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Reserved -: 10/10/2023

Delivered -: 17/10/2023

Court No. - 48

Case :- WRIT - B No. - 135 of 1977

Petitioner :- Ram Sundar

Respondent :- Deputy Director Of Consolidation Jaunpur And Others

Counsel for Petitioner :- Ganga Prasad

Counsel for Respondent :- V. Singh,S.C.,Saraj Kumar,V.N. Singh,Vimal Kumar

Hon'ble Saurabh Shyam Shamshery,J.

1. The original petitioner had claimed himself to be a grove-holder over part of 0.94 acres of plot being no. 207 situated in village Saddapur, Pargana Rari, District Jaunpur as well as on rest of said plot, claimed that he became a hereditary tenant by operation of law being in possession even prior to date of vesting.

2. In the first round of litigation, matter reached up to this Court and by order dated 17.12.1970 passed in Writ Petition No. 732 of 1965, remitted the case to Deputy Director of Consolidation with a direction to take into consideration of the provisions of U.P. Tenancy Act. On remand, the Deputy Director of Consolidation by an impugned order dated 25.08.1976 held that entries in 1356-F and 1359-F were not genuine in regard to rest of land and as such petitioner would not be entitled under Section 206 of United Provinces Tenancy Act (for short “Act of 1939”). So far as claim in regard to 0.94 acres was concerned was already determined in favour of petitioner. Since no writ petition was filed against said finding. The submission was noted by this Court that “his submission is that it was found that plot

no. 207 has ceased to be a grove land except to extent of '0.94 acres'. Relevant part of impugned order is quoted below :-

“५- मैंने इस मामले में सभी न्यायालयों के निर्णय को पढ़ा तथा माननीय उच्च न्यायालय के द्वारा दिये गये निर्णय को भी ध्यान पूर्वक पढ़ा। जैसा ऊपर कहा गया है कि माननीय उच्च न्यायालय ने निर्देश दिया कि निगरानी कर्ता के मामले को उत्तर प्रदेश टिनेन्सी एक्ट की धारा २०६ के अन्तर्गत पुनः देखना आवश्यक है व इसी दृष्टिकोण से मैंने विचार भी किया है। पत्रावली पर उपलब्ध कागजात के अवलोकन से स्पष्ट है कि बन्दोबस्त सादिक व बन्दोबस्त हाल में यह गाटा जमीनदारान की बाग थी। १९२६ में आगरा टिनेन्सी पारित होने के पश्चात ही काश्तकारों को बाग पर बागदारी के अधिकार दिये गये व बाग मानी गई। इसके पूर्व काश्तकारी बाग का कोई औचित्य नहीं रहा। १३३२ फ० या उसके पश्चात कभी भी निगरानी कर्ता की यह बाग अंकित नहीं हुई। इसके विरुद्ध बन्दोबस्त हाल व बन्दोबस्त सादिक के उपलब्ध उद्घरणों से यह स्पष्ट है कि यह बाग प्रतिपक्षी के मूरिस की थी। व उन लोगों ने अपना हक सदैव कायम रखा व किसी को काश्त करने की इजाजत नहीं दी। यह भी स्पष्ट है कि निगरानी कर्ता के मूरिस सभाऊ बन्दोबस्त हाल में ८ पेड़ों पर काबिज अंकित है। यह खसरे के खाना कैफियत का इन्द्राज है। इस इन्द्राज से उन पेड़ों पर तो सभाऊ को हक मिल सकता था। परन्तु उन्हें बाग की भूमि पर कोई भौमिक अधिकार नहीं मिल सकता था। परन्तु विद्वान उप संचालक चकबन्दी ने इस गाटे के ०९४ डिसमल रकबे पर जिस पर अब बाग है। निगरानी कर्ता को सहबागदार भूमिधर मान लिया था। वह आदेश अंतिम है। उसके विरुद्ध कोई रिट याचिका नहीं प्रस्तुत हुई। अतः उस आदेश के विरुद्ध अब मैं कोई अन्य आदेश पारित करने में अस्मर्थ हूँ। अब यह तथ्य सामने आती है कि जब निगरानीकर्ता का कोई भौमिक अधिकार इस गाटे पर जमीन्दाराना या काश्तकारान कभी नहीं रहा तो जिस अंश पर बाग नष्ट हो चुकी है तो उस पर उन्हें भौमिक अधिकार बहसियत मौरुसी दार व सीरदारी अधिकार देने का प्रश्न कैसे उठेगा। माननीय उच्च न्यायालय के समक्ष जब बात कही गई थी तो निगरानी कर्ता के वकील ने यही बात सामने रखी थी कि उत्तर प्रदेश टिनेन्सी एक्ट की धारा २०६ के अन्तर्गत जो बागदारों के अधिकार या दायित्व होते हैं। उनका वर्णन है। और उसमें यह लिखा है यदि बाग का स्वभाव समाप्त हो जाय तो बागदार उका मौरुसी काश्तकार हो जायेगा। परन्तु धारा २०६ व २०५ एक साथ पढ़ा जाना उचित होगा। धारा २०५ के अन्तर्गत बागदार की परिभाषा दी गई है। व बागदार वही व्यक्ति है जिसको जमींदार ने भूमि बाग लगाने हेतु दी हो चाहे वह लिखित स्वीकृति हो या स्थानीय रिवाज पर

आधारित हो। इस मामले में निगरानी कर्ता यह नहीं कहते कि उनके मूरीस को जमींदार ने इस भूखण्ड को पेड़ लगाने के लिए दिया था। बल्कि उनका यह कहा है कि चूंकि बन्दोबस्त हाल में उनका नाम खसरे में अंकित है। इसलिये वे सह बागदार भूमिधर हैं और अब जिस अंश पर पेड़ नहीं रहे उसके वह सीरदार हैं। परन्तु उनका कहना गलत है। यदि वे जमींदार होते व खेवट में उनका नाम अंकित होता तो वास्तव में वे पेड़ों के समाप्त होने पर उस अंश पर जिम्मेदार २ के खुदकाशत होते व जमींदारी विनाश अधिनियम के पश्चात भूमिधर हो जाते।

६- अतः इस मामले में एक ही दोष है कि निगरानी कर्ता एक ओर अपने आप बहैसियत मालिक बागदार जमीन्दाराना हकूक पर जमींदार के वंशजों के साथ सहबागदार भूमिधरी के अधिकार मांगते हैं। व दूसरी ओर जो बाग से रहित भूमि पर बजाय भूमिधरी मांगने के धारा २०६ उ० प्र० टिनेन्सी एक्ट के अन्तर्गत मौरूसी काशतकारी के अधिकार मांगते हैं।”

3. Sri Vimal Kumar, learned counsel for petitioners has submitted that Deputy Director of Consolidation has misread provisions of Section 206 of Tenancy Act, 1939 and despite on basis of spot inspection wherein original petitioner was found on possession over major portion of land in dispute, an incorrect finding was returned that no benefit could be accrued to petitioners in terms of Section 206 of Tenancy Act, 1939.

4. Learned counsel has referred few grounds mentioned in writ petition to press his arguments and for reference grounds no. 1 to 5 are quoted below :-

“i. because on the facts found by the learned D.D.C. in the course of his earlier judgment dated 8.10.64 and the findings of the High Court dated 17.12.70 in the earlier writ petition no. 732 of 1965, the petitioner will be entitled to the benefit of section 206 of the U.P. Tenancy Act, and the learned D.D.C. erred in holding otherwise in its present judgment dated 25.08.76.

ii. because originally plot no. 207 was a complete grove and the petitioner was the grove holder prior to U.P.Z.A. and L.R. Act, and when a part of the grove was converted into cultivable land, the petitioner became hereditary tenant of the part within the meaning of Section 206 of U.P. Tenancy Act and finally became *bhoomidhar* by operation of law. The Court below erred in otherwise.

iii. because it was not competent for learned D.D.C. to travel beyond the ambit of remand order passed by the Hon'ble High Court in its judgment dated 17.12.1970.

iv. because the Khasra entries of 1356 and 1359-F having been found by the genuine documents by the learned D.D.C. in his judgment dated 8.10.64 and also by the High Court in its judgment dated 17.12.70, it was not competent for the D.D.C. to upset that finding.

v. because no reasons have been assigned by the learned D.D.C. why the petitioner's right over the other plots 208 to 216 and 218 should be ignored when there was no objection from the Gaon Sabha or others.”

5. Learned counsel for petitioners has referred revenue entries from 1289-F to 1359-F that ancestors of petitioners were recorded as *sahbaghdar* (co-grove holder).

6. Above submissions were opposed by S/Sri A.K. Srivastava and Virendra Singh, Advocates for respondents that in terms of definition of a ‘grove holder’, petitioners could not get the right on entire land, since a large part of land was discontinued to be a *bagh* (grove land) and which became *bhoomidhari* of original *jamindar*. The claim of petitioners was justified qua to area measuring 0.94 acres, where his right being ‘grove holder’ was

justified since 'grove' existed, however, so far as rest of land was concerned, admittedly, there was no 'grove'.

7. Learned counsel has further submitted that Revisional Authority has rightly allowed revision petition in part and modified orders passed by lower Authorities to the extent that name of Ram Sundar i.e. original petitioner herein would be entered as *sah-bhoomidhar* along with Sripal Singh and Bihari over 0.94 acres of land of plot no. 207 and rejected the claim of original petitioner in regard to rest of land.

8. Heard learned counsel for parties and perused the record.

9. In order to appreciate rival submissions, it would be relevant to reproduce relevant Sections of Act of 1939 -:

“3. Interpretation -:

In this Act, unless there is something repugnant in the subject or context, -

(1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person;

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) "grove-land" means any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude, or when full grown will preclude, the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove;

(7) xxxx

(8) xxxx

(9) "khudkasht" means land other than sir cultivated by a landlord, an under-proprietor or a permanent tenure-holder as such either himself or by hired labour;

(10) "land" means land which is let or held for growing of crops, or as groveland or for pasturage. It includes land covered by water used for the purpose of growing singhara or other produce, but does not include land for the time being occupied by buildings or appurtenant thereto other than buildings which are improvements;

205. Definition of grove holder -:

A person who has planted a grove, -

(a) on land which was let or granted to him by a landlord, for the purpose of planting a grove;

(b) with the written permission of the landlord, or in accordance with local custom entitling him to do so, on land which he held as a tenant other than as a subtenant, a permanent tenure holder or a fixed-rate tenant, or a tenant holding on special terms in Oudh or an occupancy tenant in Oudh; shall be the grove-holder of such grove.

Provided that where the permission was granted in Agra before the 7th day of September, 1926, and in Oudh prior to the commencement of this Act, the permission need not have been in writing and may have been either ex-tenant or pressed or implied.

206. Rights and liabilities of grove holder -:

Notwithstanding anything in this Act, or any custom or contract to the contrary, -

(a) the rights of a grove-holder shall, subject to the provisions of clauses (a) and (b) and clauses (d) to (f) of Section 45, which shall apply to grove-holders as they apply to tenants, subsist so long as grove land retains its character as such. On the land ceasing to be grove-land the holder shall become a hereditary such land;

(b) a grove-holder may re-plant trees as they are cut or die and any person who is recorded as a grove-holder of

any land on the 1st day of July, 1937, and is in possession thereof at the commencement of this Act, may re-plant trees thereon within three years of the commencement of this Act;

(c) the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree of a civil or revenue Court or otherwise;

(d) the interest of a grove-holder shall devolve according to the personal law applicable to him;

(e) while the land continues to be grove-land, a grove-holder shall be liable to ejectment on one of the ground mentioned in Section 172, and the provisions of Section 157, Section 159, Section 160, Section 162, Section 173, Section 174, Sections 181 to 183, Section 185 and Section 186 shall apply to him as if he were a tenant:

(f) the provisions of Section 1 [49], 2 [59] to 64 and of Chapter VII and of clauses (b), (d) and (e) of Section 236 and of Section 237 to 240 shall apply to grove-holders as they apply to tenants, except that the provisions of Section 148 shall apply only to the extent to which they refer to the recovery of rent by suit;

(g) where a person becomes a grove-holder in respect of land of which he is a tenant, he shall hold such land as grove-holder in supersession of all subsisting rights and liabilities so far as they are inconsistent therewith.”

10. In present case, claim of petitioner of being grove holder was accepted by the Deputy Director of Consolidation in regard to area measuring 0.94 acres of plot no. 207, which was not challenged at behest of respondents. The dispute remained was in regard to rest of land i.e. whether rest of land was grove land and original petitioner was a grove holder or not. The claim was rejected by the Deputy Director of Consolidation, therefore, he has approached this Court by present writ petition.

11. The definition of ‘grove land’ is mentioned in Section 3(6) of Act of 1939 and has already been referred in preceding paragraph and careful reading of same would indicate that ‘grove

land’ means any specific piece of land having trees planted thereon in such number that they preclude or when fully grown will preclude the land or any considerable portion thereof being used primarily for any other purpose. Therefore, in a case where there were no trees planted on a particular portion of land or trees are planted in such a way that when they fully grow would not preclude the land being used primary for any other purpose, would not fall under ‘grove land’.

[emphasis supplied by this Court]

12. In the present case, there is no finding or material to show that on land presently in dispute, trees were planted or if planted, they had fully grown, so that they had precluded the land being used primary for any other purpose other than grove land rather there are findings on basis of record that present land in dispute was used for agricultural purpose, therefore, Court is of considered opinion that land presently in dispute would not fall under grove land. The counsel for petitioner have seriously disputed the nature of land in dispute.

13. In view of above findings, since land in dispute was not ‘grove land’ therefore, original petitioner could not fall within definition of a ‘grove holder’ since for that land has to be declared being a grove land.

14. Therefore, since neither the land in dispute was a grove land nor original petitioner was a ‘grove holder’, hence, rights and liabilities of ‘grove holder’ as provided under Section 206 of Act of 1939 could not be granted to original petitioner. In this regard, following finding of Deputy Director of Consolidation would be relevant and learned counsel for petitioner has not been able to refute said finding and same is quoted below -:

“परन्तु धारा २०६ व २०५ एक साथ पढ़ा जाना उचित होगा। धारा २०५ के अन्तर्गत बागदार की परिभाषा दी गई है। व बागदार वही व्यक्ति है जिसको जमींदार ने भूमि बाग लगाने हेतु दी हो चाहे वह लिखित स्वीकृति हो या स्थानीय रिवाज पर आधारित हो। इस मामले में निगरानी कर्ता यह नहीं कहते कि उनके मूरीस को जमींदार ने इस भूखण्ड को पेड़ लगाने के लिए दिया था। बल्कि उनका यह कहा है कि चूंकि बन्दोबस्त हाल में उनका नाम खसरे में अंकित है। इसलिये वे सह बागदार भूमिधर हैं और अब जिस अंश पर पेड़ नहीं रहे उसके वह सीरदार हैं। परन्तु उनका कहना गलत है। यदि वे जमींदार होते व खेवट में उनका नाम अंकित होता तो वास्तव में वे पेड़ों के समाप्त होने पर उस अंश पर जिम्मेदार २ के खुदकाशत होते व जमींदारी विनाश अधिनियम के पश्चात भूमिधर हो जाते।”

15. In view of above discussion, this Court has come to a conclusion that land in dispute would not fall under definition of a grove land, therefore, neither petitioner could fall under the definition of a grove holder nor he could not be granted any benefit of Section 206 of Act of 1939.

16. Accordingly, this Court does not find any irregularity in the impugned order passed by Deputy Director of Consolidation, hence, petition being *sans merit* is **dismissed**.

Order Date :- October 17, 2023

Nirmal Sinha

[Saurabh Shyam Shamshery, J.]