

A.F.R.

Neutral Citation No. - 2023:AHC:110490

**Court No. - 51**

**Case :-** WRIT - C No. - 38508 of 2022

**Petitioner :-** Brijesh Kumar Dubey

**Respondent :-** State Of U.P. And 8 Others

**Counsel for Petitioner :-** Radhey Krishna Pandey, Manish Pandey

**Counsel for Respondent :-** C.S.C., Ajattshatru, Awadhesh Kumar Mishra

**Hon'ble Dr. Yogendra Kumar Srivastava, J.**

1. Heard Sri Radhey Krishna Pandey, learned counsel for the petitioner, Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State respondents and Sri Awadhesh Kumar Mishra, learned counsel appearing for the respondent Nos. 7 and 8.

2. Counsel for the petitioner has confined his relief to a challenge to the order dated 23.08.2022 passed by the Sub Divisional Magistrate, Sadar, Mirzapur/respondent No. 3 whereby the restoration application filed by the petitioner registered as Case No. RST/01001/2019, in proceedings under Section 144 of the U.P. Revenue Code, 2006, has been rejected.

3. As per pleadings in the writ petition, the petitioner claims to have purchased certain land parcels by means of a sale deed dated 24.06.2019 and his name was also mutated in the revenue records in terms of an order dated

09.01.2019. Thereafter, upon coming to know with regard to pendency of a declaratory suit filed by the respondent Nos. 7 and 8 in respect of the said land, an impleadment application dated 26.09.2019 was filed, which was dismissed for want of prosecution by an order dated 19.02.2020. The restoration application filed thereagainst was also rejected by an order dated 30.12.2020.

4. It is submitted that against the orders dated 19.02.2020 and 30.12.2020, in terms of which the impleadment application filed by the petitioner in proceedings under Section 144, had been rejected, the petitioner had preferred a revision being Case No. REV/158/2021 (Computerized Case No. AL2021165300158), which was allowed by the Board of Revenue in terms of the order dated 05.07.2021 remitting the matter to the court of the Sub Divisional Magistrate, after coming to a conclusion that in a judicial proceeding the affected party has a right to be heard.

5. Contention of the learned counsel for the petitioner is that, by the time the petitioner could place the aforesaid order, before the Sub Divisional Magistrate, a final order had been passed deciding the suit on 28.07.2021.

6. Thereafter, the petitioner is stated to have preferred a recall application annexing therewith the order dated 05.07.2021 and praying for recall of the order dated 28.07.2021. The said application was rejected by the respondent No. 3 by an order dated 23.08.2022 ostensibly

for the reason that since a final order has been passed in the suit, the recall application could not be entertained.

7. Contention of the learned counsel for the petitioner is that once the Board of Revenue, in exercise of its revisional powers, had set aside the earlier orders dated 19.02.2020 and 30.12.2020 and had remitted the matter to the court of the respondent No. 3, the said respondent could not have ignored the order passed by the revisional court and reject the recall/restoration application.

8. In this regard, it may be noted that the Board of Revenue as per Section 8 of the Code, 2006, is the chief controlling authority in all matters relating to disposal of cases, appeals or revisions. The revisional jurisdiction of the Board is provided for by Section 210 of the Code, and in terms thereof it is empowered to call for the record of any suit or proceedings decided by any subordinate revenue court, in which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of any order passed in such suit or proceedings. The language of the section is one of wide amplitude and embraces within its fold any suit or proceeding decided by the revenue courts subordinate to the Board of Revenue.

9. The Sub Divisional Magistrate while exercising adjudicatory powers of a judicial nature acts as a 'Revenue Court', as defined under Section 2(16) of the U.P. Revenue Code, 2006, and as such would be a court subordinate to

the Board of Revenue and subject to its revisional jurisdiction and also its control and supervision.

10. It would be beyond cavil that when a superior court issues an order of remand to an inferior court with certain directions, the latter is obligated to decide in accordance with the said directions.

11. Counsel for the State respondents and the counsel appearing for the respondent Nos. 7 and 8, have not been able to dispute the lack of propriety on the part of the Sub Divisional Magistrate in refusing to accord consideration to the recall application of the petitioner, disregarding the direction issued by the Board of Revenue while allowing the revision, in view of its position as the chief controlling authority having supervisory powers over all subordinate revenue courts.

12. Counsel for the parties are *ad idem* on the point it would serve the interest of justice if the case is remitted to the respondent No. 3 for passing of a fresh order, after taking into consideration the order dated 05.07.2021 passed by the Board of Revenue in the revision.

13. Having regard to the aforesaid, this Court deems it appropriate to set aside the order dated 23.08.2022 passed by the respondent No.3, in Case No. 01001 of 2019 (Computerized Case No. 201916530001001) (Dhiraj Kumar and Others Vs. Munni Devi).

14. The matter is remitted to respondent No. 3 to pass a fresh order keeping in view the direction issued by the Board of Revenue in its order dated 05.07.2021 passed in Case No. REV/158/2021 (Computerized Case No. AL2021165300158), in accordance with law, after giving due opportunity to the parties concerned, expeditiously and preferably within a period of **three months** from the date of presentation of a certified copy of this order.

15. The petition stands **allowed** to the extent indicated above.

**Order Date :- 19.5.2023**  
Arun K. Singh

[Dr. Y.K. Srivastava, J.]