

AFR

Court No. - 7

Case :- WRIT - B No. - 563 of 2024

Petitioner :- Saiyed Mohammad Rehaan And Others

Respondent :- Deputy Director Consolidation District
Sultanpur 19 Others

Counsel for Petitioner :- Dwijendra Mishra, Ajeet Kumar

Counsel for Respondent :- C.S.C., Mohan Singh

Hon'ble Alok Mathur, J.

1. Heard Sri Dwijendra Mishra, learned counsel for the petitioners as well as learned Standing Counsel for respondent nos. 1, 2 and 3 and Sri Mohan Singh, learned counsel appearing for respondent no. 4.

2. In the light of proposed order notice to private respondent nos. 5 to 20 is dispensed with.

3. By means of present writ petition the petitioners have challenged order dated 21.02.2024, passed in Revision No. 34 of 2024 - Kafil Ahmad Vs. Syed Mohd. Rahman, passed by the Deputy Director of Consolidation, Sultanpur.

4. It has been submitted by learned counsel for the petitioners that the petitioners had filed objections under Section 9-A(II) of the U.P. Consolidation of Holdings Act, 1953, claiming their right over Plot Nos. 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1111, 1112, 1137, 870, 1138, 1247, 1114, 779/3, 842, 843 and 2661, situated at Village - Kisni, Pargana - Jagdishpur, Tehsil - Musafirkhana, Sultanpur (now Amethi). The petitioners claimed their right over on the basis that same was owned and possessed by their ancestors and have devolved on them on the basis of General Rule of Succession. It was stated that the said plots have been wrongly recorded in the name of MOhd. Ahmad and Syed Ahmad S/o Nawab Ali. The Consolidation Officer has decided the application of the petitioners and passed order in their favour by means of order dated 28.09.2000.

5. Aggrieved by the order dated 28.09.2000, an appeal was filed before the Settlement Officer (Consolidation) by respondent nos. 5 to 13, which appeal was dismissed by order dated 25.05.2005. In the appeal it was submitted that the case was

decided on 28.09.2000 by the Consolidation Officer, with undue haste and it was contended that the case as not listed on the said date on which it was decided. It was submitted that the case was listed on 18.09.2000, on which date arguments of the parties were heard and next date was fixed, but portion of the order sheet was destroyed where next date was endorsed and 28.09.2000 was subsequently inserted, on which date no proceedings took place and the matter was further listed on 13.10.2000, which date was deleted and the matter was fixed for 25.09.2000.

6. It was submitted that perusal of the order sheet would indicate that the order sheet has been altered and manipulated only because the Presiding Officer was about to retire and therefore, prayed that the impugned order be set aside and the matter be remanded. The Settlement Officer (Consolidation) did not agree with the submissions of the appellant and accordingly dismissed the appeal.

7. Revision was filed against the order of Settlement Officer (Consolidation) before the Deputy Director of Consolidation, who has allowed the revision and remanded the matter back to the Settlement Officer (Consolidation) for determination afresh. While allowing the revision, the Deputy Director of Consolidation was of the view that as per order sheet the case as listed on 28.08.2000 and the parties were present and the case was adjourned for 18.09.2000. On 18.09.2000 general date was fixed i.e. 28.09.2000 and subsequently the case was listed on 16.10.2000, 13.11.2000 and 04.01.2001. He has further noticed that typed order sheet exists till passing of order dated 28.09.2000 and there is no mention as to whether parties were heard or not.

8. The Deputy Director of Consolidation has further noticed the fact that in the year 2000 facility of stenographer was not provided to the Consolidation Officer and accordingly entire order sheet is suspect and the orders passed by the Consolidation Officer become suspect. He has further noticed that in the present case date was fixed for 04.01.2001 but as the Presiding Officer was about to retire, date was changed and the impugned order dated 28.09.2000 was passed by the Consolidation Officer.

9. It is in the aforesaid circumstances that the Deputy Director of Consolidation has allowed the revision and set aside the order passed by the Settlement Officer (Consolidation) dated 21.09.2009 as well as order of Consolidation Officer dated 28.09.2000.

10. Learned counsel for the petitioner has vehemently urged that there is no infirmity in the order passed by the Consolidation Officer and this aspect of the matter has been rightly considered by the Settlement Officer (Consolidation). He further submits that even in case revisional authority was of the opinion that the order of Consolidation Officer was illegal and arbitrary, he should not have proceeded to decide the matter on merits rather than remanding the matter back to the Consolidation Officer.

11. Learned Standing Counsel on the other hand has opposed the writ petition. He has submitted that there are ample evidence on record to indicate that there has been manipulation of records and specially the order sheet at the stage of Consolidation Officer who looking into his retirement seems to have altered the dates and passed the order dated 28.09.2000. He has supported the order passed by the Deputy Director of Consolidation and prayed for dismissal of the writ petition.

12. Heard learned counsel for the parties and perused the record.

13. It is at the very outset noticed that the Consolidation Officer has by means of impugned order has not only allowed the objections filed by the petitioner but has also adjudicated upon the issue with regard to public way and canal, in favour of the petitioner. While passing any such order it was mandatory to issue notice to the Gaon Sabha. It is further noticed that the order dated 28.09.2000 has been passed in haste without considering the evidence on record and points of determination nos. 8, 6, 7 and 9 and the impugned order has been passed in a very cryptic manner in favour of petitioner.

14. The other grounds which have been considered by the Deputy Director of Consolidation is the manner in which the Consolidation Officer has proceeded to decide the objections submitted by the petitioner and the private respondents. He has perused the order sheet and recorded that the case was listed on 28.08.2000 on which date parties were present and case was adjourned for 18.09.2000. On 18.09.2000, general date of 28.09.2000 was fixed subsequent to which the case was listed on 16.11.2000, 13.11.2000 and 04.01.2001. Typed copy of the order dated 28.09.2000 is also found on record. The Deputy Director of Consolidation has stated that portion of order sheet is torn and the date fixed has been deliberately obliterated by removing portion of the order sheet.

15. In the aforesaid circumstances, when the matter has been adjourned to 04.01.2001, there was no occasion to decide the

case on previous date i.e. 28.09.2000 and accordingly, such an order does not inspire confidence and accordingly the Deputy Director of Consolidation has rightly set aside the order passed by the Consolidation Officer and remanded the matter for consideration afresh.

16. Hon'ble Apex Court in **Civil Appeal No. 2077 of 2020 - Sadhna Chaudhary Vs. State of U.P. and Another** (decided on 06.03.2020), while dealing the issue of necessity of upholding the rule of law has held as under :-

"17. Undoubtedly, the High Court is correct in its observation of the applicable law. Indeed, the end result of the judicial process does not matter, and what matters is only the decision-making process employed by the delinquent officer. Clearly, it is a principle since the nineteenth century that Judges cannot be held responsible for the end result or the effect of their decisions. [See Judicial Officers Protection Act, 1850.] This is necessary to both uphold the rule of law, and insulate judicial reasoning from extraneous factors.

18. Even furthermore, there are no two ways with the proposition that the Judges, like Caesar's wife, must be above suspicion. Judicial officers do discharge a very sensitive and important constitutional role. They not only keep in check excesses of the executive, safeguard citizens' rights and maintain law and order. Instead, they support the very framework of civilised society. It is courts, which uphold the law and ensure its enforcement. They instil trust of the constitutional order in people, and ensure the majesty of law and adherence to its principles. The courts, hence prevent people from resorting to their animalistic instincts, and instead provide them with a gentler and more civilised alternative of resolving disputes. In getting people to obey their dicta, courts do not make use of guns or other (dis)incentives, but instead rely on the strength of their reasoning and a certain trust and respect in the minds of the general populace. Hence, it is necessary that any corruption or deviation from judicial propriety by the guardians of law themselves, be dealt with sternly and swiftly.

19. It has amply been reiterated by this Court that the judicial officers must aspire and adhere to a higher standard of honesty, integrity and probity. Very recently in Shrirang Yadavrao Waghmare v. State of Maharashtra [Shrirang Yadavrao Waghmare v. State of Maharashtra, (2019) 9 SCC 144 : (2019) 2 SCC (L&S) 582] , a Division Bench of this Court very succinctly collated these principles and reiterated that:

"5. The first and foremost quality required in a Judge is

integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in Tarak Singh v. Jyoti Basu [Tarak Singh v. Jyoti Basu, (2005) 1 SCC 201] held as follows:

'Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.'

6. The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in Daya Shankar v. High Court of Allahabad [Daya Shankar v. High Court of Allahabad, (1987) 3 SCC 1 : 1987 SCC (L&S) 132] held thus:

'11. ... Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.'

7. Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.

8. Judges must remember that they are not merely employees but hold high public office. In R.C. Chandel v. High Court of M.P. [R.C. Chandel v. High Court of M.P., (2012) 8 SCC 58 : (2012) 2 SCC (Civ) 343 : (2012) 3 SCC (Cri) 782 : (2012) 2 SCC (L&S) 469] , this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant:

'29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct

expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.'

9. There can be no manner of doubt that a Judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a Judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.

10. In our view the word "gratification" does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc."

20. We are also not oblivious to the fact that mere suspicion cannot constitute "misconduct". Any "probability" of misconduct needs to be supported with oral or documentary material, even though, the standard of proof would obviously not be on a par with that in a criminal trial. While applying these yardsticks, the High Court is expected to consider the existence of differing standards and approaches amongst different Judges. There are innumerable instances of judicial officers who are liberal in granting bail, awarding compensation under MACT or for acquired land, back wages to workmen or mandatory compensation in other cases of tortious liabilities. Such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.

21. Furthermore, one cannot overlook the reality of ours being a country, wherein countless complainants are readily available without hesitation to tarnish the image of the judiciary, often for mere pennies or even cheap momentary popularity. Sometimes, a few disgruntled members of the Bar also join hands with them, and the officers of the subordinate judiciary are usually the easiest target. It is, therefore, the duty of the High Courts to extend their protective umbrella and ensure that the upright and straightforward judicial officers are not subjected to unmerited onslaught."

17. A judicial order should inspire confidence and a judicial order which does not inspire confidence shall be set aside and the manner of passing the order should be above reproach and

should be just, fair and reasonable and should not leave any room for suspicion or arbitrariness.

18. Arbitrariness in passing the order dated 28.09.2000 is writ large on the face of the order and the order sheet. The dates were changed and the order sheet deliberately manipulated so as to pass the order before his superannuation. Such an exercise by a Judicial Officer or Revenue Officer discharging judicial functions is strongly condemned.

19. From the discussion made above as well as in view of the arguments raised by the petitioners, no ground for interference in the matter by this Court is made out. Hence the prayer made by the petitioners in the present writ petition are declined.

20. The writ petition being devoid of merits is **dismissed**.

Order Date :- 25.5.2024

A. Verma

(Alok Mathur, J.)