

Court No. - 8

Case :- WRIT - C No. - 6148 of 2024

Petitioner :- Anantram

Respondent :- Distt. Magistrate Sadar Dist.
Pratapgarh And 2 Others

Counsel for Petitioner :- Vijai Bahadur Verma

Counsel for Respondent :- C.S.C.,Jai Pal
Singh,Pankaj Gupta

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no.1 and Shri Jai Pal Singh learned counsel appearing for the private respondent no.3 who has filed a counter-affidavit which is taken on record.

2. Learned counsel for the petitioner submits that he has received the copy of the counter-affidavit but he does not propose to file any rejoinder-affidavit since the facts stated in the writ petition could not be effectively controverted even in the counter-affidavit.

3. In view of the aforesaid, the Court has proceeded to hear the parties and with their consent, the petition is being decided finally.

4. Submission of the learned counsel for the petitioner while assailing the impugned order dated 07.06.2024 passed by the respondent no.1 is that he had initiated proceedings under Section 32/38 of the U.P. Revenue Code 2006. Since certain orders were passed in favour of the petitioner during the consolidation operations but they were not duly reflected in the revenue record, consequently this prompted the petitioner to move the said application, a copy of which has been brought on record as annexure no.1.

5. It is further urged that while the said application remained pending with the respondent no.1, the private respondent no.3 had moved an appeal before the Settlement Officer of Consolidation challenging the order dated

24.10.1996. Initially, the said appeal was allowed in favour of the private respondent no.3, however, upon making an application for recall, the same was allowed. This was assailed by the private respondent no.3 before a Co-ordinate Bench of this Court in Writ-B No.635 of 2023 (Nawab Ali Vs. State of U.P. & others) which came to be finally disposed of by means of judgment dated 16.10.2023, a copy of which has been brought on record as annexure no.7.

6. The contention is that since the order of recall in favour of the petitioner was against the decision of the Full Bench of this Court in **Smt. Anarkali and others Vs. Deputy Director of Consolidation and others, 1997 (15) LCD page 921**, hence the counsel for the petitioner had submitted before the Co-ordinate Bench that the writ petition of private respondent be allowed and the petitioner may be granted the liberty of assailing the order before the Deputy Director of Consolidation. It is urged that in view thereof the petitioner had filed a revision before the Deputy Director of Consolidation which is still pending as of till date.

7. In light of the aforesaid subsequent events, the basic purpose of the application which was moved before the respondent no.1 under Section 32/38 of the Revenue Code 2006 has lost its significance as the matter was now seized before the Consolidation Authorities and it is in this backdrop that the petitioner had requested that in case if the said application is kept in abeyance subject to the orders to be passed by the Deputy Director of Consolidation. However, it is urged that the said matter was initially heard by the respondent no.1 on 13.03.2024. It is stated that on the said date, the application under Section 10 CPC was only heard and not the entire matter on merits and thereafter it was fixed for orders on 22.03.2024.

8. It is further submitted that the entire order sheets have been brought on record which will reflect that no orders on the application under Section 10 CPC were passed on 22.03.2024 rather subsequent dates were being fixed as shall be evident from the extract of the order sheets which

have been brought on record as annexure no.10.

9. It is also submitted that on 28.05.2024 the respondent no.1 recorded in its order that the matter had been heard earlier and since the file was covered by certain directions of the High Court, hence only one opportunity is granted to the parties to present their case fixing 29.05.2024. On 29.05.2024, none of the parties were present before the Court concerned and thereafter it was fixed for orders on 31.03.2024 and thereafter the order dated 07.06.2024 has been passed which as per the petitioner was completely erroneous; inasmuch as neither an opportunity of hearing was granted coupled with the fact that as per the dairy available with the Reader of the Court on 28.05.2024 the next date fixed was 31.05.2024 and on the said date, the next date fixed was 07.06.2024.

10. It is urged that there is nothing to indicate as to how the order sheets dated 29.05.2024 came into being especially when the matter was already fixed for 31.03.2024 and i.e. for the reason that none could appear on behalf of either of the parties on 29.05.2024. In the aforesaid circumstances, it is submitted that the entire order sheet which has been drawn is not correct and does not corroborate with the dates fixed and as known to the parties from the diary of the Reader. There was no occasion for the respondent no.1 to have decided the case on its entire merits and the incorporation in the order dated 28.05.2024 that the matter was argued on a previous occasion and its covered by the orders passed by the High Court is a patently erroneous fact as it does not relate to the instant case and for the said reason the order dated 07.06.2024 is liable to be set aside.

11. The learned Standing Counsel as well as the counsel for the respondent no.3 could not dispute the fact emerging from the order sheets and as urged above. There was no explanation as to the fact that once the matter was heard on 19.03.2024 on an application under Section 10 CPC and thereafter from the perusal of the order sheets, which does not indicate that the matter was ever heard on the entire merits of the case,

then under what circumstances it has been stated in the order dated 28.05.2024 that the matter was heard on an earlier occasion and the case was covered by the order passed by the High Court.

12. Considering the aforesaid fact which could not be disputed by the learned Standing Counsel or the counsel for the private respondent no.3, this Court is satisfied that the order impugned cannot be sustained for the reasons noticed above and appears to have been passed without due application of mind, against the weight of the matter on record and it also amounts to depriving an adequate opportunity of hearing to the parties.

13. Accordingly, the impugned order is set aside. The matter shall stand restored with the respondent no.1 before whom the parties shall appear on 23rd of September, 2024 and shall make their submissions and thereafter the court concerned after hearing the parties shall decide the matter by a speaking and reasoned order.

14. It is made clear that the Court has not examined the contention of the respective parties on merits and the order has been set aside strictly on account of procedural defaults which goes to the root of the matter.

15. Subject to the aforesaid, the petition is allowed. There shall be no order as to costs.

Order Date :- 9.9.2024

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