

Court No. - 2

Case :- WRIT - C No. - 10829 of 2024

Petitioner :- Rahul Mishra

Respondent :- District Magistrate Ayodhya District Ayodhya
And 2 Others

Counsel for Petitioner :- Pramod Kumar Pandey, Sanjay
Kumar Verma

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Brij Raj Singh, J.

1. The petitioner is lodged in District Jail, Ayodhya. He wants to execute sale deed and get it registered. The petitioner has filed present petition seeking following relief:-

(i) *To issue a writ, order or direction in the nature of mandamus to direct the opposite parties to fix the time for executing the sale deed of house No. SF-16, registration No. 88 situated at Kaushalpuri, Phase-2, District- Ayodhya.*

2. Heard learned counsel for the parties.

3. Similar writ petition bearing no. Writ-C No. 2607 of 2023 [Ram Kumari vs. State of U.P. & Ors.] came up for consideration before this Court involving the similar issues and it was disposed of on 24.5.2023 in the following terms. In the said judgment Section 38 of the Registration Act, 1908 and para no. 654 of the U.P. Jail Manual 2022 were considered. Referring to the said judgment another writ petition bearing CRIMINAL MISC. WRIT PETITION No. - 1959 of 2024 wherein similar issues were involved was disposed of on 21.3.2024 in the following terms.

"Heard.

Petitioner is an accused in Case Crime No.472/2021, 473/2021 and 474/2021 lodged at Police Station-Gomti Nagar, District-Lucknow. He has filed this petition stating that he had moved an application before the Chief Judicial Magistrate for release in judicial custody for execution of sale deed so as to settle the dues of Bank but the said application has been rejected on 09.02.2024, copy of the order is annexed as Annexure no.9 to this writ petition. The ground of rejection is that according to C.J.M., the said application is not maintainable before him. He says that apart from the fact that the order of C.J.M. is illegal but without joining issues, he has approached this Court seeking a writ of Mandamus commanding opposite party no.3 to release the petitioner in police custody so that he

may execute a sale deed of his property bearing no. R 83, Nehru Enclave, Gomti Nagar, Lucknow and pay the dues of the Bank.

In a similar petition bearing Writ-C No.2607 of 2023 [Ram Kumari vs. State of U.P. & Ors.], we have considered this aspect and disposed of the writ petition on 24.05.2023 in the following terms:-

"Let the Sub-Registrar, Malihabad, Lucknow be impleaded as an opposite party during course of the day.

Petitioner is the mother of Budhi Lal, who has been convicted of the offence under Section 302 read with 34 I.P.C. in Sessions Trial No. 471 of 2010 (Case Crime No. 577 of 2009), Police Station Malihabad, District Lucknow and is in prison.

Petition has been filed seeking following relief:-

"i) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite party no. 2 i.e. District Magistrate, Lucknow to decide the representation of the petitioner dated 29.08.2022 and permit to the petitioner to get execution of registered power of attorney from her son namely Budha Lal @ Budhi Lal in the interest of justice."

We had heard this matter at length on earlier date i.e. 06.4.2023 and passed the following order :-

"This petition has been filed seeking following main prayer:-

"(i) Issue a writ, order or direction in the nature of mandamus thereby commanding and directing the opposite party No.2 i.e. District Magistrate, Lucknow to decide the representation of the petitioner dated 29.08.2022 and permit to the petitioner to get execution of registered power of attorney from her son namely Budha Lal @ Budhi Lal in the interest of justice."

Petitioner is mother of Budha Lal @ Budhi Lal, who has been convicted in S.T. No.471 of 2010 arising out of Case Crime No.577 of 2009, under Section 302 read with 34 IPC, Police Station- Malihabad, District- Lucknow and has been sentenced to death subject to its confirmation by the High Court. On account of which, he is in jail. Son of the petitioner, who is convict as of now, owns some land and he has not been able to challenge his conviction before the High Court on account of paucity of funds. The petitioner-mother says that if a Power of Attorney is executed by her son in her favour for selling of his land, then sale consideration can be used for contesting the judgement before the High Court. In these circumstances, this petition has been filed.

Learned counsel for the petitioner relies on Section 38 of the Registration Act, 1908, which reads as under:-

"38. Persons exempt from appearance at registration-office.?(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) person exempt by law from personal appearance in Court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination."

According to the said provisions, a person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office or a person in jail under civil or criminal process, shall not be required so to appear, i.e., the appearance referred in Section 36 & 37 of the said Act, 1908 for the purposes of registration.

The contention is that Sub-Registrar may visit the son of the petitioner in jail for registration of the Power of Attorney. We are of the opinion that it is the son who has to decide as to whether he wants to execute a Power of Attorney in favour of his mother for the purpose preferred in the petition or not and if he does, then a power of attorney will have to be executed and will have to be signed by the son of the petitioner and such other persons as may be required in law. We find that exemption from appearance at the registration office is only for the purpose of registration but unless the Power of Attorney is executed as per the desire of the petitioner's son, who is in jail, there is no question of Sub-Registrar visiting the son in jail for the aforesaid purpose of registration. We find that as per Para 654 of U.P. Jail Manual, 2022 there is a provision, according to which every prisoner may at the discretion of the Superintendent be permitted to sign and attest a Power of Attorney or other statements, conveyances concerning his properties. If the said provision is operative, then, the Superintendent of Jail where the son of the petitioner is lodged should ask him as to whether he wants to execute any Power of Attorney and if he does, then, the opposite parties shall arrange for execution of such Power of Attorney and its signature by the son of the petitioner and thereafter, the Sub-Registrar with whom Power of Attorney is to be registered will have to be intimated by the petitioner and the Jail Authorities concerned whereupon he shall exercise his powers under Section 38 of the Registration Act, 1908. Let this exercise be done and the Court be informed about the result on the next date.

Having said so we find that the reason for execution of Power of Attorney as noticed hereinabove is quite disturbing. If the son of the petitioner is in jail and he does not have requisite finances to file an appeal or to engage a private counsel, then, an appeal can be preferred from Jail itself and the Superintendent of Jail and other Authorities can give him proper advice in the matter.

We accordingly, direct that the District Legal Aid Services Authority and its Secretary at Lucknow shall look into the matter and do the needful in this regard. The District Judge, Lucknow is directed to verify facts in light of averments made in the writ petition and do the needful so far as provision of legal aid to the convict is concerned. The details of the criminal case in respect to which he is lodged in Jail, have been mentioned in this order and also in the memo of writ petition. The Superintendent of Jail where the son of the petitioner is lodged shall also do the needful and inform the Court accordingly.

The Senior Registrar of this Court at Lucknow to communicate this order to the District Judge, Lucknow and also Secretary, District Legal Aid Services Authority along with photo copy of this writ petition only for the aforesaid purpose.

*Name of Shri Pracheesh Pandey, learned A.G.A. shall be printed whenever the case is next listed along with learned Chief Standing Counsel and he shall also apprise the Court about the result of the aforesaid exercise on the next date and communicate this order to the Jail Superintendent concerned for compliance.
Put up this case on 26th April, 2023."*

Learned Standing Counsel does not have instructions as to what steps have been taken by the Secretary, District Legal Aid Services Authority and the District Judge, as was ordered.

As regards the other issue of registration of sale deed, petitioner counsel says that sale deed has been prepared and now it is to be signed by the son of the petitioner, who is in prison.

Record reveals that the Senior Registrar of this Court has communicated our order dated 06.04.2023 to Secretary, District Legal Aid Services Authority and District Judge, Lucknow, however, it is not clear as to what steps have been taken by them in this regard.

In view of our earlier order, the District Legal Aid Services Authority shall provide proper advise to the convict referred hereinabove as also assistance, if necessary, for filing an appeal against his conviction through an Advocate on the panel of said authority, unless off-course the convict wants to engage a private lawyer. If he is agreeable to file an appeal through a panel lawyer, then the Jail Superintendent shall inquire from him as to whether he still wants to sell his land for the purposes of filing the appeal, if he does not, then off-course, the matter shall rest and execution & registration of the sale deed, as suggested by the petitioner would not be required, however, if he says that he wants to sell the land, if it is recorded in his name, then, further action would be required. In this context, we find that there is a provision in para 654 in U.P. Jail Manual, 2022, which reads as under:-

" Permission to sign documents:- Every prisoner may at the discretion of the Superintendent be permitted to sign and attest a power of attorney or other statements, conveyances concerning his properties."

Learned Standing Counsel says that the Jail Manual, 2022 is in operation.

We may also refer, in this regard, to the provisions of Section 38 of the Registration Act, 1908, which reads as under:-

"38. Persons exempt from appearance at registration-office:-

(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) person exempt by law from personal appearance in Court, and who

would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination."

After the Jail authorities facilitate the execution & signing of the document of the sale deed as per para 654 of U.P. Jail Manual, 2022, the Jail Superintendent and the petitioner shall inform the Registrar/Sub Registrar for appropriate steps under Section 38 of the Registration Act, 1908 and the said Registrar/Sub-Registrar would act in accordance with Section 38 of the Registration Act, 1908 and shall himself go to Jail in which the convict is confined and take appropriate steps for registration of the said sale deed.

Let the exercise of execution and signing of sale deed be completed within fifteen days of receipt of certified copy of this order, if the occasion so arises and, thereafter, for the purposes of registration of the said document, the Sub Registrar, Malihabad, Lucknow or whosoever is the the Sub Registrar having jurisdiction over the matter would visit the District Jail, Lucknow, where the son of the petitioner is said to be lodged within fifteen days so that the sale deed is registered in terms of the aforesaid provisions unless there is any legal impediment in this regard in which case, he shall inform the Jail Superintendent in writing, who in turn shall inform the son of the petitioner.

Ms. Shagun Srivastava, Holding Brief appearing for the State shall communicate this order to concerned for compliance.

The Senior Registrar of this Court at Lucknow shall communicate this order to the District Judge, Lucknow and Secretary, District Legal Aid Services Authority, Lucknow for compliance.

Petition is disposed of in the aforesaid terms. "

As would be evident from the above quoted judgment, there is a provision contained in Section 38 of the Registration Act, 1908 which reads as under:-

"38. Persons exempt from appearance at registration-office.?(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) person exempt by law from personal appearance in Court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination."

According to the aforesaid provision a person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office or a person in jail under civil or criminal process, shall not be required so to appear, i.e., the appearance referred in Section 36 & 37 of the said Act, 1908 for the purposes of registration. Now, registration of sale deed is a subsequent event, first of all, there has to be a sale deed duly executed by the rightful person. In this context, Para 654 of the U.P. Jail Manual, 2022 is relevant which reads as under:-

" Permission to sign documents:- Every prisoner may at the discretion of the Superintendent be permitted to sign and attest a power of attorney or other statements, conveyances concerning his properties."

As recorded in the above quoted judgment, Jail Manual, 2022 is in operation. In view of the aforesaid, we direct the Jail Superintendent, District Jail, Lucknow to facilitate execution of the sale deed by the petitioner if he is the owner of the land in question as per Para 654 of U.P. Jail Manual, 2022 and thereafter, the Superintendent of Jail, District Jail, Lucknow on behalf of the petitioner shall inform the Registrar/ Sub-Registrar for appropriate steps under Section 38 of the Registration Act, 1908 for registration of the said sale deed whereupon the said officer i.e. Registrar/ Sub-Registrar would act in accordance with Section 38 of the Act, 1908 and shall visit the jail where the petitioner is lodged and take appropriate steps for registration of the said sale deed. Let the exercise of execution and signing of sale deed be completed within fifteen days of receipt of certified copy of this order if the occasion so arises and thereafter for the purposes of registration of said documents, the Sub-Registrar concerned having jurisdiction over the matter would visit the District Jail, Lucknow where the petitioner is lodged within the next fifteen days so that the sale deed is registered in terms of the aforesaid provision and as per Rules, unless there is any legal impediment in this regard, in which case, he shall inform the Jail Superintendent in writing who in turn shall inform the petitioner.

Sri Badrul Hasan, learned A.G.A. shall communicate this order to the Superintendent of Jail, District Jail, Lucknow as also the I.G. Stamp and Registration who shall ensure compliance.

Senior Registrar of this Court at Lucknow shall also communicate the order to the aforesaid.

With these observations/ direction, the writ petition is disposed of."

4. We also **dispose of** this writ petition on the same terms with a direction to the Jail Superintendent, District Jail Ayodhya to facilitate the execution of the sale deed by the petitioner, who is the owner of the land question, as per Para 645 of the U.P. Jail Manual, 2022 and thereafter Jail Superintendent, District Jail Ayodhya on behalf of the petitioner shall inform the Registrar/Sub Registrar for appropriate steps under Section 38 of the Registration Act, 1908 for registration of the sale deed whereupon the the Registrar/Sub Registrar, as the case may be, would act under Section the Registrar/Sub Registrar under Section 38 of the Registration Act would visit the District Jail,

Ayodhya where the petitioner is lodged within the next fifteen days so that the sale deed is registered in terms of the aforesaid provision and as per Rules, unless there is any legal impediment in this regard, in which case, he shall inform the Jail Superintendent in writing who in turn shall inform the petitioner.

5. Sri Manish Mishra, learned Standing Counsel shall communicate this order to the Superintendent of Jail, District Jail, Ayodhya as also the I.G. Stamp and Registration who shall ensure compliance.

6. With these observations/ direction, the writ petition is **disposed of.**

[Brij Raj Singh, J.] [Rajan Roy, J.]

Order Date :- 19.12.2024

Anuj Singh