

Rahmatullah and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-19-2006

Reported in : 2006(3)AWC2583

Judge : R.K. Agrawal and; Saroj Bala, JJ.

Acts : Article 226

Appeal No. : C.M. Recall Application No. 8394 of 2006, C.M.W.P. No. 41979 of 2004 and C.M.W.P. No. 20212 of 2006

Appellant : Rahmatullah and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Pankaj Shukla,; S.M.A. Kazmi,; Ravi Kiran Jain and; Rishi Chaddha, Advs. and; Pankaj Kumar Shukla, S.C.

Advocate for Pet/Ap. : T.P. Singh and; P.K. Mishra, Advs.

Judgement :

R.K. Agrawal, J.

1. Civil Misc. Writ Petition No. 41979 of 2004 filed by Rahmatullah and two others- Azamatullah and Smt. Naseem Begum - sons and daughter respectively of Saiyed Ullah Khan, was disposed of by this Court vide judgment and order dated

22.11.2005. It may be mentioned here that the petitioners, Rahmatullah and Ors., in the aforesaid writ petition, had sought a writ, order or direction in the nature of certiorari quashing the order dated 6/7.7.2004, passed by the District Magistrate, Mathura, filed as Annexure-1 to the writ petition. They had further sought a writ, order or direction in the nature of mandamus commanding the respondent Nos. 5, 6 and 7, namely, Munish Kumar Jain, Vijay Kumar Seth and Jain Inter College, respectively, not to transfer and change the nature of the land in question pending disposal of the writ petition or till the date of reverting back the possession of the land in question to the petitioners by the respondent Nos. 1 and 2. According to the petitioners, land recorded in Khewat No. 1/1 of Plot No. 278 having an area of 0.061 hectares, Plot No. 279 having an area of 0.101 hectares. Plot No. 280 having an area of 0.218 hectares. Plot No. 394/2 having an area of 0.182 hectares. Plot No. 441/3 having an area of 0.004 hectares and Plot No. 443/2 having an area of 0.069 hectares, in all seven plots having a total area of 0.675 hectares, situate in village Keshavpur, Manoharpur, Pargana, Tehsil and district Mathura, were recorded in the name of the ancestors of the petitioners, i.e., the grandfather, namely Munshi Abdulla Khan son of Mahmood Khan (Pathan) alongwith one Asha son of Mohan (Kumhar) since 1330 F. After the death of Munshi Abdulla Khan, the name of his two sons, namely Asid Ullah Khan and Saiyad Ullah Khan alias Samad Ullah Khan, were recorded and thereafter the names of the petitioners came to be mutated in the revenue record in place of their father vide order dated 22.5.1993. It is stated by the petitioners that their father Saiyad Ullah Khan alias Samad Ullah Khan was the only surviving heir and representative as Asid Ullah Khan had expired without issue and, therefore, the entire property devolved in favour of the petitioners. They claim that Khewat of the year 1408 F. and khasra of 1409 F. discloses that the names of the petitioners have been recorded as owners of the plots in question. According to the petitioners, there existed the land of the State of U.P. bearing Khasra No. 303 having an area of 0.105 hectares, Khasra No. 304/1 having an area of 0.210 hectares and Khasra No. 305 having an area of 0.417 hectares. According to the petitioners, the then Chief Minister of the State of U.P., Ms. Mayawati, was to visit Mathura on 14.6.2003. The respondent No. 1, i.e., the District Magistrate, Mathura, requested the petitioners to provide their land in question for the purpose

of carrying out the function and programme of the Chief Minister peacefully, which was consented by the petitioners. The possession of the plots in question were temporarily taken by the District Magistrate, Mathura and the City Magistrate, Mathura, alongwith other officials of the district administration. The district administration prepared a platform for the purpose of address by the Chief Minister and barricading was also done for the audience and for the purpose of security a pucca boundary wall was also constructed alongwith a huge gate fixed at the entrance. After the programme was over, the district authorities failed to deliver peaceful possession of the land in question to the petitioners. The petitioners made request to the district authorities to restore the possession of the petitioners over the plots in question, which they had taken over for the purpose of the function of the Chief Minister and as the authorities were busy in some administrative work, the possession was not delivered immediately. The petitioners had made an application on 3.7.2003 for delivering the possession, which was followed by a reminder on 23.7.2003. When nothing was done in the matter, the petitioners approached this Court by filing Civil Misc. Writ Petition No. 38215 of 2003, Rahmatullah and Ors. v. District Magistrate, Mathura and Ors., which was disposed of by this Court vide judgment and order dated 4.9.2003 with a request to the District Magistrate, Mathura, to examine the whole issue and pass an appropriate order and if there is no legal impediment in restoring the possession of the open land belonging to the petitioners, he may do so, preferably within a week from the date of filing of a certified copy of that order alongwith a copy of the writ petition alongwith its annexures. The petitioners filed a certified copy of the order alongwith other documents before the District Magistrate, Mathura, vide application dated 22.9.2003. After calling for a report from the Additional District Magistrate, Mathura, the matter was kept pending. The District Magistrate, in the meantime, was transferred and a new incumbent took charge. The petitioners again made an application on 6.10,2003. The report was again called for by the District Magistrate. It appears that Munish Kumar Jain, who is respondent No. 5 in the present writ petition, on some misapprehension approached this Court by filing Civil Misc. Writ Petition No. 14981 of 2004, which was dismissed by this Court as not maintainable, vide judgment and order dated 12.4.2004. The Court, however, clarified its earlier order dated 4.9.2003 by

passing the following order:

This writ petition has been filed raising the grievance that this Court had passed an order on 4th September, 2003, issuing direction to the learned District Magistrate, Mathura, to consider the representation of the Rahmatullah Khan (respondent No. 3) and the petitioner apprehends that under the garb of the order the District Magistrate, Mathura, shall dispossess him and hand over possession to the said respondent No. 3.

The order passed by us on 4th September, 2003, means only direction to examine the whole issue and pass an appropriate order and if there is no legal impediment in restoring the possession of the open land it can be handed over to the petitioner therein. We have not passed any order to restore the possession without any reason or without any opportunity of hearing to the person concerned. No order has yet been passed. The apprehension of the petitioner may be totally misconceived. In fact this writ petition is not only misconceived but challenging the order passed by us on 4th September, 2003, deciding the Writ Petition No. 38215 of 2003. It is settled legal proposition that an order passed in a writ petition cannot be challenged by filing a writ petition.

Thus, the petition is dismissed as not maintainable.

Moreso, even the petitioner has filed suit which is pending consideration before the competent civil court, therefore, we see no reason that the District Magistrate, Mathura, shall pass an order without examining the issue involved therein.

2. Thereafter, the District Magistrate, Mathura, had decided the application/representation made by the petitioners vide order dated 6.7.2004 and had declined to pass any order in favour of the petitioners on the ground that the land mentioned in Khewat No. 1/1 is highly disputed and the request for delivery of possession cannot be acceded to.

3. After the exchange of the affidavits, the matter came up for consideration before the Court on 22.11.2005. The Court while disposing of the writ petition noted the contention of the learned senior counsel, Sri T.P. Singh, to the following effect:

The learned Counsel invited the attention of the Court to Annexure S.R.A.-2, filed alongwith the supplementary rejoinder-affidavit of Shri Sanjeev Singh affirmed on 19.9.2005, in which the learned Civil Judge (S.D.), Mathura, vide order dated 12.9.2005, had decided the Issue No. 3 regarding the jurisdiction of the civil court In entertaining and deciding the suit. He has held that the civil court has no jurisdiction and the revenue court alone has the jurisdiction. According to Sri Singh, in view of the subsequent development, even though the order passed by the District Magistrate on 6.7.2004 might have been technically correct, yet in view of the subsequent development, as in the eyes of law, the suit is not pending, there is no dispute regarding title, which fact should be reconsidered by the District Magistrate.

4. Taking Into consideration the aforesaid submission of Sri Singh, the Court disposed of the writ petition with the following directions:

Without going into the merits of the case, as to whether there is any dispute regarding title at present or not, we deem fit and proper to direct the District Magistrate, Mathura, to pass a fresh order upon a representation being made by the petitioner within two months thereafter after giving an opportunity of hearing to the petitioners or their representative as also the representatives of Jain Inter College, Mathura, or any other person claiming interest in the land in question In the past.

It is made clear that the Court has not adjudicated the claim on merits.

The writ petition is disposed of with the aforesaid observations.

5. The present application was filed on behalf of Munish Kumar Jain, respondent No. 5, seeking recall of the aforesaid order to which affidavits have also been exchanged.

6. In the meantime, the District Magistrate had passed an order on 1.4.2006, directing the City Magistrate, to deliver possession of an area of .420 hectares of land comprising of Khasra No. 278 (area 0.061 hectares), No. 279 (area 0.101 hectares), No. 280 (area 0.218 hectares) and No. 304/2 (area 0.040 hectares) to

Rahmatullah and Ors. on the ground that Vijay Kumar Seth and Munish Kumar Jain have not been able to prove their title over the said land. The order dated 1.4.2006, has been challenged by Vijay Kumar Seth, Jain Inter College, Chaurasi, Mathura, through its Manager Munish Kumar Jain and Munish Kumar Jain before this Court by means of Civil Misc.. Writ Petition No. 20212 of 2006. It may be mentioned here that, according to the petitioners. Rahmatullah Khan, Asmat Ullah Khan and Smt. Naseem - Begum had executed a sale deed on 10.3.2004 transferring their entire interest in the land in favour of three persons, namely, Sanjeev Chaudhary, Narayan Singh and Govind Singh who have been impleaded as the respondent Nos. 6, 7 and 8 herein. The sub-registrar found deficiency of Rs. 2,10,500 of stamp duty on the instrument and, vide order dated 4.1.2006, while impounding the instrument of sale deed, had ordered for recovery of the aforesaid amount of deficient stamp duty, which fact was not brought to the notice of this Court or the District Magistrate. It has also been stated by the petitioners that Rahmatullah and Ors. had filed Original Suit No. 679 of 2005 which was got dismissed by them for want of prosecution.

7. Pleadings have been exchanged between the parties. As the application for the recall of the order dated 2.11.2005, passed in Civil Misc. Writ Petition No. 41979 of 2004 and the controversy involved in the present writ petition relate to the same subject-matter, they have been heard together and are being decided finally by a common judgment/order.

8. We have heard Sri Ravi Kiran Jain, learned senior counsel, assisted by Sri Rishi Chaddha and Sri Pankaj Shukla, and Sri T.P. Singh, learned senior counsel, assisted by Sri P.K. Misra, on behalf of the rival parties.

9. In support of the application seeking recall of the order, it was submitted on behalf of the applicant that, in view of the concession given by Sri Singh that the order dated 6.7.2004, passed by the District Magistrate might have been technically correct, the Court ought to have dismissed the writ petition and further direction to the District Magistrate for deciding the fresh representation was not warranted. It was further submitted that even if it is assumed that the Court was competent to issue such a direction, it did not confer upon the District Magistrate

any authority/jurisdiction in law to decide the question of title.

10. Sri Ravi Kiran Jain, learned senior counsel. In support of the Civil Misc. Writ Petition No. 20212 of 2006 submitted that the question of ownership and title of the land in question is being seriously questioned by the petitioners herein and the matter is still sub-Judice. According to him, even though the civil court had held that it had no jurisdiction to go into the question of title, as it involves the agricultural land and the Revenue Court alone had the jurisdiction to go into that question, the matter is still sub-judice before this Court in Civil Misc. Writ Petition No. 9729 of 2006. Thus, it cannot be said that there is no dispute regarding the title. He further submitted that the direction given by this Court for deciding fresh representation did not confer upon the District Magistrate the jurisdiction to go into the disputed question of title of the rival claimants. He had to decide the representation in accordance with law. The District Magistrate while deciding the representation, vide order dated 1.4.2006, had exceeded his jurisdiction by going into the question of title of rival claimants and directing for delivery of possession of an area of 0.420 hectares of land comprised in various plots to Rahmatullah and Ors., respondent Nos. 3, 4 and 5. The District Magistrate had not gone into the question whether any land belonging to the said Rahmatullah and Ors., respondent Nos. 3, 4 and 5, as a matter of fact, had been taken over by the district authorities for the purposes of the function of the Chief Minister or not and, therefore, the said order, according to him, cannot be sustained and is liable to be set aside.

11. Sri T.P. Singh, learned senior counsel, appearing for the respondent Nos. 3, 4 and 5, however, submitted that there is no dispute regarding the ownership and title of the said respondents in respect of the land in question. Their names have been recorded in the relevant revenue records and the claim of the petitioners herein for grant of temporary injunction in respect of the land in question have been negatived. Even the suit filed by them has not been entertained on the ground that the civil court had no jurisdiction. Thus, the petitioners cannot claim any right, title and interest in the land in question. According to him, the order dated 1.4.2006, passed by the District Magistrate is a well considered one and does not require any interference from this Court,

12. Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties, we deem it fit and proper to first consider the application for recall of our order dated 22.11.2005 filed by Munish Kumar Jain,

13. We have already reproduced hereinbefore the directions given by this Court in the said order. From a reading of the same, it is clear that the Court had not adjudicated the claim of the parties on merits. It had only permitted the petitioners of Civil Misc. Writ Petition No. 41979 of 2004, to make a fresh representation before the District Magistrate and had directed the District Magistrate to pass a fresh order after giving an opportunity of hearing to all the persons claiming interest in the land in question. The Court had specifically recorded that it was not going into the merits of the case on the issue as to whether there was any dispute regarding title in the land in question or not. The said order did not affect the rights of any of the parties. It only empowered the District Magistrate to pass a fresh order after giving an opportunity of hearing to all concerned on the representation which may be made by the petitioners therein.

14. What is the effect of directing an authority to consider the case of an aggrieved party, came up for consideration recently before the Apex Court in the case of A.P.S.R.T.C. and Ors. v. G. Srinivas Reddy and Ors. : (2006)IILLJ425SC . The Apex Court, in paragraphs 14 to 20 of the report, has held as follows:

14. We may, in this context, examine the significance and meaning of a direction given by the Court to 'consider' a case. When a Court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to 'consider' the claim/case/representation of the petitioner/s in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference

and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

16. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the Court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

18. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a

reason for the Court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the Court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the Court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting underserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of Court's direction to 'consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders to consider'.

20. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The Court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the Court becomes virtually infructuous as the aggrieved petitioner will have to come again to Court with a fresh writ

petition or file an application for fixing time for deciding the matter.

15. Applying the principles laid down in the aforesaid case to the facts of the present case, we find that, pursuant to the earlier order dated 25.11.2003, the District Magistrate was to apply his mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. Nothing more and nothing less. It did not adversely affect the respondents therein so as to seek recall of the Court's order. Even otherwise, the District Magistrate, Mathura, while passing the order on 6.7.2004, had not decided anything on merits but had declined to go into the question on the ground that there is dispute regarding title and a suit is still pending. It is always open to a party to make a fresh representation before the authority concerned after the situation/circumstance has changed and, therefore, even without an order of this Court, the petitioners would have been at liberty to make a representation before the District Magistrate, Mathura, who would have decided the same in accordance with law. The application is, therefore, misconceived and is liable to be rejected.

16. Now, coming to Civil Misc. Writ Petition No. 20212 of 2006, we find that all along the case of Rahmatullah and Ors., respondent Nos. 3, 4 and 5 herein, was that their ancestors were the owners-in-possession of the land in question. Their names had been recorded in the relevant revenue records. The possession of the land in question had been taken by the district authorities on 7.5.2003 in connection with the function of the Chief Minister, State of U.P., which was held on 14.5.2003. The grievance was that after the function was over, the possession has not been restored back. This Court in Civil Misc. Writ Petition No. 38215 of 2003, had directed the District Magistrate, Mathura, to examine the whole issue and pass appropriate orders and if there is no legal impediment in restoring the possession of the open land belonging to the petitioners, he may do so, expeditiously within a time bound frame. The question is as to whether the District Magistrate could have decided the question of title of rival claimants or not. No provision of law has been brought to our notice by any of the counsel for the parties, which empowers the District Magistrate to adjudicate upon the question of title of immovable property including the land while deciding the matter on the administrative side. The only question which was to be addressed by the District

Magistrate was as to whether on 7.5.2003 or thereafter, in connection with the function of the Chief Minister which was held on 14.5.2003, the possession of the land belonging to the respondent Nos. 3, 4 and 5 or any part thereof has been taken by the district authorities or not.

17. We have gone through the order dated 1.4.2006, passed by the District Magistrate, filed as Annexure-19 to the writ petition, and find that the District Magistrate instead of addressing himself on this vital issue, concentrated more on the question of title of rival claimants and had passed the order only on the basis of title of the respondent Nos. 3, 4 and 5. The District Magistrate has, therefore, completely misdirected himself and has entered into issues which, under law, he was not entitled to do so.

18. In view of the foregoing discussions, we are of the considered opinion that the order dated 1.4.2006, passed by the District Magistrate cannot be sustained and is, therefore, liable to be set aside. However, the District Magistrate shall reconsider the matter and pass appropriate orders in accordance with law after giving an opportunity of hearing to all affected parties on the following issues:

(i) whether possession of land comprising in Khewat No. 1/1 of Plot No. 278 having an area of 0.061 hectares, Plot No. 279 having an area of 0.101 hectares, Plot No. 280 having an area of 0.218 hectares, Plot No. 394/2 having an area of 0.182 hectares, Plot No. 441/3 having an area of 0.004 hectares and Plot No. 443/2 having an area of 0.069 hectares, in all seven plots having a total area of 0.675 hectares, or any part thereof, situate in village Keshavpur, Manoharpur, Pargana, Tehsil and district Mathura, as claimed by Rahmatullah and Ors., respondents Nos. 3, 4 and 5, to be belonging to them had been taken over by the district authorities on 7.5.2003 or thereafter for the purposes of the function of the Chief Minister held on 14.5.2003 or not;

(ii) if it is so, then the district authorities are under a duty to restore back the possession to the respondent Nos. 3, 4 and 5 otherwise not.

19. It goes without saying that the District Magistrate shall not enter into the question of title of any of the rival claimants, which question shall be decided only

by a competent court of law.

20. The District Magistrate shall afford opportunity of hearing to the petitioners as also Rahmatullah and Ors., respondent Nos. 3, 4 and 5 and the district authorities, and all of them will be at liberty to file such documents and lead such evidence as they deem fit and proper in support of their claim.

21. As three years are going to pass, we direct the District Magistrate to decide the matter expeditiously preferably within a period of two months from the date a certified copy of this order is filed before him.

22. With the aforesaid observations and directions, the Civil Misc. Writ Petition No. 20212 of 2006 succeeds and is allowed. The application for recall of the order dated 22.11.2005 is rejected. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

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