

Neutral Citation No. - 2023:AHC-LKO:84978

A.F.R.

Reserved On:- 12.12.2023

Delivered On:- 21.12.2023

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 3726 of 2022

Petitioner :- Shatrughan Yadav

Respondent :- State Of U.P. Thru. Secy. Revenue Lko. And 2 Others

Counsel for Petitioner :- Akhilesh Singh, Onkar Nath Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh, J.

(Application for Extension of Time - IA/2/2023)

1. Heard Shri Onkar Nath Tiwari, learned counsel for the petitioner and Shri Shailendra Kumar Singh, learned Chief Standing Counsel assisted by Shri Praful Kumar Yadav, learned Additional Chief Standing Counsel, Shri Hemant Pandey, learned Standing Counsel and Shri Dharendra Singh, learned Standing Counsel for the State/Applicant.

2. The deponent/State by way of instituting an application dated 21.11.2023 sought prayer for extension of time, as provided in the judgment and order dated 27.09.2022.

3. While filing writ petition Matters Under Article 227 No.3726 of 2022 (*Shatrughan Yadav Vs. State of U.P. and Others*) the petitioner, namely, Shatrughan Yadav sought prayer for issuance of a direction to respondent/ opposite party nos.2 and 3 to conclude the survey bandobast, initiated under Section 49 of U.P. Revenue Code, 2006 (hereinafter referred to as "Code, 2006"), in respect to village- Majha Rath and Majha Durgaganj, Tehsil- Tarabganj, District- Gonda within stipulated period of time as fixed by this Court. The petitioner further submitted that the matter of survey bandobast is pending since 2020 and the gazette notification was also annexed alongwith the writ petition.

4. Considering the above said prayer, the coordinate bench of this Court passed the order on 27.09.2022, which is reproduced hereinunder:-

"Heard learned counsel for the petitioner. Notice on behalf of the respondents No.1 to 3 has been accepted by the office of the Chief Standing Counsel.

By means of the instant petition, the petitioner seeks a direction to the respondents No. 2 and 3 to conclude the survey bandobast under Section 49 of the U.P. Revenue Code, 2006 in respect of Village-Majha Rath and Majha Durgaganj, Tehsil Tarabaganj, Ditriect Gonda.

Learned standing counsel submits that he has no objection in case an expedite order is passed.

Considering the facts and circumstances, this Court is of the opinion that no gainful purpose will be served in keeping the aforesaid petition pending rather ends of justice can be served by directing the respondents No.2 and 3 to to conclude the survey bandobast under Section 49 of the U.P. Revenue Code, 2006 in respect of Village-Majha Rath and Majha Durgaganj, Tehsil Tarabaganj, Ditriect Gonda preferably within a period of six months from the date an authenticated copy of this order is placed before the authority concerned.

It is made clear that the Court has not examined the case of either of the parties on merits and the authority concerned shall be free to decide the matter strictly in accordance with law.

With the aforesaid, the petition is disposed of."

5. This Court while disposing of the writ petition (Matters Under Article 227) No.3726 of 2022 directed to the opposite party nos.2 and 3 to conclude the survey bandobast under Section 49 of the Code, 2006 with respective villages, within period of six months, from the date an authenticated copy of the order is placed before the authority concerned and it was further observed that the Court did not examine the case of the either parties, on merits and it was open to the authorities to proceed in accordance with law.

6. In compliance of the aforesaid order, the petitioner submitted a representation on 12.07.2023 and the said representation was disposed of vide order dated 28.07.2023, while informing to the petitioner that the survey bandobast proceeding is going on and this will take some more time, ultimately the survey proceeding could not be completed within time prescribed by this Court and therefore, the petitioner moved contempt petition bearing no.2492 (Civil) of 2023, which is pending consideration before the Hon'ble Contempt Court.

7. The contention of counsel for the State/applicant is that the petitioner is a resident of village- Durgaganj and the dispute is regarding time bound survey, as per Record Maintenance Rule, 1978, by the survey team headed by Assistant Record Officer, Ayodhya and Gonda. He submits that the authorities initiated the proceeding with respect of conducting survey bandobast as per the provisions contained in the Code, 2006 and the proceedings are a bit late for the reason that the sugar crop was ripe in

the month of September, 2022 and thereafter the proceeding started in the month of December, 2022. In the month of December, the proceeding of measurement (paimaish) were initiated and it was duly processed, which continued till the month of March, 2023 but the dispute of the border arose between the Districts- Ayodhya and Gonda and a suit was instituted prior to further proceedings of the measurement (paimaish) and a request was made to the team of measurement (paimaish) to drop the proceeding of survey bandobast. In the meantime, period prescribed by the Hon'ble Court for concluding the bandobast survey proceedings got completed and thus the petitioner preferred a contempt petition before this Court, wherein the Hon'ble Contempt Court vide order dated 09.11.2023, while fixing a date, opened it to the applicants to file compliance affidavit or any further order, if passed on application for extension of time moved by the applicant and failing which the authorities were directed to appear in person on 12.12.2023.

8. Learned counsel for the petitioner argued that proceeding with respect to survey bandobast could not be completed due to bona fide and justified reasons as the survey bandobast takes considerable period of time, as estimated time is tabled in paragraph 4 of the application and so far as the villages under the survey are concerned, the expected time for preparing survey is given in the chart in paragraph 4. He added that at the ground level, there are certain practical problems, which takes time to be solved/ exhausted.

9. Adding his contentions, he submits that the controversy regarding maintainability of the miscellaneous application, after disposal of writ petition is settled, in case of ***Abhishek Prabhakar Awasthi Vs. New India Assurance Company*** reported in ***(2013) SCC Online Allahabad***, wherein the Court has held that the writ court has inherent jurisdiction to grant extension of time in the interest of justice while balancing both, the needs for expeditious conclusion of the inquiry in the interest of fairness and honest administration. Placing reliance on a case reported in ***2009 (2) SCC 164 (K.A. Ansari Vs. Indian Airlines Ltd.)***, he referred paragraphs 17 to 21. Paragraphs 17 to 21 are reproduced hereinunder:-

"17. It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not

open to the court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (See State of U.P. v. Brahm Datt Sharma, SCC p. 188, para 10.) At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.

18. *Therefore, the question for consideration in the instant case is whether the miscellaneous application preferred by the first appellant could be said to be founded on a fresh cause of action?*

19. *Having bestowed our anxious consideration on the rival submissions, we are of the opinion that keeping in view the terms of the final order dated 11-10-2004, the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforementioned legal position viz. on termination of proceedings by final disposal of writ petition, it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action.*

20. *It is manifest that in Direction (ii), the learned Single Judge had clearly directed that the writ petitioners would be entitled "to be posted to a post in equivalent scale held by them when the letter dated 23-4-2003 was issued". The respondent Indian Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.*

21. *In our opinion, in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23-4-2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4-3-2005."*

10. Referring the aforesaid, counsel for the petitioner submitted that it is a settled law that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceeding stands terminated by final disposal of the writ petition, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If the principle is not followed, there would be a confusion and the finality of the proceeding would cease to have any meaning as held by the Hon'ble Court in the case of **State of U.P. Vs. Brahma Dutt Sharma** reported in **1987 (2) SCC 179**, para 10.

11. At the same time, there is no restraint on a party applying for clarification if the order is not clear and the party against whom it has been made, is trying to take advantage because the order is caused in ambiguous or equivocal words. Thereafter, the Hon'ble Court finally

came to the conclusion that miscellaneous application, is maintainable, if it is not filed agitating fresh cause of action.

12. Again reliance has been placed on a case rendered in ***Maninderjit Singh Bitta Vs. Union of India*** reported in **(2012) 4 SCC 568** and submitted that as per the time prescribed, the State Government started compliance of fixing new high security registration plate but the same could not be completed due to certain reasons and despite the lapse of considerable time, the Hon'ble Apex Court was pleased to grant six weeks further time to complete the remaining process and file the affidavit of compliance.

13. Further contention of counsel for the State/applicant is that so far as the present case is concerned, the period of six months was provided by the Hon'ble Court for concluding the survey bandobast as per the provisions of Section 49 of the Code, 2006 and the authorities in compliance of the above said order, bona fidely proceeded in the matter but unfortunately the survey proceeding could not be concluded under the compelling circumstances. He submits that the prayer sought vide the instant application do not open any proceeding afresh but it is simply for extension of time, wherein the reasons have been explained. Therefore, submission is that the time prescribed vide order dated 27.09.2022 may be extended for further reasonable period of time as is probable and is shown, vide the chart in paragraph 4 of the application, to complete the survey.

14. Per contra, learned counsel appearing for the petitioner has vehemently opposed the contention aforesaid and submitted that the application filed by the deponent/ State authorities are not maintainable as the same is amount to review/ revision of the final order passed by this Court. In support of his contention, he placed reliance on the case of ***Brahma Dutt Sharma (supra)*** and referred paragraph 10. Paragraph 10 of the judgment is reproduced hereinunder:-

"10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on August 10, 1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of

the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

15. He submitted that it has been held by the Apex Court that no miscellaneous application is permitted, in a finally decided case.

16. Learned counsel for the petitioner next added that notification for survey bandobast was done in the year, 2020 and even after passing of 3 years no considerable job is done to conclude the survey proceeding as out of several *prapatra* for survey, no *prapatra* has been filed yet and therefore, the chart which has been prepared in paragraph 4 of the application is a disguise and the State authorities have no respect and regard to the order dated 27.09.2022 passed by this Court. He submitted that the time period prescribed in the chart is totally based on speculation and imagination and even no provision of any statute is quoted so as to time mentioned in the chart for completing and filing the *prapatra*. He also submitted that the reasons for delay in completing the survey has not properly been explained in the application and therefore, the same is liable to be dismissed.

17. Having heard learned counsel for the parties and after perusal of material placed on record, it transpires that initially writ petition was filed by the petitioner, namely, Shatrughan Yadav before this Court vide Matters Under Article 227 No.3726 of 2022, which was decided vide order dated 27.09.2022, while issuing directions to the respondent nos.2 and 3 of the writ petition, to conclude the survey bandobast as per provisions of Section 49 of the Code, 2006 regarding village- Majha Rath and Majha Durgaganj, within period of six months.

18. The aforesaid bandobast survey could not be completed within prescribed period of time and therefore, the contempt petition bearing Contempt Case No.2492 of 2023 is instituted before the Hon'ble Contempt Court.

19. Once the survey bandobast could not be completed by the State authorities within time prescribed by this Court, they moved the instant

application with the prayer for extension of time as is prescribed by this Court in the order dated 27.09.2022.

20. This Court examined the issue which crop up before this Court that whether the miscellaneous application is maintainable in a finally decided petition and secondly, that whether the reasons mentioned in the application for extension of time are sufficient and proper for extension of time and the bona fide thereof and it resulted that so long as the first question with respect to maintainability of the application is concerned, the Hon'ble Apex Court in case of ***Brahma Dutt Sharma (supra)*** has held that '*no miscellaneous application could be filed in the writ petition to revive proceeding in respect of subsequent events after two years.*' The ratio which has been drawn by the Apex Court is very overt from the reading of the paragraph 10 of the judgment as the same, says that the miscellaneous application is not maintainable in respect of **subsequent events**. So far as the present case is concerned, application is moved for extension of time and there is no other prayer with respect to any subsequent event. Had it been a case of the State Government that by way of moving the present application certain subsequent events are brought for consideration and disposal before this Court, the ratio of the judgment in ***Brahma Dutt Sharma (supra)*** would have been applied.

21. This Court is also not unmindful to the judgment of the Full Bench of this Court in case of ***Abhishek Prabhakar Awasthi (supra)*** which deals with this issue and answered the questions, which are reproduced hereinunder:-

"19. In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not

completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end."

22. The Full Bench while dealing with the issue of extension of time for concluding a disciplinary proceeding that the time prescribed by the Court can be extended on an appropriate application, explaining the reasons for the delay and thus has opened the door for maintainability of the miscellaneous application in the decided petition so far as the extension of time is concerned.

23. In fact, the extension of time is not amount to reviving the proceeding for subsequent events and the circumstances in the given situation is identical to the judgment rendered by the Full Bench in case of *Abhishek Prabhakar Awasthi (supra)*. In fact, the Court provides the time for concluding any proceedings either there is any provision of any statute which provides the time period or the probable time for concluding any proceeding to the discretion of the Court, if no such time prescribed by the statute. Even the time which is prescribed for conclusion of any proceeding by any authority or Court also depends on probability of conclusion of the same and it would not be proper to stop the further proceeding if prescribed time is over, otherwise that shall hamper the very object of dispensation of justice.

24. So far as the first question is concerned, this Court is of the considered opinion that the application for extension of time prescribed in a decided writ petition is maintainable provided the reasons are properly and categorically explained and the bona fide of such authorities are shown, subject to condition that the same would not change the nature of the final judgment and order and further no subsequent event is brought for adjudication afresh.

25. Dealing with the second issue as is raised by the petitioner, while filing the objection that the reasons for non compliance of the order dated 27.09.2022 has not properly been explained, this Court gone through the reasons explained in the affidavit in support of the application for

extension of time. In paragraphs 3, 4 and 5, the reasons for non compliance of the order dated 27.09.2022 within time prescribed, is explained, as due to the ripe of the crop of sugarcane, over the land in question, the survey proceeding was stopped for some period of time. This Court has also noticed the chart transcribed under paragraph 4 of the affidavit which says that for completing the survey of the village, this will take more than five years, though, the time prescribed are not based on any statutory provision but it is based on the probability and this Court is of considered opinion that the test of reasonable period of time, essentially be taken care off in case, the party to the case is approaching the Court for extension of time period.

26. In view of the aforesaid submissions and discussions, the instant application is hereby **allowed**.

27. Consequently, the applicants/State authorities i.e. respondent nos.2 and 3 are given further period of one year to conclude the survey bandobast of village- Majha Rath and Majha Durgaganj, Tehsil- Tarabganj, District- Gonda and liberty is also granted to the applicants that if the aforesaid survey bandobast is not completed within the time prescribed by this Court, they may move application for further extension of time, while explaining the bona fide reasons and mentioning the stage of the proceedings done, uptill filing of such application.

Order Date :- 21.12.2023

Mohd. Sharif