

**Court No. - 51**

**Case :-** WRIT - C No. - 6322 of 2023

**Petitioner :-** Kalamuddin

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Sadhu Sharan,Ajay  
Kumar,Shamshuddin Khan (S U Khan)

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

**Hon'ble Chandra Kumar Rai,J.**

1. Heard Mr. Shamshuddin Khan, Counsel for the petitioner and Mr. Shravan Kumar Dubey, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant petition has been filed for quashing the order dated 3.2.2023 passed by respondent no.4.

3. Brief facts of the case are that plot No. 1037 of Khata No. 601 area 0.4640 hectare situated in Village Lahureta, Tehsil- Naraini, District Banda is recorded in the name of petitioner along with others in the revenue record. Copy of the khatauni of 1429-1434 fasli has been annexed as Annexure No. 1 to the writ petition in order to demonstrate that petitioner along with others are recorded over the plot No. 1037. Copy of the khasra of 1429 fasli has also been annexed in respect to plot No. 1037 which demonstrate that petitioner is in possession over the plot No. 1037 area 0.464 hectare and in column No. 20, it is mentioned that 20 eucalyptus trees and 1 mahua tree are existing. Petitioner filed an application on 29.1.2023 before the District Magistrate regarding trees existing in his plot No. 1037 who referred the matter before respondent no.4, Forest Ranger Officer, Banda. Respondent no.4 made an enquiry and found that eucalyptus trees are standing in the bhoomidhari plot of the petitioner and no permission is required from Forest Department regarding cutting and disposal of eucalyptus tree. Copy of the letter/ order dated 31.1.2023 passed by respondent no.4 is annexed as Annexure No. 6 to the writ petition. On 3.2.2023, another order was passed by respondent no.4 that earlier order dated 31.1.2023 liable to be is set aside and the same was set aside directing that eucalyptus trees may not be cut down by the petitioner as the same was planted by the Forest Department, hence this writ petition.

4. Counsel for the petitioner submitted that petitioner along with others are recorded tenure holder of the plot No. 1037 and they

have planted the eucalyptus trees and mahua tree, as such, the Forest Department has no jurisdiction to interfere with the right, title and possession of the petitioner. He further submitted that entry of the plot in dispute has not been expunged, altered or changed in any manner, as such, nobody can interfere with the right, title and possession of the petitioner along with others who are tenure holder of the same. He further submitted that Forest Department once has passed the order that Forest Department has no concern with the eucalyptus trees situated in plot No. 1037, as such, the same authority has no jurisdiction to recall the order and restrain the tenure holder from maintaining or cutting the trees planted by them. He submitted that impugned order dated 3.2.2023 passed by respondent no.4 is liable to be set aside.

5. Mr. Shravan Kumar Dubey, learned Additional Chief Standing Counsel for the State-respondents submitted that Forest Department has planted the trees, as such, the impugned order was passed in accordance with law. He further placed the paragraph Nos. 17 and 19 of the counter affidavit in order to demonstrate that Forest Department has planted the trees in the plot in dispute, as such, petitioner has no right to cut down the trees. He further submitted that there is ban on cutting of mahuwa trees in view of the notification dated 7.1.2020 annexed as Annexure No.5 to the writ petition. He submitted that no interference is required in the matter and writ petition is liable to be dismissed.

6. The paragraph Nos. 17 and 19 of the counter-affidavit will be relevant for perusal which are as under:-

***"17. That in reply to the contents of paragraph 12 of the writ petition, it is submitted that the petitioner is alleging that after demarcation of the land by S.D.M. concerned in the year 2018, the same become Bhumidhar land of the petitioner and other tenure holders. In this respect, it is submitted that present matter in dispute is not ownership of the land in question but the dispute is relating to 20 Eucalyptus trees planted by the Forest Department in the year 1977-78, as such, the same is property of the Forest Department. The petitioner and other tenure holder, if are having any objection then the Forest Department may be permitted to cut down aforesaid trees in accordance with law so that land of the petitioner may be got vacated and the revenue of the State-Government may also be protected.***

***19. That in reply to the contests of paragraph 14 of the writ petition, it is submitted that after the demarcation of the land, the owner/ co-tenure holders of Gata No. 1037 has not been***

*parties in the writ petition and further regarding 20 aforesaid eucalyptus trees, no claim and objection has been raised by other co-tenure holders, namely Zumman, Shiraj and Raniya etc. at the level of Forest Department or at the level of any competent Court of law, as such, instant writ petition on this reason deserves to be dismissed apart from other reasons stated in preceding paragraphs of this counter-affidavit."*

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that petitioner along with others are the recorded tenure holder of the plot No. 1037 of khata No. 607 area 0.4640 hectare. There is also no dispute about the fact that in the khasra of 1429 fasli, 20 eucalyptus trees and 1 mahua tree are mentioned in the name of the petitioner along with other co-sharer.

9. Since petitioner is the recorded tenure holder of the plot in dispute, as such, Forest Department has no right to interfere in any manner with the right, title and possession of the petitioner in respect to the plot No. 1037 along with the respective area as recorded in the revenue record. The averment made in the counter-affidavit that trees have been planted by the Forest Department is wholly misconceived.

10. It is material that plot in question is recorded in the name of the petitioner coupled with the fact that 20 eucalyptus trees and 1 mahua tree is also mentioned in column No.20 of the khasra of 1429 fasli in the name of petitioner along with his co-sharer, as such, the impugned order dated 3.2.2023 passed by respondent no.4, Forest Range Officer, Banda cannot be sustained in the eye of law and the same is hereby set aside.

11. So far as argument advanced by learned Additional Chief Standing Counsel for the State-respondents that there is ban on the cutting of mahua tree, is not issue involved in the matter rather the impugned order has been passed regarding eucalyptus trees regarding which there is no ban, as such, the argument advanced by learned Additional Chief Standing Counsel is rejected.

12. Writ petition stands **allowed**. Respondents are restrained from interfering with the right, title and possession of the petitioner alongwith his co-sharer in respect to the trees standing in plot no.1037, area 0.4640 hect.

**Order Date :- 6.12.2023/Vandana Y.**