

Reserved on: 24.07.2024

Pronounced on: 28.08.2024

Court No. - 17

Case :- CIVIL MISC REVIEW APPLICATION No. - 60 of 2024

Applicant :- Jogi Prasad Verma

Opposite Party :- Rahat Ali And Others

Counsel for Applicant :- Vinay Misra, Santosh Kumar Tripathi

Counsel for Opposite Party :- R D Shahi, Pranav Mishra, Rahul Kumar Shukla, Ripu Daman Shahi

Hon'ble Rajeev Singh, J.

1. Heard Sri Vinay Misra, learned counsel for the review applicant/respondent no.3 in the writ petition and Sri R.D. Shahi, learned counsel appearing for the petitioners in the writ petition/Rahat Ali, Usman Ali, Farooq Ali, and Nawab Ali.

2. The instant review application has been filed by the applicant for setting aside the judgement and order dated 12.04.2024 passed in Writ-B No. 387 of 2024 (***Rahat Ali and 3 others vs. Rajasva Parishad through Sadasya Nyayik and 3 others***).

3. Learned counsel for the applicant submitted that the applicant- Jogi Prasad Verma, aged about 79 years, s/o late Chedi r/o Laxmanpur, Harbansh Babhani Kanoongo, Gonda, was recorded tenure holder of Gata No. 21 measuring an area of 1.05 acres situated in Village- Laxmanpur, Pargana and Tehsil- Gonda, who was even then in possession over the property in question and his name was in the revenue record till 22.04.2017. It came into his notice that some imposters executed sale deed of his property in favour of Rajdar Ahmad s/o Khalikajjama r/o Mohalla Aliganj, Lucknow on 22.09.1980, in which, Kaushal Kishore Kaishvar was deed writer, Jagbahadur Lal was stamp vender, Anandji Kushwaha, Advocate was legal advisor, and Mathura and Kewal (both sons of Golai r/o Molakpur, Kotwali Nagar, Gonda) were the witnesses of aforesaid forged sale deed. Thereafter, the aforesaid property was purchased by Waris Ali s/o Ali Ahmad r/o Village- Jamdara, Police Station- Kotwali Dehat, District- Gonda and Rahat Ali s/o Musibat Ali r/o Village- New Basti, Mohalla- Maharajganj, Police Station- Kotwali Nagar, District- Gonda from the fictitious person, namely, Rajdar Ahmad through registered sale deed dated 11.04.2018.

3.1. It has further been submitted that one written complaint was given

by the applicant to the police against Rajdar Ahmad, Kaushal Kishore (deed writer), Jagbahadur Lal (stamp vender), Anandji Kushwaha (Advocate), Mathura and Kewal (witnesses), Waris Ali and Rahat Ali (purchasers of the property purchased from alleged Rajdar). Then, one F.I.R. No. 651 of 2018 under Sections 419, 420, 467, 468, 471, 504, 506 I.P.C., Police Station- Kotwali Nagar, Gonda was lodged against the aforesaid persons. Thereafter, a writ petition i.e. Writ-B (M/B) No. 28302 of 2018 was filed by Waris ali, in which, written instructions were placed by Inspector- Om Prakash Shankar, Crime Branch, Gonda, by which, it was informed that during the course of investigation, no person in the name of Rajdar was found. After detailed investigation, charge-sheet dated 05.12.2019 was submitted by the Investigating Officer against Waris Ali and Rahat Ali under Sections 419, 420, 467, 468, 471, 507 I.P.C., but accused persons of the alleged sale dated 22.09.1980, namely, Kaushal Kishore, Jagbahadur Lal, Mathura and Kewal were not traceable.

3.2. It has next been submitted that after lapse of 37 years, Tehsilder concerned mutated name of Rajdar Ahmad on the basis of sale deed dated 22.09.1980 on 22.04.2017, but neither any notice was issued to recorded tenure holder nor any report was sought from the area lekhpal related to the possession over the property in question. Thereafter, fictitious person, namely, Rajdar Ahmad executed a sale deed on 11.04.2018 and on the basis of that sale deed, Waris Ali and Rahat Ali preferred an application before Tehsildar Judicial for getting their names mutated in place of Rajdar Ahmad. Accordingly, without asking any report related to the possession over the property in question again mutation order was passed ex-parte on 22.05.2018 by deleting the name of Rajdar and mutating the names of Waris Ali and Rahat Ali, and after knowing all these frauds, the applicant, who was the actual owner of the property in question, preferred an application for recall of the order dated 22.04.2017 on 11.07.2017 before Tehsildar concerned. The applicant also filed a recall application of the order dated 22.05.2018, but as no action was being taken by the Tehsildar concerned, one petition i.e. Misc. Single No. 4604 of 2020 was filed, by which, a direction was issued by this Court on 18.02.2020 to Tehsildar, Gonda to dispose of the recall application expeditiously so preferred by the review petitioner. In the meantime, Waris Ali and Rahat Ali executed a sale deed in favour of Akash Agarwal and Krishan Chandra Pandey on 03.12.2019 and in favour of Ashok Kumar Shukla and Sanjay Kumar Gupta on 03.03.2020 in respect of entire land allegedly purchased by them from Rajdar Ahmad. On the basis of aforesaid sale deed, names of Ashok Kumar Shukla and Sanjay Kumar Gupta were also requested to be mutated by filing mutation case, which they had not pressed on 12.11.2021, but they again started pressing the same on 07.12.2022. While pendency of the aforesaid case, Akash Agarwal also filed mutation case on 27.07.2020 for scoring of the names of Waris Ali and Rahat Ali.

4. Further submission of learned counsel for the applicant was that it was found in the investigation of the aforesaid criminal case that no sale deed was executed by the applicant in favour of Rajdar Ahmad, hence, it was to be decided by the Tehsildar by a detailed order. The restoration application of the applicant was allowed vide order dated 07.02.2024, and order dated 22.04.2017, which was passed for mutating the name of Rajdar Ahmad, was also recalled. The said order was challenged by Rahat Ali and legal heirs of Waris Ali on the ground that Waris Ali, who purchased the property from Rajdar Ahmad, had died and the information of the same was also given, but without allowing substitution of the legal heirs of the Waris Ali, the restoration application was decided and Writ Petition No. 387 of 2024 was allowed by this Court by setting aside the order dated 07.02.2024 passed by Tehsildar, Gonda and order dated 22.02.2024 passed by Board of Revenue and the matter was remanded for deciding the same.

4.1. It has also been submitted that vide order dated 22.04.2017, the property in question was mutated in the revenue record on the basis of fictitious sale deed as neither any notice was given to the recorded tenure holder nor any report related to possession was asked, and in the mutation related to the sale deed dated 22.09.1980, the existence of Waris Ali was not there as he was subsequent purchaser. It was categorically observed by the Tehsildar that repeated notice was given to Rajdar Ahmad, in whose favour, the property was mutated, but he never turned up; as notice was also published in the newspaper, but he did not turn up, then the order was passed by the competent authority. In the criminal case, it was categorically observed by the Investigating Officer that Rajdar Ahmad was a fictitious person, but wrong picture was made before the Writ Court, therefore, the order dated 12.04.2024 passed by the Writ Court is liable to be set aside by allowing the review application and the writ petition is also liable to be dismissed on the ground that presently, there was a dispute between the applicant, who was the recorded tenure holder, and so called fictitious purchaser, namely, Rajdar Ahmad and no such sale deed was executed, which was established in the police investigation.

5. Sri R.D. Shahi, learned counsel appearing for the respondents in the review application as well as for petitioners in the writ petition, namely, Rahat Ali s/o Musibat Ali r/o New Basti Mohalla Maharajgan, Pargana, Tehsil and District- Gonda, Usman Ali, Farooq Ali, and Nawab Ali (all three are sons of Waris Ali r/o Village- Jamdara, Pargana, Tehsil and District- Gonda) has submitted that Waris Ali purchased the property from Rajdar Ahmad and he also filed objection in the said case. However, he did not dispute the fact that in the mutation case, there was no provision for arraying party, therefore, Waris Ali was not arrayed in the mutation case.

6. A question was asked from learned counsel for respondents/writ

petitioners that when there was no provision for arraying party, then how the provision of substitution would apply. But, he did not give proper reply.

6.1. Another question was also asked from Sri Shahi about the fact that whether any criminal case was lodged against Rajdar Ahmad as well as others including Rahat Ali and Waris Ali, then he did not dispute on this fact.

7. Sri Shahi drew attention of the Court on legal provisions of Section 34 of U.P. Revenue Code, 2006 and RC Form No. 11, 12 & 13, but he was unable to give complete address of Rajdar Ahmad. Further, he submitted that there was no illegality in the order passed by the Writ Court and the review application is liable to be dismissed.

8. Considering the submissions of learned counsel for the parties and going through the contents of review application as well as objection filed by Sri Shahi appearing for Rahat Ali, Usman Ali, Farooq Ali and Nawab Ali (petitioners in the writ petition/respondents in the present review application), it is evident from the record that the review applicant- Jogi Prasad Verma was the recorded tenure holder, who categorically stated that he never sold the property in question on 22.09.1980 through registered sale deed in favour of Rajdar Ahmad with consideration of sum of Rs. 3,000/-. The aforesaid sale deed was prepared by deed writer- Kaushal Kishore, and stamp was purchased from stamp vender- Jagbahadur Lal. As per the sale deed, Jogi Prasad was identified by Anandji Kushwaha, Advocate and it was witnessed by Mathura and Kewal. Thereafter, Waris Ali purchased the said property from Rajdar Ahmad, but there is no detailed residential address of Rajdar Ahmad mentioned either in the sale deed dated 22.09.1980 or in the sale deed dated 11.04.2018 executed by Rajdar Ahmad in favour of Waris Ali and Rahat Ali, and Aadhar Card is also not annexed therein. Thereafter, the F.I.R. No. 651 of 2018 (supra) was lodged by Jogi Prasad Verma (actual recorded tenure holder). A recall application was also filed by Jogi Prasad Verma for recall of order dated 22.04.2017 and notice was issued to Rajdar Ahmad through registered post as well as by publication in the newspaper, but he did not turn up. Objection in the said case, which was related to the mutation in the name of Rajdar Ahmad, was also filed by subsequent purchasers, namely, Rahat Ali and Waris Ali and at the same time, they sold out the property to different persons.

8.1. It is further evident from the police report as well as report of revenue authorities that Rajdar Ahmad is not traceable, in whose favour, the alleged sale deed dated 22.09.1980 was executed by a person impersonating the applicant.

9. The Tehsildar concerned is directed to proceed and conclude the case i.e. ***Jogi Prasad Verma vs. Rajdar Ahmad*** registered under

Sections 34 and 35 of U.P. Revenue Code, 2006 expeditiously considering all the reports and without giving any unnecessary adjournment to either of the parties.

10. With above directions, the review application is ***allowed*** and writ petition i.e. Writ-B No. 387 of 2024 is ***dismissed***.

Order Date :- 28.8.2024

Arpan