

Court No. - 7**Case :-** WRIT - B No. - 28 of 2024**Petitioner :-** Shiv Shankar Singh And Others**Respondent :-** State Of U.P. Thru. Addl. Chief Secy., Deptt. Of Revenue, Lucknow And Others**Counsel for Petitioner :-** Varun Pratap Singh**Counsel for Respondent :-** C.S.C.,Aditya Kumar Pandey,Pankaj Gupta**Hon'ble Saurabh Lavania,J.**

Heard learned counsel for the petitioners-Sri Varun Pratap Singh and Sri Swarnim Pandey; learned counsel for the State, Sri Vijay Bahadur Verma, Advocate and Sri Aditya Kumar Pandey, Advocate, for opposite party No.7 on whose behalf a Vakaltnama has been filed, which is taken on record and Sri Vikram Pandey, Advocate holding brief of Sri Pankaj Gupta, learned counsel for the Gaon Sabha.

In view of order proposed to be passed this Court is of the view that no prejudice would be caused to the opposite party Nos. 6 and 8, who are real brothers of opposite party No.7, as the facts of the case are not in dispute and to the view of this Court even on appearance these parties would not be in position to dispute the facts and in view of the order proposed to be passed the matter would be heard and decided on merits and accordingly, the notice to opposite party Nos.6 and 8 is dispensed with and with the consent of the Counsel for the parties who are present before this Court this petition is being decided at admission stage.

Present petition has been filed for the following main reliefs:-

"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 11.12.2023 passed by Deputy Director of Consolidation, District-Pratapgarh (opposite party no.3) as contained in Annexure No.1 to this writ petition.

ii. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 18.01.2022 passed by Consolidation Officer, (opposite party no.4) Tehsil-Kunda. District-Pratapgarh as contained in Annexure No.2 to this writ petition to the extent it provides for hearing on application dated 27.05.2016 moved by the petitioners.

iii. Issue a writ order or direction in the nature of mandamus commanding the opposite party no-4 to decide the objection filed by the father of the petitioners under section 20 of the Act, 1953 on merits."

Vide impugned order dated 18.01.2022 passed in Case No. 24/2021-22 (Shivshankar & Others vs. Lal Diwakar Pratap Singh & Others), the opposite party No.4-Consolidation Officer, Kunda, Pratapgarh (in short "C.O.") allowed the application for restoration/recall of the order dated 09.08.2016 filed in the month of December, 2018 by the private opposite party Nos.6 to 8 namely Lal Diwakar Pratap Singh, Pushpraj Singh and Purshottam Singh, respectively, all sons of Late Jwala Singh and set aside the order dated 09.08.2016 passed in Case No. 133/2015-2016 and fixed the case for hearing on the application dated 27.05.2016, which was allowed vide order dated 23.06.2016.

Vide impugned order dated 11.12.2023, the opposite party No.3/Deputy Director of Consolidation, Pratapgarh (in short

"D.D.C.") dismissed the Revision No. 826 of 2023, Computerized Case No. T2022530257000021 (Shivshankar & Others vs. Lal Diwakar Pratap Singh & others), instituted under Section 48(1) of the U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953") by the petitioners challenging the order dated 18.01.2022, meaning thereby, the opposite party No.3 affirmed the order dated 18.01.2022.

Brief facts, which are relevant for the purposes of disposal of present petition, are to the effect that an objection dated 03.02.1993/04.02.1993 under Section 20 of the Act of 1953 was preferred by the predecessor-in-interest of the petitioners and the same was dismissed for want of prosecution on 18.12.1998 and thereafter, an application dated 27.05.2016 for restoration of the case was preferred by the petitioners and the same was allowed by the opposite party No.4/C.O. vide order dated 23.06.2016 and thereafter, opposite party No.4/C.O. decided the case i.e. Case No. 133/2015-16 on merits vide order dated 09.08.2016.

On coming to know about the final order dated 09.08.2016, the opposite party Nos.6 to 8 preferred an application for restoration/recall of order dated 09.08.2016 stating therein that contesting opposite party namely Jwala Singh, father of the applicants/opposite party Nos. 6 to 8, had expired on 28.03.2016 and no opportunity of hearing was provided to the applicants prior to passing the order dated 09.08.2016 and accordingly, the final order dated 09.08.2016 in absence of parties is nullity and is liable to be recalled. In this

application, the applicants/opposite party Nos.6 to 8 prayed for recall of order dated 09.08.2016 as also that the objection regarding allotment of Chak be heard and decided on merits. The relief sought in the application being relevant on reproduction reads as under:-

"अतः श्रीमानजी से विनम्र निवेदन है कि भा०मि०अधि० की धारा 5 का लाभ देकर प्रार्थना पत्र वाद दायरा अन्दर मियाद मानकर आदेश दिनांक 9.08.016 ई० को अपास्त करते हुए पुनः सुनवाई के पश्चात गुण दोष के आधार पर उपरोक्त चक आपत्ति के सम्बन्ध में निर्णय करने की कृपा की जावे।"

The aforesaid application with a prayer to restore the case to its original number/recall of the order dated 09.08.2016 was allowed by the impugned order dated 18.01.2022, affirmed by the order dated 11.12.2023, passed by the opposite party Nos.4/C.O. and 3/D.D.C., respectively.

Assailing the orders impugned dated 18.01.2022 and 11.12.2023 passed by the opposite party Nos.4/C.O. and 3/D.D.C., respectively, learned counsel for the petitioners submitted that in fixing the case for hearing on the application dated 27.05.2016 the opposite party No.4/C.O. exceeded its jurisdiction as this application was allowed earlier vide order dated 23.06.2016 and in the application, which was allowed vide order dated 18.01.2022, the relief with regard to application dated 27.05.2016 and order dated 23.06.2016 was not sought and only to this extent the order dated 18.01.2022 and order dated 11.12.2023, whereby the order dated 18.01.2022 has been affirmed, are liable to be set aside.

Opposing the present petition for the relief sought, Sri Vijay Bahadur Verma and Sri Aditya Kumar Pandey, learned counsel for the side opposite stated that no doubt the application which was preferred for recall of the order dated 09.08.2016 and to restore the case to its original number no specific prayer was sought in relation to the application dated 27.05.2016, which was allowed vide order dated 23.06.2016, however, the opposite party No.4/C.O. after considering the entire facts of the case particularly that contesting opposite party namely Jwala Singh, father of the applicants/opposite party Nos.6 to 8, had expired on 28.03.2016, fixed the case for hearing on the application dated 27.05.2016, as such, interference in the present matter is not required particularly taking note of the facts that the application itself was preferred against the dead person.

In response, learned counsel for the petitioner stated that the opposite party Nos.6 to 8 were substituted in the case instituted by preferring an application dated 27.05.2016 for restoration of case, which was dismissed for want of prosecution vide order dated 18.12.1998, and as such, the private opposite parties were parties to the proceedings concluded vide order dated 23.06.2016 and in relation to order dated 23.06.2016, whereby the application dated 27.05.2016 was allowed by the opposite party No.4/C.O., no relief was sought by the opposite party Nos.6 to 8 with regard to the order dated 23.06.2016 in the application which was allowed vide order dated 18.01.2022 and affirmed vide order dated

11.12.2023 and as such in granting the relief which was not sought the opposite party No.4/C.O. committed illegality and in ignoring this aspect of the case the opposite party No.3/D.D.C. also committed error in law and accordingly the order dated 18.01.2022 and 11.12.2023 are liable to be interfered.

To prove the fact that opposite party Nos. 6 to 8 were substituted, he placed before this court a certified copy of the application on which order allowing substitution was passed on 23.06.2016 which is taken on record.

He further submitted that it is settled principle of law that if a relief is not sought in specific terms in that case the relief cannot be granted. In the instant case, in the application preferred in the month of December, 2018, the relief was sought only with regard to recall of order dated 09.08.2016 and not with regard to recall of order dated 23.06.2016, whereby the restoration application dated 27.05.2016 preferred by the petitioners was allowed, and further prayer in the application seeking recall of the order dated 09.08.2016 was to the effect that an objection regarding allotment of Chak be decided on merits, as such, fixing the date for hearing on application dated 27.05.2016 meaning thereby directed the parties to advance the submissions on the application dated 27.05.2016 vide order dated 18.01.2022 is unsustainable in the eyes of law and accordingly, the order dated 11.12.2023 affirming the order dated 18.01.2022 is also not sustainable in the eyes of law.

He further submitted that he has no objection if the matter is heard on merits. Prayer is to allow the present petition.

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

Admittedly, contesting opposite party namely Jwala Singh was alive on 18.12.1998 and he was present before the opposite party no.4/C.O. on 18.12.1998 when the case was dismissed for want of prosecution and he died on 28.03.2016 and thereafter, an application dated 27.05.2016 for restoration of case/recall of order dated 18.12.1998 was preferred by the petitioners impleading Jwala Singh and thereafter, an application for substituting the legal heirs (opposite party Nos. 6 to 8) of Jwala Singh was also preferred which was allowed on 23.06.2016 and on the same day i.e. 23.06.2016 the application dated 27.05.2016 was allowed and the case was restored and thereafter the Case No. 133/2015-16 was decided on merits in absence of opposite party Nos. 6 to 8 vide order dated 09.08.2016.

In the application preferred by the opposite party Nos. 6 to 8 for restoration of the case and recall of the order dated 09.08.2016, no relief was sought with regard to the application dated 27.05.2016 and the order dated 23.06.2016, whereby the application dated 27.05.2016 was allowed and the case was restored to its original number, however, the opposite party no.4 while allowing the application seeking recall of the order

dated 09.08.2016 and restoring the case to its original number vide order dated 18.01.2022 fixed the case for hearing on application dated 27.05.2016 meaning thereby directed the parties to advance submissions on the application dated 27.05.2016.

In the light of aforesaid, the issue in this petition is to the effect that whether relief not asked for could be granted and that without proper pleadings.

The law is settled. In the case of ***Union of India Versus Ibrahim Uddin, (2012) 8 SCC 148***, the Hon'ble Apex Court observed as under:-

77. This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi [(2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127] , after placing reliance on a very large number of its earlier judgments including Trojan & Co. v. Nagappa Chettiar [AIR 1953 SC 235] , Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256 : AIR 2002 SC 665] , Ishwar Dutt v. Collector (LA) [(2005) 7 SCC 190 : AIR 2005 SC 3165] and State of Maharashtra v. Hindustan Construction Co. Ltd. [(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299] , held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon."

The Hon'ble Apex Court in the case of ***Mrs. Akella Lalitha Versus Shri Konda Hanumantha Rao and another; (2022 SCC OnLine SC 928)***, observed as under:-

"16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17. In the case of Trojan & Co. Ltd. v. Rm.N.N. Nagappa Chettiar, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:—

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

18. In the case of Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors' held:

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

Taking note of law indicated above and the facts aforesaid this Court is of the view that the opposite party no.4/C.O. committed error/illegality in granting the relief in relation to application dated 27.05.2016 and order dated 23.06.2016 while allowing the application for recall of order dated 09.08.2016 preferred by opposite party nos. 6 to 8 as in this application relief was not sought with regard to application dated 27.05.2016 and order dated 23.06.2016, whereby the application dated 27.05.2016 was allowed and ignoring this

aspect of the case while passing the order dated 11.12.2023 the opposite party no.3/D.D.C. also committed illegality. Thus, the order dated 18.01.2022 and 11.12.2023 are liable to be interfered.

For the reasons aforesaid, the present petition is **partly allowed**. The orders dated 18.01.2022 and 11.12.2023 are hereby set aside only to the extent on hearing on the application dated 27.05.2016, which was allowed vide order dated 23.06.2016. In this view of the matter, the Consolidation Officer shall decide the case/objections on merits after providing proper opportunity to the parties concerned, expeditiously, strictly as per law.

Order Date :- 11.01.2024

Jyoti/-