

Court No. - 8

Case :- WRIT - C No. - 4759 of 2024

Petitioner :- Gyanadevi

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Ambika Prasad Pathak, Hukum Singh, Sunil Pandey

Counsel for Respondent :- C.S.C., Ajay Kumar Pandey, Neetu Mishra

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the petitioner and learned Standing counsel for the State respondent as well as Sri Ajay Kumar Pandey learned counsel for the private respondent.

In pursuance of the order dated 07.08.2024 passed by this Court the erstwhile Tehsildar (Judicial) Patti Pratapgarh namely Sri Manoj Kumar Rai is present before the Court who has filed his personal affidavit and the same is taken on record.

The instant petition was filed seeking quashing of the order dated 21.03.2024 passed by the Upper Tehsildar Nyayik Tehsil Patti District Pratapgarh. To put the matter in perspective the facts as indicated in the petition are being noticed first.

Smt. Sona Devi the private respondent no.3, was the original tenure holder of Gata no.498(M) of Khata no.376 situated in village Gadaulia Pargana Tehsil Patti District Pratapgarh. Smt. Sona Devi executed a registered sale deed in favour of the petitioner dated 30.12.2023. On the basis of the said sale deed the petitioner had moved an application for getting her name mutated. In the mutation proceedings the respondent no.2 i.e. Tehsildar Patti Pratapgarh by means of the order dated 18.03.2024 allowed the application for mutation and directed that the name of the petitioner be incorporated in the revenue records. While passing the order dated 18.03.2024 it was noticed that respondent nos.4 and 5 had initially appeared in the said mutation case and had sought time to file objections. Later, counsel for the private respondent nos.4 and 5 moved an application that they did not want to press their objections which was consequently allowed and thereafter as the matter of mutation as filed by the petitioner remained uncontested, consequently, the mutation order was passed.

What is the more surprising, that immediately thereafter, on 21.03.2024 at the behest of the private respondent nos.4 and 5 an application was moved that the private respondents had never intended to withdraw/not press their objections and in this

view of the matter the order of mutation dated 18.03.2024 be recalled. The respondent no.2 passed a fresh order on 21.03.2024 and recalled its own order dated 18.03.2024.

It is in this backdrop that the petitioner approached this Court with the case that once the mutation order was passed in favour of the petitioner on 18.03.2024, it was not open for the respondent no.2 to have recalled the order and that too without putting the petitioner to notice coupled with fact that the respondent no.2 did not have any power to review its order and for another reason that once the matter had been finally decided merely on an application moved by the private respondent nos.4 and 5, the said order could not be recalled without first registering the said application and hearing the parties concerned, hence, the order was per se bad.

A coordinate Bench of this Court by means of the order dated 27.05.2024 passed the following order which reads as under:--

"1. The present writ petition has been preferred for quashing of the impugned order dated 21.03.2024 passed by respondent no. 2 i.e. Uppar Tehsildar, Nyayik, Tehsil Patti, District Pratapgarh, whereby respondent no. 2 has recalled its earlier order dated 18.03.2024, which was passed in favour of the petitioner.

2. Learned counsel for petitioner has submitted that the petitioner has filed a case under Section 34 of U.P. Revenue Code, 2006 in which the objections were filed by respondent no. 3, 4 and 5 but subsequently, respondent nos. 3, 4 and 5 had withdrawn their objections against the mutation application preferred by the petitioner.

3. After not pressing the objections by the private respondents, the mutation order dated 18.03.2024 was passed in favour of petitioner on the basis of the registered sale deed executed in favour of the petitioner.

4. It is further submitted that within four days of passing of the order dated 18.03.2024, respondent no. 2 had recalled its earlier order dated 18.03.2024 by impugned order dated 21.03.2024, without there being any application preferred by the respondent nos. 3, 4 and 5 for recalling the order dated 18.03.2024 and in support of his submission, learned counsel for petitioner has enclosed the copy of the questionnaire wherein the information has been provided to the petitioners that no application was preferred for recall of the order.

5. Learned State counsel, who has accepted notices on behalf of respondent nos. 1 and 2 prays for and is granted four weeks' time for filing counter affidavit. Two weeks' time, thereafter is granted to learned counsel for petitioner for filing rejoinder affidavit.

6. Issue notice to respondent nos. 3, 4 and 5, returnable at an early date.

7. Learned counsel for petitioner prays for and is granted a weeks' time for taking steps.

8. List this case in the first week of August, 2024, as fresh.

9. Office is directed to submit service report by the next date of listing.

10. Till the next date of listing, the operation of the impugned order dated 21.03.2024 shall remain stayed."

This matter was placed before the Court on 07.08.2024 wherein this Court had passed the following order reads as under:-

"Heard Shri Ambika Prasad Pathak, learned counsel for the petitioner.

The instant petition has been filed by the petitioner assailing the order dated 21.03.2024, copy of which has been brought on record as Annexure No.5 to the writ petition.

The record indicates that initially the Tehsildar (Judicial), Patti, Pratapgarh in Case No.252 of 2024 under Section 34 of the U.P. Revenue Code, 2006 had passed an order mutating the name of the petitioner in place of the erstwhile owner on the strength of sale deed. Just few days thereafter, the Tehsildar once again on an alleged application filed by the parties had passed an order on 21.03.2024, whereby the order dated 18.03.2024 was set aside/recalled and thereafter the matter was listed on 28.08.2024. It is in the aforesaid backdrop that the petitioner has approached this Court assailing the order whereby without even noticing the petitioner, the order passed in her favour on 18.03.2024 has been recalled.

In the aforesaid backdrop, the co-ordinate Bench of this Court by means of the order dated 27.05.2024 had passed the following order, which reads as under:-

"1. The present writ petition has been preferred for quashing of the impugned order dated 21.03.2024 passed by respondent no. 2 i.e. Uppar Tehsildar, Nyayik, Tehsil Patti, District Pratapgarh, whereby respondent no. 2 has recalled its earlier order dated 18.03.2024, which was passed in favour of the petitioner.

2. Learned counsel for petitioner has submitted that the petitioner has filed a case under Section 34 of U.P. Revenue Code, 2006 in which the objections were filed by respondent no. 3, 4 and 5 but subsequently, respondent nos. 3, 4 and 5 had withdrawn their objections against the mutation application preferred by the petitioner.

3. After not pressing the objections by the private respondents, the mutation order dated 18.03.2024 was passed in favour of petitioner on the basis of the registered sale deed executed in favour of the petitioner.

4. It is further submitted that within four days of passing of the order dated 18.03.2024, respondent no. 2 had recalled its earlier order dated 18.03.2024 by impugned order dated 21.03.2024, without there being any application preferred by the respondent nos. 3, 4 and 5 for recalling the order dated 18.03.2024 and in support of his submission, learned counsel for petitioner has enclosed the copy of the questionnaire wherein the information has been provided to the petitioners that no application was preferred for recall of the order.

5. Learned State counsel, who has accepted notices on behalf of respondent nos. 1 and 2 prays for and is granted four weeks' time for filing counter affidavit. Two weeks' time, thereafter is granted to learned counsel for petitioner for filing rejoinder affidavit.

6. Issue notice to respondent nos. 3, 4 and 5, returnable at an early date.

7. Learned counsel for petitioner prays for and is granted a weeks' time for taking steps.

8. List this case in the first week of August, 2024, as fresh.

9. Office is directed to submit service report by the next date of listing.

10. Till the next date of listing, the operation of the impugned order dated 21.03.2024 shall remain stayed."

Today, learned counsel for the petitioner Shri Pathak has provided a copy of the order dated 08.07.2024 passed by the Tehsildar (Judicial), Patti, Pratapgarh, wherein he has set aside the order dated 21.03.2024, which had already been stayed by this Court and has also allowed the recall application dated 12.04.2024 and even the earlier order dated 18.03.2024 has been restored. He has further informed that the private respondent has already filed an appeal against the said order and in such circumstances, the instant petition has become infructuous.

May be that since the order dated 21.03.2024 has been set aside by the Tehsildar and the order dated 18.03.2024 has been restored, against which the private respondent may have filed an appeal, but the core issue which still survives is whether once this Court by means of its order dated 27.05.2024 as quoted above had already stayed the operation of the said order then under what circumstances or under what authority, the said Tehsildar could have set aside the order as done in the order dated 08.07.2024.

Tehsildar (Judicial) Patti, Pratapgarh shall appear in person and file his personal affidavit and explain the aforesaid situation along with the record on 12th August, 2024.

List this matter on 12th August, 2024 as fresh."

It is in the aforesaid backdrop the issue before this Court is as whether the respondent no.2 could have proceeded to pass any order or setting aside the order dated 21.03.2024 which had already been stayed by the High Court by means of the order dated 27.05.2024.

Sri Manoj Kumar Rai who was the erstwhile Tehsildar Patti who had passed the order dated 08.07.2024 has filed his personal affidavit indicating that he is presently posted as Tehsildar, Tehsil-Sikandarpur, District-Baliya along with his affidavit he has also filed the copy of the order dated 08.07.2024.

From the perusal of the said order, it would indicate that the respondent no.2 was aware of the fact that the High Court had passed the order dated 27.05.2024 as the same was noticed by the respondent no.2 while passing the order dated 08.07.2024. Once the order had been stayed by the Court and it was in the notice of the respondent no.2, prima facie there was no reason for respondent no.2 to have proceeded with the matter and while passing order dated 08.07.2024 it set aside the order which was already stayed by this Court. Any order which is passed by the High Court and in the notice of the authority, needless to say is binding. If there was any doubt in the mind of the authority it could have sought a clarification or modification of the order but it has no business to proceed or pass any order which may have the effect of overreaching the order passed by the High Court.

A specific query was put to Sri Manoj Kumar Rai as to the fact that once he was aware that the order dated 21.03.2024 had been stayed by the High Court then under what circumstances he set aside the order dated 21.03.2024, to which, Sri Rai had no explanation to offer except that he apologized and that the order was passed without any specific intention to violate the order passed by the High Court.

It is now settled that if an order has been stayed by the High Court the impact is that the said order so stayed, gets eclipsed, for that limited purpose and duration till such time the order of stay operates and it is deemed as if the said order is inoperative. That being so, the respondent no.2 could not have set aside the order which already was stayed by the High Court.

There is no explanation given by the respondent no.2 that once he had passed the order on 18.03.2024 in favour of the petitioner and the file was consigned to record then after two days how he entertained an application/request at the behest of respondent nos.4 and 5 and behind the back of the petitioner stayed the order dated 18.03.2024. Apparently, the statement of Sri Rai the then Tehsildar who had passed the order appears to be dubious and it also appears that not only did he pass the order dated 21.03.2024 by throwing the settled norms and rules, regulations of procedures to the winds but later he passed an order during pendency of the instant petition on 08.07.2024 whereby he set aside the order dated 21.03.2024 while the same was stayed by the High Court and this fact was in his knowledge which prima facie indicates that it was this fact was done with deliberation and is willful.

It is also to be noticed that the High Court while passing the order dated 27.05.2024 had fixed the matter to be listed in the

first week of August, 2024. However, even without waiting for the said date, the respondent No.2, who was the holding the post of Tehsildar, went ahead and passed the impugned order dated 08.07.2024 which depicts the haste as well as the fact that it was deliberate attempt to get over the order passed by the High Court.

It is more surprising that this Court is dealing with the revenue matters and there are cases which are adjourned on the slightest of a cause, but in this case, it appears that despite a clear order passed by the High Court, staying the operation of the order dated 21.03.2024, yet the respondent No.2 proceeded with the matter without even waiting for the date fixed by the High Court.

Once, the order had been stayed by the High Court, the next date fixed in the said order dated 21.03.2024 automatically would be of no avail to the respondent No.2 to proceed with the matter.

In this view of the fact that an attempt has been made to over reach the orders passed by the High Court, this Court is of the prima facie opinion that the machination with which the order dated 08.07.2024 had been passed whereby the proceedings have been rendered nugatory as the order dated 21.03.2024 which had been stayed by the High Court has been set aside by the Tehsildar falls within the category of contempt of the Court.

In view of the aforesaid, this Court for the aforesaid reasons refers the matter to the appropriate court dealing with the contempt jurisdiction. Since the order dated 08.07.2024 has been assailed by the aggrieved party by taking recourse to law hence in so far as the Writ C no.4759 of 2024 is concerned, the order dated 21.03.2024 shall stand quashed and consequences shall follow.

The writ petition to the aforesaid effect shall stand **allowed**.

The Senior Registrar of this Court is directed to place this matter before the contempt court to draw contempt proceedings against Sri Manoj Kumar Rai s/o Udai Narayan Rai presently posted as the then Tehsildar (Judicial) Patti, Pratapgarh.

A copy of this order shall also be placed on service record of Sri Manoj Kumar Rai (presently posted as Tehsildar, Tehsil-Sikandarpur, District-Baliya).

Order Date :- 27.8.2024/Harshita