

Court No. - 52

Case :- WRIT - C No. - 14283 of 2021

Petitioner :- Nandu

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

Counsel for Petitioner :- Vinay Kumar Singh

Counsel for Respondent :- C.S.C.,Sudhir Bharti

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Mahaveer Yadav, learned counsel holding brief of Sri Vinay Kumar Singh, learned counsel for the petitioner and Sri Madan Mohan, learned Standing Counsel for the State-respondent nos.1 to 6.

2. The present petition has been filed seeking the following relief:-

"i) Issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 30.06.1995 passed by respondent no.5 in Case No.30/45/94 (Sant Kumar and others Vs. Nandu and others) filed under Section 198(4) of U.P.Z.A. and L.R. Act and order dated 18.03.2020 passed by respondent no.3 in Revision No.100/100/1041/2001-02 its computer No.C2001050000881 (Devanti Vs. Sant Kumar) filed under Section 333 of U.P. Z.A. and L.R. Act in respect of Mauja Masan Pakad (Basudeeha) Tehsil Bansgaon, District- Gorakhpur.

ii) Issue a writ order or direction in the nature of Mandamus commanding the respondents not to interfere in peaceful possession/occupation of the petitioner over the land in dispute."

3. It is the case of the petitioner that the Land Management Committee of Village Masan Pakad (Basudeeha), Tehsil Bansgaon, District Gorakhpur vide its resolution dated 16.12.1992 recommended for allotment of lease in favour of certain persons and the same has been sent for approval before respondent no.6 and the same was approved vide order dated 31.08.1994, wherein the petitioner was one of them.

4. Petitioner has been allotted lease for agriculture purpose against plot no.375, area 0.146 hectare since the same was recorded as *Ushar* in the revenue records pertains to record of rights of 1427F to 1432F, in pursuance of the lease extended in favour of the petitioner, his name has been entered in the revenue records and the petitioner is in peaceful possession of the same plot till today.

5. At the behest of some aliening persons, a case has been instituted under Section 122-C(6) of U.P. Z.A. and L.R. Act, 1950 for cancellation of residential allotment extended in favour of other persons before respondent no.4 which culminated into order dated 28.12.1992 through which allotment proposed by the Land Management Committee has been dismissed.

6. A separate proceeding has been initiated under Section 198(4) of U.P. Z.A. and L.R. Act, 1950 before respondent no.5 for seeking cancellation of agriculture lease extended in favour of the petitioner, the grounds have been taken up which has been mentioned while passing the order dated 28.12.1992 through which residential lease has been cancelled wherein the petitioner was not available since no residential lease has ever been extended in favour of the petitioner.

7. While deciding the proceedings under Section 198(4) of U.P. Z.A. and L.R. Act, 1950, the same ground has been taken up by the responding authorities for deciding the sanctity of agriculture lease extended in favour of the petitioner that once the proposal made by the same Land Management Committee in shape of agriculture lease as well as residential lease, wherein the residential lease has already been cancelled and as such, the lease extended in favour of the petitioner as agriculture lease, was also cancelled vide order dated 30.06.1995.

8. Being aggrieved with the order dated 30.06.1995, petitioner preferred Revision No.100/100/1041/2001-02, Computer No.C2001050000881 (Devanti Vs. Sant Kumar), under Section 333 of U.P. Z.A. and L.R. Act before respondent no.2 and the same was transferred to respondent no.3 at the admission stage. After having the rival contentions and pleadings, revision preferred by the petitioner was also dismissed vide order dated 18.03.2020 which impugned the present petition.

9. At the time of calling counter affidavit on behalf of the State-respondents, the Coordinate Bench of this Court protected the interest of the petitioner by way of granting interim order which enables the petitioner to continue over the possession of the same portion of land which has been extended in shape of agriculture lease which is still continuing and there is hardly any dispute with regard to possession of the petitioner over the said portion of land.

10. Learned counsel for the petitioner raised his arguments for challenging the order which impugned the present petition on the ground that no independent application of mind has been applied by the respondent no.3 while adjudicating the revision preferred by the petitioner and the same has been decided only in pursuance of the order passed by respondent no.5 which was on reliance of the adjudication made by respondent no.4 over the controversy raised in the matter of residential lease extended in favour of other person wherein the petitioner was not the beneficiary of the same.

11. Controverting the stand taken up in the petition, parawise pointed reply has been submitted by the State-respondents by way of preferring counter affidavit on behalf of the respondent nos.2 to 5, wherein specific stand has been taken up that the residential allotment given to the allottees was cancelled on the ground of irregularity and on the same day, agriculture allotment was done which was also irregular and the same was also cancelled.

12. By bare perusal of the narrations made in the counter affidavit, it is crystal clear

that no separate, thoughtful consideration has been given by the authorities over the allotment of agriculture lease as well as residential lease but the same has been equated while adjudicating the controversy raised in the residential lease which adversely affected the petitioner through which the agriculture lease was also cancelled.

13. Sri Madan Mohan, learned Standing Counsel fairly assisted the Court in the manner that by and large the order which has been passed which impugned the present petition, has to be dealt with separately with independent thought after considering the claim set out by the petitioner but the same has been dealt with only by way of relying on the order which has been passed at the time of cancellation of residential lease which has been extended in favour of other person.

14. In view of the aforementioned facts and circumstances, the order dated 30.06.1995 passed by respondent no.5 and order dated 18.03.2020 passed by respondent no.3 are hereby quashed and set aside, the matter is hereby remitted back to the responding authority specifically respondent no.6 for deciding afresh by way of giving opportunity of hearing to all the concerned.

15. The above mentioned exercise shall be completed as expeditiously as possible, preferably within a period of six months from the date a certified copy of this order is produced before respondent no.6.

16. However, it is made clear that during pendency of the decision as directed above, the petitioner shall not be dispossessed from plot no.375, area 0.1460 hectare, Village Masan Pakad (Basudeeha), Tehsil Bansgaon, District Gorakhpur.

17. Writ petition stands **allowed** accordingly.

Order Date :- 13.12.2023

Shaswat