

Court No. - 3

Case :- WRIT - C No. - 503 of 2005

Petitioner :- Lal Behari Mritak

Respondent :- State Of U.P. Thru Chief Secy. And 2 Ors.

Counsel for Petitioner :- K.K.Pal,Lalit Shukla Amicus Curie,P.K. Agarwal,Pooja Pal

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Manish Kumar,J.

1. Heard Sri Krishna Kumar Pal, learned counsel for the petitioner and Sri Ramesh Kumar Singh, learned Senior Advocate General for the State of U.P. assisted by Sri Pratyush Tripathi, Additional Chief Standing Counsel for the State Respondents.

2. This petition has been filed with the following main prayer:-

"I) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to pay compensation to the tune of Rs. 25 Crores to the petitioner for his business loss and mental agony."

3. It has been argued by the learned counsel for the petitioner that the petitioner was originally resident of Village Khalilabad, District Azamgarh and after the death of his father, namely, Chauthi, the name of the petitioner was entered in the revenue records and his immovable property vested in the name of the petitioner as he was the only son of his parents. The petitioner was working as a labourer in a factory manufacturing banarsi silk sarees and later on he established his own banarsi silk sarees manufacturing unit and was doing well in

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his business. In the year 1976, the petitioner wanted to take a business loan by mortgaging his immovable property and was told to get a caste and income certificate from the concerned authorities in Village Khalilabad. When the petitioner went to the Area Lekhpal, he was told that on 30.07.1976 in Case No. 298 he was declared dead, and his entire immovable property was transferred in the name of his cousin brothers Patiram, Baburam, Baliram. The petitioner was shocked that he had been declared dead and all his immovable properties were usurped by some other persons. The petitioner repeatedly represented to all concerned about his plight of being declared dead, but nothing was done by the respondents. The petitioner was forced to fight a long legal battle for himself to be declared alive, as a result, he was not able to concentrate on his business of banarsi silk sarees manufacturing unit and was forced to close it down since it was incurring heavy losses.

4. The petitioner's plight was raised in 1984 by a Member of the Legislative Assembly but still no heed was paid. The petitioner made representations to the then Prime Minister and finally after 18 years he was declared alive on 30.06.1994. The petitioner's plight was mentioned in an article in the Asia edition of 'Times Magazine' published as "*Plight of Living Dead*" of which the High Court of Judicature at Allahabad took suo moto notice in Civil Misc. Writ Petition No. 29806 of 1999. A copy of the order dated 07.01.2000 has

been filed as Annexure-III to the petition. The Court directed the Chief Judicial Magistrate to take action against those responsible for wrong entry made in the revenue records and to take action against erring officials of the State and also directed the matter to be placed before the National Human Rights Commission. Since the petitioner was also fighting the cause of other persons who had been declared dead, he was also awarded the Ignobel Award by the Harvard University, Boston. The right to life of the petitioner having been clearly violated by the opposite parties for more than eighteen years, compensation should be awarded to the petitioner as observed by the Hon'ble Supreme Court, in various cases where compensation has been directed to be given in public law remedies.

5. Learned counsel for the petitioner Sri K. K. Pal while arguing the matter had referred to a detailed interim order passed by this Court on 19.02.2018.

6. This Court has perused the order dated 19.02.2018 which in sum and substance referred to the averments as mentioned by the petitioner in his writ petition, and thereafter, held the writ petition to be maintainable on the ground that it was the admitted case of the respondents that due to conduct of certain officials of the respondent State in connivance with the relatives of the petitioner, the petitioner was shown as a dead person and land of the petitioner was recorded

in the name of his relatives. The Court recorded that on receipt of complaint made by the petitioner the matter was looked into by District Magistrate, Azamgarh and the wrong was corrected only in June, 1994 and the order passed on 30.07.1976 in Case No. 298 was set aside. Criminal Proceedings had been initiated against the concerned revenue officials. The Court observed in paragraph 15 onwards as follows:-

"15. In the rejoinder affidavit of the petitioner sworn on 21.9.2005, the petitioner has brought out his predicament he had to face on account of action of the respondent State in declaring him dead.

It has been pleaded by the petitioner that the petitioner was declared dead in the year 1976 and was declared alive in the year 1994 i.e. after 18 years. For the said 18 years, the petitioner remained divested of his properties.

During the entire period when the petitioner was declared dead, the petitioner suffered grave mental anxiety and depression. The petitioner was socially rejected and was addressed as 'Bhoot' (Ghost). The petitioner could not do any business in the interregnum period because he could not get any financial assistance from any bank. Life of the petitioner has been destroyed ; economic condition of the petitioner has deteriorated ; the petitioner has been fighting for two meals a day ; the petitioner has one wife, one son and two daughters to support, however, has been reduced to the position of a beggar and therefore is unable to file a civil suit with requisite court fee to claim compensation.

The writ petition is maintainable because right of the petitioner vested under Article 21 of the Constitution of India has been violated.16. We have also gone through the contents of the supplementary counter affidavit filed by Niab Tehsildar, Azamgarh sworn on 1.10.2015. A reference has been made to the criminal proceedings initiated against the erring officers. Reference has been made to the fact that the grievance of the petitioner has already been addressed by way of correcting the relevant revenue record hence there is no occasion for the petitioner to demand such a huge sum of money.

It has been stated that the petitioner did not suffer any mental agony or financial loss due to any act of the respondents. Other contents of the supplementary counter affidavit are repetition of the stand taken in the

main counter affidavit and therefore need not be repeated/referred to at this stage of proceedings.

17. *We have referred to the contents of the supplementary rejoinder affidavit of the petitioner sworn on 24.7.2016. Certain errors in relation to record mentioned in the counter affidavit have been highlighted.*

18. *Complete and clear facts however, have not come on record.*

19. *This Court is required to be informed whether the entire property of which the petitioner is the rightful owner has been transferred in the name of the petitioner ; and whether physical possession of the said property has been handed over to the petitioner.*

20. *We hereby direct District Magistrate, Azamgarh to address the issue and file his affidavit in this regard. So as to ensure that all the civil rights of the petitioner are restored, District Magistrate would be at liberty to take help from all concerned quarters, including the police.*

We also direct District Magistrate, Azamgarh to file his affidavit as regards the involvement of all the public servants and private persons who were involved in the process of declaring the petitioner dead.

An application would have been filed by some person(s) with the plea that the petitioner had died ; the contents of the application would have been entertained and verified by a public servant ; some person would have adjudicated to hold that the petitioner had died on the basis of some report furnished by another public servant, and thereafter entry in the mutation would have been made as disclosed vide Annexure No.1.

The affidavit be filed on the basis of the relevant records in the above regards.

In case the record is not available and has gone 'missing', the action be taken against custodian of records, not only on the administrative side, but also on the criminal side.

This court apprehends that the public servants would try to manipulate and conceal the facts from the court and therefore this direction is being issued.

21. *We have taken notice of the fact that it is the admitted position of the respondents that the petitioner was wrongly declared dead by State Agencies.*

In case the State agencies had been diligent in performance of their entrusted task and the public servants had behaved as servants of the public which expects conduct of proceedings in accordance with the process of law, surely the petitioner would not have been declared dead.

This writ court as a court of equity cannot ignore the predicament of a person who for legal purposes is declared dead. The court would be failing in its duty if it ignores violation of right to life of a citizen, which

is directly attributable to the actions of the State functionaries. The court cannot ignore the inaction on the part of the State agencies for 18 long years from 1976 till 1994.

*We have taken notice of the fact that name of the petitioner is Lal Behari, however, because he was declared dead, he is being addressed as '**Lal Behari Mritak**'.*

So as to deliver justice, one has to step into shoes of the person who approaches a court of law to know whether ; and how much the shoe pinches. The conduct of the public servants has resulted in bringing a bad name to the country and to the State of Uttar Pradesh. The news of persons who are alive however declared dead was published in International Magazines.

Such infraction on the part of the public servants cannot be allowed to go without compensating the petitioner. The petitioner has lost precious years of his life for which he could have been productive not only towards the society but also for his family members.

22. *The court is sensitive to the fact that only the State agency could declare a person dead and not a private person. In the case in hand, it is by virtue of action of the State that the petitioner was declared dead and entries accordingly were made in the revenue record denying civil rights vested in the petitioner. Resultantly, the petitioner was subjected to mental trauma, harassment and humiliation in the family and the society. The conscience of the court has been shaken by the apathy and insensitivity shown by the State agencies towards the plight of the petitioner.*

23. *In view of the facts and circumstances, we hereby direct respondent nos.1 to 3 to file an affidavit on behalf of the State to show cause why appropriate compensation be not paid to the petitioner.*

24. *In peculiar facts and circumstances of the case, we hereby appoint Shri Lalit Shukla Advocate as Amicus Curiae for assistance to the court.*

Let a copy of the entire file be furnished to Shri Lalit Shukla by Registry, within four working days.

25. *Let name of Shri Lalit Shukla, Advocate be shown in the cause list as Amicus Curiae.*

26. *List on 13.3.2018 for further hearing."*

7. In pursuance of such orders the then District Magistrate, Azamgarh filed his personal affidavit on 16.03.2018 wherein it has been stated that the land of Gata No. 87 (area 0.1680 Hectare) was

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recorded in the names of Baburam, Patiram and Baliram all minor, sons of Late Ramdhari under the guardianship of their mother Partapi Devi, by the then Tehsildar (Sadar) on 30.07.1976 on account of an application filed by the cousins of the petitioner and his aunt showing the petitioner as a dead person. On a complaint being made by the petitioner inquiry was carried out by the Chief Revenue Officer who sent his report dated 24.06.1994 to the then District Magistrate who passed an Order on 25/30.06.1994, canceling the order dated 30.07.1976 and the name of the petitioner was mutated/entered in the revenue records of the land in question.

A criminal case was instituted against the then Lekhpal, Thakur Prasad, but the said criminal proceedings were stayed by this Court at Allahabad. Lekhpal Thakur Prasad thereafter died and the criminal case abated.

In compliance of the order dated 07.01.2000 passed by this Court in Writ Petition No. 29806 of 1999 (Jeevit Mritak Sangh Vs. State of U.P. and Others), the matter was referred to the National Human Rights Commission which after hearing all concerned directed the State Government to take an appropriate decision in the matter, but did not direct any compensation to be paid to the petitioner. In compliance of the orders passed by the National Human Rights Commission dated 18/20.01.2007, the Government Order No.

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144/01.08.2007-58/34/11/2002-807 dated 22.01.2007 was issued by the State Government directing all District Magistrate and Commissioners of Divisions to take appropriate actions against the erring officials and to correct revenue records in all such matters that are brought to their notice expeditiously. The National Human Rights Commission noted the Government Order issued by the State Government in its order dated 29.02.2008, wherein it also noted that a comprehensive survey made by the State Government in all 70 Districts of the State and 52 more cases of manipulations of revenue records had come to light and fraudulent entries were rectified in 51 cases. In addition, 175 complaints were received and in 173 matters the corrective action was taken. Disciplinary proceedings were initiated against 97 revenue officials and criminal proceedings were launched against 81 officials. Justice had been done to 335 victims and their lands were restored to them. The N.H.R.C. complimented the State Government for the good work done by it and found that no further action was required and close the case.

8. In all the proceedings before this Court in Writ Petition No. 29806 of 1999 and before the N.H.R.C., the matters were conducted by the *Amicus Curies* and expenses were paid by the State Government and no financial loss was caused to the petitioner during the course of such proceedings in the above mentioned cases.

9. The Lekhpal concerned in the case of the petitioner had also been punished by the Competent Authority on 08.01.2018. Certain files relating to the case in the Court of Tehsildar and the Court of Chief Revenue Officers were found missing for which FIRs were lodged.

10. According to the report of the Sub-Divisional Magistrate, Nizamabad, the petitioner is in possession of half (1/2) portion of the land in question i.e. Gata No. 87 area 0.1680 Hectare since the very beginning and although the State Government had lodged FIR against his cousins Patiram and Baburam (Baliram having died), sons of Late Ramdhari on 05.02.2018, the petitioner has not made any effort to lodge FIR or complain against his cousins who were responsible for initiating proceedings for mutation of revenue records in their names through their mother.

11. It has also been stated by the then District Magistrate that the total area of the land in question is 0.1680 Hectare i.e. 415 kadi, out of such area 207 kadi which is half, has always been in the possession of the petitioner. Hence it cannot be said that any harm had been caused to the petitioner. If any, harm had been caused due to wrong revenue entry, it was because of cousins of the petitioner, namely, Patiram and Baburam sons of late Ram Dhari. The petitioner neither initiated criminal proceedings against them nor filed any suit before

the Revenue Court for cancellation of entry made in the Revenue Record.

12. Sri Ramesh Kumar Singh, learned Additional Advocate General has also brought to the notice of this Court, the family tree of the petitioner. The land in question initially belonged to one Muneshwar who had three sons, Chauthi, Dwarika and Ramdhari. The petitioner's father Chauthi had married twice. His first wife died issueless. His second wife Parmi Devi give birth to the petitioner Lal Bihari. The second son of Muneshwar, namely Dwarika died issueless and the third son, namely, Ramdhari was married to Pratapi who gave birth three sons Baburam, Patiram and Baliram (now dead). The petitioner's father, namely, Chauthi died when he was only two or three years old and his mother, Parmi Devi remarried one Ramker, resident of Village Amilo in Tehsil Muhammadabad now Sadar and after her remarriage, the petitioner started living with his mother and his step-father, namely, Ramker in Village Amilo. The petitioner is still residing in the same Village Amilo. His name has been mentioned in the Voters List since 1988, and in subsequent years also, in the Parivar Register etc. of Village Amilo as son of Chauthi with step-father's name being mentioned as Ramker.

13. Although, the case of the petitioner is that he was fighting for rights and therefore could not concentrate on his banarasi silk saree

unit, such story is completely false as the petitioner did not suffer any hardship as he continued to live and exercise all his rights in Village Amilo since 1972. The petitioner had purchased the land from Asharaf Ahmad, Jya Alam and Shabbir Alam in 1988 of Area 0.182 Hectare. His son Vijay Bharat S/o Lal Bihari is running a Gas Agency of Indian Oil Corporation. The petitioner has sufficient land in Village Amilo. He had not set up any banarasi silk saree manufacturing unit as there is no registration thereof in any of the relevant departments in the name of the petitioner.

14. The petitioner was enjoying a complete and perfect identity as a living person in Village Amilo since childhood and his name was mentioned in Khasara, Khatauni, Family Register and Voter List etc. of Village Amilo. His marriage was also performed in the said village Amilo and he had children and he was never referred to as Bhoot/Ghost, or atleast there is no such evidence in any records maintained by the relevant departments. Taking an undue advantage of the absence of the petitioner, from his regional Village Khalilabad, his own family members i.e. his Aunt, namely, Pratapi Devi and cousins Patiram, Baburam and Baliram had filed a case under Section 34 of the U. P. Land Revenue Act, 2006 family case no. 298 in the Court of Tehsildar, Sadar for mutation of their names. It is in pursuance of such case having been filed under Section 34 that there names were recorded in the Khatauni under the natural guardianship

of their mother, namely, Pratapi Devi. When this fact came to the knowledge of the authorities on a complaint being made by the petitioner, the Chief Revenue Officer had made an Inquiry and in pursuance thereof, the District Magistrate had passed the order as aforesaid in 1994 directing recording the name of the petitioner in Khatauni.

15. The N.H.R.C. in pursuance of order passed by this Court on 07.01.2000 had registered a case and was satisfied with the action taken by the State Government and disposed of the matter on 29.02.2008. The petitioner was approached by certain film producers and a script was prepared for making a film on his life. The copies of newspaper items published with regard to the proposed cast of the film have been filed also alongwith affidavit by the petitioner himself.

16. Learned counsel for the petitioner at this stage has intervened to say that the file relating to the Mutation Case No. 298 of 1976 has been deliberately misplaced and to cover up the lapses on the part of the State officials FIR had been lodged in 2018.

17. This Court having considered the matter at length is of the opinion that entries in the revenue records and mutation made in favour of any person does not create any right, title or interest in a property of that particular person, rights have to be declared by means of a Declaratory Suit to be filed before the Competent Revenue

Court. If a mutation entry had been made under Section 34 of the U. P. Land Revenue Act on the basis of misrepresentation made by the cousins of the petitioner and his aunt, the proper remedy for the petitioner was to file an Appeal against such mutation entry and in case he did not get the relief as claimed by him he could have approached the Board of Revenue in Revision. The petitioner could have also filed a Case under Section 229 (B) of the U.P.Z.A.L.R. Act for declaration of his bhoomidhari rights against his cousins and his aunt. He did not take recourse to any of such remedies that were legally available to him under various statutes. His case having been highlighted in the Vidhan Sabha by a sitting MLA, and thereafter, in an article by the Times Magazine, undue favour was shown to him by the media. No doubt, in pursuance of an order passed by this Court on 07.01.2000, the National Human Rights Commission took cognizance of the case, but thereafter, the State Government took swift action and remedied the wrongs done by various revenue officials for several persons and this has been noted in the order passed by the NHRC on 29.02.2008 and the State Government has been complemented on the swift action taken once notice of such irregularities in the revenue records was derived by it. The petitioner did not suffer any mental torture or physical or financial loss as the petitioner continued to live in Village Amilo and got married, bought and sold land, and had begotten children, one of his children is running a gas agency. The

entire case set up by the petitioner for compensation of Rs. 25 Crores seems to this Court to be an action taken out of some fortuitous circumstances where the case was highlighted by the Times Magazine. A film was also made on the basis of story spun by him. There is no evidence of the petitioner ever running a business of banarasi silk saree manufacturing unit which had incurred losses because the petitioner had to fight a long drawn out legal battle to declare himself alive, the petitioner's name was mutated in the Revenue records in 1994 and he approached this Court eleven years after such correction had been carried out. Only a wrong entry in the revenue records, caused mainly because of the relatives of the petitioner would not entitled the petitioner to the claim for compensation of Rs. 25 Crores.

18. This Court is clearly of the opinion that a mountain out of a molehill has been made by the petitioner only to claim compensation from the State Government for a wrong which was initially caused due to the greed on the part of his relatives. The petitioner has not filed any FIR against his relatives, he has also not arrayed them as parties in this petition or in any other case filed before any Competent Revenue Court to get the revenue entries corrected. This Court has also spent sufficient public time in coming to the truth of the matter and all because of the allegation of the petitioner that he was declared dead by the State Government. No such declaration of death of the

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petitioner was ever made by the State Government, it was his relatives who was filed a claim for Succession under Section 34 of the U. P. Land Revenue Code.

19. The writ petition is *dismissed* with a cost of Rs. 10,000/- to be deposited by the petitioner in this Court within six weeks and in case of failure to do so the Senior Registrar shall send a Recovery Certificate to the Collector of the District Concerned to recover the same as arrears of land revenue, which shall be forwarded to the DLSA to help persons in genuine need..

Order Date :- 20.2.2023
Darpan Sharma