, however, no one appeared on behalf of these opposite parties and for opposite party No.3, contesting opposite party, Sri Digvijai Singh, Advocate as also Sri Prasiddha Narayan Singh, Advocate have filed the Vakalatnama.

The main contention of the learned counsel for the petitioner for interfering in the order dated 28.02.2023 passed in Case No.RST/03878/2018, under Section 34 of the Code of 2006 is to the effect

that on 05.05.2018, when the order was passed the applicant (contesting opposite party No.3) was not present and the case for mutation, registered as Case No.03878 of 2018, Computerized Case No.T201810460203878 was dismissed vide order dated 05.05.2018, in absence of applicant, after observing on merits.

Thereafter, to restore the Case No.03878 of 2018, Computerized Case No.T201810460203878, no application with the prayer to restore the same was ever preferred.

However, on an application preferred with the prayer to consolidate the case(s), the opposite party No.2-Nayab Tehsildar, Kshetra-Chinhat, Tehsil-Sadar, Division & District-Lucknow, restored the case, which was dismissed on 05.05.2018, vide order dated 02.09.2022. Thus, this order of restoration of the Case No.03878 of 2018, Computerized Case No.T201810460203878 is non-est.

Thereafter, the order impugned was passed on merits on 02.09.2022, which is also not sustainable for the reasons aforesaid.

He further submitted that an order passed on merits can not be recalled and only appeal would lie against the same and moreover, in the present case, without any application for recalling of order dated 05.05.2018 the Case No.03878 of 2018, Computerized Case No.T201810460203878 was restored.

He also submitted that before passing the order dated 02.09.2022 the proper opportunity of hearing was not provided. In these circumstances, the indulgence of this Court is required.

Sri Prasiddha Narayan Singh, learned counsel for the side opposite as also Sri Hemant Kumar Pandey, learned counsel for the State stated that no interference should be made in the impugned order on the ground that substantial justice between the parties has been done.

It has also been stated that vide order dated 05.05.2018 the case was dismissed as such the same can be restored by the authority concerned.

However, on query being put, learned counsel for the State, based upon the instructions as also Sri Prasiddha Narayan Singh could not place before this Court any application with the prayer to recall of the order dated 05.05.2018 and restore the case to its original number.

Learned counsel for the side opposite also could not dispute the submissions of learned counsel for the petitioner based upon the pleadings on record that the petitioner was not a party in the proceedings instituted by the private opposite party.

Sri Pandey, at this stage, stated that the petitioner is having statutory remedy by means of the appeal before the appellate authority under Section 35(2).

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

Undisputedly, no application for restoration was preferred by the applicant (opposite party No.3) for restoring the Case No.03878 of 2018, Computerized Case No.T201810460203878 and it appears that on the application preferred for consolidation of case(s) the opposite party No.2 passed the order dated 02.09.2022, whereby he consolidated the case(s) as also restored the Case No.03878 of 2018, Computerized Case No.T201810460203878, which was dismissed on 05.05.2018. In this view of the matter, the procedure adopted by the opposite party No.2 is unjustified and un-reasonable.

Thus, the ground for challenging the impugned orders taken by the petitioner which is to the effect that without an application with a prayer to recall the order dated 05.05.2018 the case has been restored, to the view of this Court, is justified and this Court finds that the case was

restored without any application preferred in this regard by the concerned applicant.

In view of aforesaid, this Court is of the view that relegating the petitioners to avail the statutory remedy would not be appropriate at this stage and justice would suffice by interfering in the impugned order(s) with and liberty to the aggrieved party to take recourse of appropriate remedy provided under the law to get the case for mutation decided on merits.

Accordingly, the orders dated 28.02.2023 and 02.09.2022 are hereby set aside with liberty to opposite party No.3 to take recourse of law to get the case for mutation decided on merits.

The writ petition is allowed in aforesaid terms. "

5. Learned counsel for the applicant submitted that the opposite parties committed error by reopening the proceeding of the aforesaid cases related to the mutation without any proper application, therefore, they committed willful disobedience of the order of Writ Court, for the same, they shall be summoned and punished accordingly.

6. Considering the submission of learned counsel for the applicant, contents of contempt application as well as the order sheet, it is evident that on the last date, record was placed before this Court and it was found that vide order dated 27.10.2023, the proceeding was reopened by the Competent Authority under the impression that it is to be decided afresh in compliance of the order dated 20.09.2023 passed by this Court under Article 227 No.1687/2023 (*supra*). As no recall application was filed by Ajay Kumar Singh before the order dated 27.10.2023. Therefore, this Court is of the view that the order dated 27.10.2023 was passed under wrong impression.

7. In view of the above, the present contempt application is **disposed of** with the direction to Naib Tehsildar, Tehsil- Sadar, Circle- Chinhat, District- Lucknow to revisit the order dated 27.10.2023 and proceed in accordance with law.

8. However, it is open to the applicant to move an application before the Competent Authority along with the order dated 20.09.2023 passed under Article 227 No.1687/2023 (*supra*) and proceed in accordance with law.

9. Presence of officer is hereby dispensed with.

Order Date :- 30.5.2024

V. Sinha