

**Court No. - 42** [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

**Case :-** WRIT - C No. - 23781 of 2021

**Petitioner :-** Gurudeen

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Sanjeev Kumar Khare

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vivek Kumar Birla,J.**

1. Heard learned counsel for the petitioner and Sri Rituraj Singh, learned Standing Counsel appearing for the State respondents.
2. Present petition has been filed for commanding the respondent no. 3 to decide the mutation case no. 920 of 2018, (Gurudeen vs. Rajbahadur), Computer Case No. 201814360300920 under Section 34 of U.P. Land Revenue Act, within stipulated period.
3. Earlier petitioner for the same cause of action has approached this Court by way of filing **Writ- C No. 17160 of 2019 (Gurudeen vs. State of U.P. And 2019)**, which was disposed of vide order dated 20.5.2019, the said order is quoted as under:-

*"Heard learned counsel for the petitioner.*

*This writ petition has been filed seeking the following relief:-*

*"(i) Issue a writ, order or direction in the nature of mandamus commanding to the respondent no. 2 i.e. Tehsildar, Tehsil-Machhalishahar, District-Jaunpur to decide the mutation case bearing no. 00920 of 2018 Computer Case no. T201814360300920 (Gurudeen Vs. Ram Bahadur), Under section 34 of U.P. Land Revenue Act, pending in the court of respondent no. 2 since 05.03.2018, within stipulated period fix by this Hon'ble Court."*

*It is submitted that a mutation case filed by the petitioner is pending consideration since March 2018.*

*The writ petition is therefore disposed of directing the respondent no. 2 to decide the pending proceedings as expeditiously as possible without granting any unnecessary adjournment to any of the parties.*

*It shall however afford precedence to matters of a similar nature which have remained pending for a greater period of time."*

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4. Submission of learned counsel for the petitioner is that several dates were fixed but the court below has not decided the case by complying the order of this Court. The above quoted order indicates that direction was issued to decide the proceedings as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

5. Learned counsel for the petitioner further submitted that the Presiding Officer was not present on several dates, as such, the disposal of the case is being delayed hence a direction to dispose of the case within a time bound period be issued.

6. Allegations are being raised against the Presiding Officer, whereas perusal of the order-sheet indicates that a clear reason for being not present in the Court has been given that the Presiding Officer is busy due to administrative reason. It is of common knowledge that the officers presiding over such courts are at times, required to attend various tasks by remaining present on the spot or being present in the office of the superior authorities etc, in other words, by physically remaining out of their offices or busy for administrative reasons. Hence, the reason that Presiding Officer is busy due to administrative reason is broadly understandable, though it cannot be a ground for intentionally adjourning the matter.

7. Now the time has come that before issuing direction or even notice to the Presiding Officer, the order-sheet should be looked into to ascertain as to whether substantial cause of delay is on the part of the lawyers or not.

8. Perusal of the order-sheet clearly indicates that after passing of aforesaid order dated 20.5.2019 by this Court, on 37 dates, the lawyers were not working and it is only on few dates they were present and proceedings were undertaken. For certain period courts were not functioning due to Covid-19 Pandemic.

9. On the earlier occasion also I have considered the question of issuing writ of mandamus in case of disposal of mutation cases after considering the judgment of this Court in case of **Chadra Bali vs. Additional Commissioner And Others 2012 (4) ADJ 13**, wherein general mandamus was issued to decide certain nature of cases within a time bound period as

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well as the Government Order dated 16.5.2012 issued by the State Government, whereon a circular dated 17.5.2012 was issued by the Commissioner Board of Revenue, Lucknow and provisions of U.P. Janhit Guarantee Adhiniyam, 2011.

**10.** After taking note of the provisions of the U.P. Janhit Guarantee Adhiniyam, 2011 following observations were made by this Court in paragraph nos. 8, 9 and 10 in the case of **Radha Devi Vs. State of U.P. And Others 2016 (6) ADJ 753.**

*"8. A notification dated 15.1.2011 was issued notifying the services, designated officers, first appeal officers, second appellate authority and stipulated time limits.*

*9. Uncontested mutation of land is included as one of the services and time period provided is 45 working days. The designated officer is Tehsildar and in case he does not decide within the stipulated limit first appellate officer is Sub Division Magistrate and the stipulated time of disposing of first appeal is 30 working day. The second appellate authority is District Magistrate in such matters. Section 4 provides right to obtain service within stipulated time limits, Section 5 provides for services of stipulated time limit; Section 6 provides for appeal; Section 7 provides for penalty in case the service is not provided by the designated officer or the first appeal officer as the case may be within stipulated time without sufficient and reasonable cause. The second appellate authority even has power to recommend disciplinary action if he is satisfied that the designated officer or the first appeal officer has failed to discharge the duties assigned to him under this Act.*

*As such the aforesaid Act No. 3 of 2011 provides complete remedy where such cases are not decided within the stipulated time.*

*10. Therefore, in view of the aforesaid no directions are required to be passed and the petitioner may approach the competent authority in view of the observations made hereinabove, who is under obligation to consider any such application if filed by the petitioner. "*

*(Emphasis Supplied)*

**11.** I have considered the question for granting mandamus in such cases from a different view point also in the case of **Prafull Kumar vs. State of U.P. and another, 2021 (7) ADJ 443**, paragraph nos. 4, 5, 6 and 7 of the same are quoted as under:-

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“4. A perusal of the order-sheet right from the year 2014 reflects that except on few dates almost throughout the lawyers were abstaining from work. Once the appeal was dismissed for want of prosecution also. It is also pertinent to note that in fact, the lawyers are so regularly abstaining from work that a rubber stamp is being used on the order-sheet that the lawyers are abstaining from work. This position is continuing since the year 2014 itself till date except the period during which the Court was not functioning due to Covid-19 Pandemic.

5. Almost everyday large number of petitions are coming before this Court with similar prayers that proceedings may be decided within a time bound period and in most of the cases order sheet of the case reflects the same state of affairs with only very few exception.

6. This speaks a lot about sorry states of affairs in the courts below, particularly on revenue side.

7. Under such circumstances, this Court refuses to grant the relief as prayed for in this writ petition. Lawyers cannot take working of the Court for granted as on one hand, obviously the lawyers must have charged their professional fee and thereafter, they are abstaining from work and on the other hand, they are seeking a direction to the Court concerned to decide the case within a specific period. It is a sheer wastage of time of the Court concern and ultimately of resources, financial or otherwise, of the litigants as well of the tax payers, as daily cost of running a Court is huge but is not serving any purpose, neither of the litigants nor of the society at large. Further, again on one hand, lawyers are not working, on the other hand, if such directions and/or mandamus is issued, the Court/Authority is put under the threat of Contempt of Court, if case is not decided. This again generate litigation creating unnecessary burden on the Court. Again the big question mark is there, for whose benefit? May be the same lawyer who is abstaining from work is generating this litigation, which in fact, is not serving as substantial counsel of the litigant or of the society at large. ”

(Emphasis supplied)

12. Therefore, it is clear that such matters are liable to be decided as expeditiously as possible and in a time bound manner. However, when the lawyers are abstaining from the work, the words "working days' assumes importance. In the present case itself it is clear that apprehension of this Court as expressed in the case of **Prafull Kumar (Supra)** was not baseless as it is clear from the facts of the present case where even after mandamus was issued by this Court, the lawyers were abstaining from work, therefore,

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clearly, "working days" are not available with the court/ authority concerned due to reason 'lawyers abstaining from work', however, again for this reason only interest of justice should not suffer and court/ authority should proceed if litigant/ litigants is/ are present in person.

**13.** In such view of the matter, I do not find any good ground to entertain the present petition to grant the prayer for which the petitioner has already approached this Court wherein, direction was issued to decide the case, expeditiously, although, no direction was issued to decide the case within time bound manner. This is a glaring example of non functioning of the lawyers at the revenue side in particular, which I have already noted in **Prafull Kumar (Supra)**.

**14.** At the cost of repetition it may be highlighted that this is a case where even after obtaining the order from this Court, lawyers were abstaining from work and thereafter, again they approach this Court seeking for further direction. At times contempt proceedings are initiated. Usually, experience of this Court in such matters is that initially the contempt petitions are also disposed of by giving one more opportunity to opposite party to decide the case/ comply the order of this Court. At times, again lawyers do not appear and second contempt petition is filed, whereon usually notices to Presiding Officers are issued. In such manner, the Advocates on the one hand, charge their professional fees and on the other hand, even after direction of this Court to argue the matter, they do not appear to argue the case on the ground of call for strike or resolution of the concerned Bar Association to refrain from work for any reason whatsoever. Hence, meaningless litigation is generated before this Court without there being any fruitful relief granted to the litigant.

**15.** This speaks a lot about sorry states of affairs in the courts below, particularly on revenue side. Clearly, apprehension of this Court as expressed in **Prafull Kumar (Supra)** was not without basis.

**16.** The poor litigant, in such matters, particularly, at the lower level on the revenue side, is charged fees for pursuing his grievance, however, in such pursuation litigant/ petitioner is not getting any relief on merits of his

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claim and grievance on the procedural side of the matter remains that the court is not proceeding to decide and/ or pass orders and that the court be directed to proceed to decide the case within a time bound manner.

17. In such view of the matter, I do find any good ground to grant any such relief as prayed for in this petition. Now the time has come to take cognizance of all such matters where meaningless litigation is being generated due to lawyers abstaining from work and as already observed in **Prafull Kumar (Supra)**, is not serving any substantial cause of the litigant or of the society at large and is not in the interest of justice as huge time of the Courts and therefore, huge public money is wasted in attending such meaningless litigation.

18. As noticed in **Radha Devi (Supra)** the petitioner should also press the provisions of Janhit Guarantee Adhiniyam, 2011 into service before the Court/ authority concerned in such matters.

19. However, in the interest of justice, as the litigants should not suffer for any reason, it is provided that in case parties are present in- person before the Presiding Officer, the Presiding Officer/ authority concerned shall make all efforts to decided the case as expeditiously as possible as already directed by this Court.

20. Learned Standing Counsel as well as the Registry of this Court is directed to send a copy of this order to the concerned Bar Association within a period of 15 days from today so that the Bar Association and learned members of the concerned Bar Association may be sensitized about the working of the court and plight of the litigants from whom they have charged their professional fees.

21. The registry is further directed to forward a copy of this order to all the District Judges and Commissioners of the region and Board of Revenue for being forwarded to all the Bar Associations for the purpose of sensitizing the lawyers on this issue.

22. Time has come when Bar Council of the State as well as Bar Council of India should also deliberate on this issue and pass appropriate resolution/ guidelines. Therefore, Registry is further directed to send copy of this order

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to U.P. Bar Council and Bar Council of India also for consideration and doing the needful.

23. Accordingly, present petition stands dismissed, however, with the observations as made above.

**Order Date :- 28.9.2021**

Aditya