AFR

Neutral Citation No. - 2023:AHC:203676

Court No. - 51

Reserved On.-3.10.2023

Delivered On.-26.10.2023

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 3287 of 2018

Petitioner :- Sunil Kumar Singh
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Adya Prasad Tewari,Sheo Shankar Tripathi
Counsel for Respondent :- C.S.C.,Satyendra Chandra Tripathi,Tariq Maqbool Khan

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Adya Prasad Tewari, learned counsel for the petitioner, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Mr. Sudhir Bharti, learned counsel for the respondent-gaon sabha. Neither anyone is present on behalf of respondent nos. 5 & 6 nor any request has been made on their behalf for adjournment.

2. Brief facts of the case are that plot no.198 (old no.258), area 0.1780 hect., is recorded in the name of gaon sabha under Class 6-2 category land. Proceeding under Section 122-B of the U.P. Z.A. & L.R. Act, 1950 was initiated against respondent no.5-Kedar Nath Yadav Inter College, Baghagara, Tahsil, Sadar, Gorakhpur (a private unaided intermediate college, under self-financed scheme). An order for ejectment and damages has been passed against respondent no.5 in respect to 44 decimal area of plot no.258 as well as damages of Rs.11,91,040/- vide order dated 28.6.2001. Respondent no.5 challenged the order dated 28.6.2001 by way of Revision No.73 before the Collector which was dismissed vide order dated 23.11.2001. Against orders dated 28.6.2001 and 23.11.2001, respondent no.5 filed Civil Misc. Writ Petition No.40820 of 2001 before this

Court which was initially entertained in respect to damages part only but subsequently writ petition was dismissed vide order dated 23.1.2014. In paragraph no.11 of the writ petition, it is specifically stated that order dated 23.1.2014, dismissing the writ petition filed by respondent no.5, has attained finality. Petitioner made a complaint before the authorities for the removal of encroachment over the plot in dispute in pursuance of the final order passed in the proceeding under Section 122-B of the U.P. Z.A. & L.R. Act but no substantial steps have been taken by the authorities, hence, the instant P.I.L. on behalf of the petitioner for removal of encroachment made by respondent no.5 over plot no.198, area 0.1780 hect. as well as for recovery of amount of damages awarded against respondent no.5 vide order dated 28.6.2001 in the proceeding under Section 122-B of the U.P. Z.A. & L.R. Act. In paragraph nos.3 & 4 of the writ petition, it is mentioned that petitioner is a social worker and has been doing several activity for the welfare and development of the village as well as to protect the public property land from grabbing.

3. This Court has entertained the matter on 12.4.2018 and had directed that if gaon sabha's land is restored to its original shape, then it also becomes the responsibility of the authorities to see that the school gets a place for functioning so that the local children do not suffer. Vide subsequent orders dated 19.4.2018/30.4.2018, this Court had further directed for removal of illegal and unauthorized occupation from the gaon sabha's land and the Chief Secretary of the State was required to come up with a scheme as has been provided in paragraph no.22 of the judgment of the Apex Court in **Jagpal Singh and Others vs. State of Punjab and Others, 2011(113)R.D. 689 (SC)** but no scheme has been produced before this Court in compliance of the orders of this Court dated 19.4.2018/30.4.2018.

4. Counsel for the petitioner has placed reliance upon the judgments of this Court reported in ***2015 (127) RD 615, Jagat Narain and Others vs. State***

of U.P. and Others and reported in ***2020 (146) RD 216, Baba Sukkhu Maa Prabhudevi Inter College and Another vs. State of U.P. and 4 Others*** in order to demonstrate that gaon sabha's land cannot be encroached by the person who has no right and title to occupy the same.

5. On the other hand, learned Additional Chief Standing Counsel and the counsel for the gaon sabha submitted that once the order for ejectment and damages has been maintained by this Court by dismissing the writ petition filed by respondent no.5, then there is no justification for respondent no.5 to occupy the plot in question. They further submitted that respondent no.5 has not taken any steps to challenge the order of ejectment and damages before Hon'ble Apex Court and has also not taken any steps for exchange, etc., as such, respondent no. 5 is not entitled to the ratio of law laid down by this court in **C/M Vishambhar Nath Janta Inter College and Another vs. State of U.P. and 4 Others (Writ C No.42710 of 2018)** decided on 21.12.2018, in which this Court, on the ground of pendency of exchange proceeding, in respect to plot in question, has held that the order passed in the proceeding under Section 67 of the U.P. Revenue Code, 2006, shall not be implemented till the decision of the case under Section 101 of the U.P. Revenue Code, 2006.

6. In reply, counsel for the petitioner submitted that in the instant matter, no proceeding for exchange is pending, as such, respondent no.5 is not entitled to any relief in the matter. He further submitted that institution is a private unaided intermediate college, as such, no relief can be granted to respondent nos. 5 & 6.

7. Learned standing counsel has filed two counter affidavits in the matter, 1st counter affidavit has been filed on behalf of respondent no.1, annexing different government orders, issued by the Government of U.P. in respect to removal of the encroachment from the land of Gram Panchayat/public land. The second counter affidavit has been filed on behalf of respondent nos. 2

& 3, stating that the order for ejectment and damages has been passed against respondent no.5 which has been maintained by this Court by means of dismissing the writ petition and it is also correct that the institution is running in the plot in question since 1974 and it has got two-storyed building in which more than 400 children are taking education, as such, Tehsildar, Sadar has sent a letter to the higher authorities for necessary direction in this regard.

8. Respondent nos. 5 & 6 have filed their short counter affidavit through Mr. Satendra Chandra Tripathi, Advocate stating that petitioner has filed the instant P.I.L. with malafide intention as petitioner was initially member of Committee of Management of Kedar Nath Yadav Junior School which runs the institution Kedar Nath Yadav Intermediate College, Baghagara, Tahsil, Sadar, Gorakhpur and due to certain dispute, petitioner has filed the instant P.I.L which is not in public interest rather a private interest of the petitioner for extraneous consideration.

9. This matter was listed before this Court for final disposal on 2.8.2023 and 28.8.2023 when learned counsel for respondent nos. 5 & 6 was present but on the subsequent date, i.e. 20.9.2023, counsel for respondent nos. 5 & 6 was not present and again when the matter was taken up on 3.10.2023, neither learned counsel for respondent nos. 5 & 6 was present nor any request was made on their behalf.

10. I have considered the arguments advanced by learned counsel for the parties except learned counsel for respondent nos. 5 & 6 and perused the records.

11. There is no dispute about the fact that the order for ejectment and damages has been passed under Section 122-B of the U.P. Z.A. & L.R. Act against respondent no.5 by Tehsildar, which has been maintained in appeal as well as by this Court while dismissing the writ petition filed by respondent

no.5 vide order dated 23.1.2014. There is also no dispute about the fact that respondent no.5 has not applied for any exchange, etc. as provided under Section 161 of the U.P. Z.A. & L.R. Act, now under Section 101 of the U.P. Revenue Code, 2006.

12. So far as the maintainability of the instant P.I.L. is concerned, since the plot in dispute is recorded as gaon sabha plot and an order for ejectment and damages has already been passed by the court concerned which has been maintained by this Court while dismissing the writ petition filed by respondent no.5 on 23.1.2014, hence the instant P.I.L. cannot be dismissed on the ground of maintainability as the order for ejectment and damages has already been passed about 22 years ago and respondent no.5 is enjoying the possession without making any effort to challenge the order before the Apex Court or taking steps for exchange, etc., in accordance with law, as such, the instant P.I.L. is being entertained on merit, taking into consideration the entry of the plot in dispute as well as the order passed by the Tehsildar for ejectment and damages which has attained finality.

13. The relevant portion of the judgment passed by Additional Tehsildar dated 28.6.2001 in the proceeding under Section 122B of U.P.Z.A. and L.R. Act for the ejectment and damages against the respondent no.5 are as follows:-

"न्यायालय अपर तहसीलदार तहसील सदर, गोरखपुर।

वाद संख्या- *54/86* अन्तर्गत धारा *122* बी ज०वि०अ० बावत मौजा बाघागाड़ा तप्पा हवेली परगना भौवापार तहसील सदर जिला गोरखपुर।

गांव सभा बनाम विजय प्रताप यादव

मैनें पक्षों के विद्वान अधिवक्ताओं की बहस सुनी एंव पत्रावली पर उपलब्ध कागजात का भली भांति परीक्षण किया। जिससे स्पष्ट है कि आ०नं० *258* रकबा *44* डि० स्थित मौजा बाधागाड़ा पर श्री विजय प्रताप यादव का अवैध कब्जा है। श्री यादव के विद्वान अधिवक्ता का यह तर्क स्वीकार नहीं है कि श्री विजय प्रताप यादव मात्र श्री केदार नाथ जूनियर हाई स्कूल के प्रबंधक है। और विवादित भूमि पर उनका नहीं बल्कि श्री केदार नाथ जूनियर हाई स्कूल का कब्जा है। यदि उनका यह तर्क मान भी लिया जाय तो श्री विजय प्रताप यादव उक्त विद्यालय के प्रबंधक होने के नाते विवादित भूमि के अवैध अध्यासी है। विवादित भूमि के सम्बन्ध में उप संचालक चकबन्दी के यहां जो वाद विचाराधीन है, उससे विवादित भूमि के स्वत्व के सम्बन्ध में होने से भी आज्ञपितकर्ता को कोई लाभ नहीं मिल सकता है, जब तक कि उक्त वाद में अनितम निर्णय पारित नहीं हो जाता है। आपत्तिकर्ता के विद्वान अधिवक्ता द्वारा माननीय उच्च न्यायालय एंव अन्य जो रूलिंग्स

प्रस्तुत की गयी है। उन सभी की विषय वस्तु प्रश्नगत वाद से भिन्न होने के कारण वे इस वाद पर प्रभावी नहीं है। अतएंव आपत्तिकर्ता द्वारा प्रस्तुत आपत्ति निरस्त की जाती है तथा नोटिस धारा *49(क)* की पुष्टि की जाती है।

आदेश

आ०नं०-*258* रकबा *44* डि० स्थित मौजा बाघागाड़ा तप्पा हवेली परगना भौवापार तहसील सदर से श्री विजय प्रताप यादव पुत्र श्री गंगा यादव प्रबंधक श्री केदार नाथ जूनियर हाई स्कूल बाघागाड़ा को बेदखल किया जाता है। तथा क्षतिपूर्ति के रूप में इनके उपर *11,91,040-00 (*ग्यारह लाख इक्यानबे हजार चालिस रूपये मात्र*)* का जुर्माना किया जाता है। तदनुसार क्षति पूर्ति की वसूली हेतु नोटिस *49(*च*)* जारी हो। क्षतिपूर्ति की वसूली के पश्चात पत्रावली दाखिल दफ्तर की जाय।

ह०अपठनीय

28-06-2001

*(*कुँवर शशि भूषण सिंह*)*

अपर तहसीलदार"

14. The order of Additional Tehsildar was maintained by collector by dismissing the revision vide order dated 23.11.2001, the relevant portion of the order dated 23.11.2001 are as follows:-

"न्यायालय कलेक्टर, गोरखपुर।

निगरानी सं० *73* अन्तर्गत धारा *122(4* ए*)* ज०वि०अ० बावत मौजा बाघागाड़ा तप्पा कस्बा परगना हवेली तहसील सदर जनपद गोरखपुर।

विजय प्रताप बनाम गांव सभा

आदेश

उभयपक्षों के विद्वान अधिवक्ता को सुना गया तथा पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्यों से स्पष्ट है कि आ०नं० *258/-44* डि० खाता संख्या *431* में वर्ग *5(1)* पंचायत भवन हेतु अंकित है और धारा *132* के अन्तर्गत सुरक्षित भूमि है इस भूमि का आबंटन नहीं हो सकता परन्तु तत्कालीन ग्राम प्रधान पलकधारी यादव ने नियम विरूद्ध दिनांक *6.8.74* को केदारनाथ यादव जूनियर हाई स्कूल बाघागाड़ा के भवन हेतु प्रस्ताव पारित कर दिया जिसका अनुमोदन उपजिलाधिकारी द्वारा नही हुआ परन्तु उक्त कथित प्रस्ताव के आधार पर निगरानीकर्ता विजय प्रताप यादव ने विवादित भूमि में एक पक्का कमरा तथा टीनसेड डालकर व्यवसायिक दृष्टिकोण से केदारनाथ जूनियर हाईस्कूल खोलकर चलाने लगे तथा प्रस्ताव के आधार पर चकबन्दी में दावा प्रस्तुत करके दिनांक *30.3.93* को एकपक्षीय गाटा सं०-*258/0-44* डि० पर नाम अंकित करा लिया जिसके विरूद्ध गांव सभा बाघागाड़ा की तरफ से ब०अ०च० न्यायालय में अपील योजित की गयी। ब०अ०च० ने साक्ष्यों का परीक्षण करने के उपरान्त दिनांक *28.4.99* को आदेश पारित किया कि विवादित भूखण्ड गांव सभा सम्पत्ति है और इस पर किसी व्यक्ति अथाव संस्था का नाम अनर्गल रूप से दर्ज नही किया जा सकता है। ब०अ०च० ने चकबन्दी अधिकारी का आदेश दिनांक *30.03.93* निरस्त करते हुए भूमि पूर्ववत गांव सभा के नाम अंकित करने का आदेश पारित किया है जिसके विरूद्ध निगरानीकर्ता की तरफ से उप संचालक चतबन्दी के न्यायालय में निगरानी प्रस्तुत की गयी है। इसलिए उक्त निगरानी के आधार पर निगरानीकर्ता को कोई लाभ नही दिया जा सकता है।

प्रश्नगत प्रकरण में मुख्य विचारणीय प्रश्न है कि आया तथाकथित प्रस्ताव दिनांक *6.8.74* के आधार पर निगरानीकर्ता को कोई लाभ दिया जा सकता है तथ्यों से सपष्ट है कि आ०नं० *258/-44* पंचायत भवन के खाते में अंकित है और धारा *132* के अन्तर्गत सुरक्षित भूमि है। उक्त भूमि के स्वभाव/नेचर को बिना परिवर्तित किये किसी भी व्यक्ति/संस्था के पक्ष में आबंटन का प्रस्ताव पारित नही किया जा सकता है इसी कारण उपजिलाधिकारी द्वारा उक्त प्रस्ताव का अनुमोदन नही किया गया है, और तथाकथित प्रस्ताव कानून के दृष्टि में शून्य है। तथ्यों से यह भी स्पष्ट है कि उक्त तथाकथित शून्य प्रस्ताव के आधार पर निगरानीकर्ता चकबन्दी अधिकारी से अपने पक्ष में नाम अंकित करा लिये थे, जो ब०अ०च० के

आदेश दिनांक *28.4.99* द्वारा निरस्त हो चुका है। इस प्रकार यह स्पष्ट है कि आ०नं०*-258/-44* डि० पंचायत भवन बाघागाड़ा के नाम से सुरक्षित भूमि है। अवल न्यायालय के आदेश में कोई त्रुटि नहीं है। अतएंव आदेश दिनांक *28.6.2001* को खण्डित करने का कोई औचित्य नहीं है।

अतः निगरानी बलहीन होने के कारण निरस्त की जाती है। अवर न्यायालय को पत्रावली वापस भेजी जाय। निगरानी पत्रावल वाद आवश्यक कार्यवाही दाखिल दफ्तर हो।

ह०अपठनीय

23.11.2001

महेश कुमा गुप्ता,

कलेक्टर,

गोरखपुर।"

15. The order dated 23.1.2014 dismissing the Writ C No.- 40820 of 2001 filed by respondent no.5 against the order dated 28.6.2001 and 23.11.2001 runs as follows:-

> *"This case is listed under the category of 'Infructuous Cases'. Learned Counsel for the petitioner has not raised any objection to the listing of the case under the said Category.*
>
> *The Office report is accepted. Petition is accordingly dismissed as infructuous."*

16. Inspite of the aforementioned final orders passed against the respondent no.5, no steps has been taken by the respondent no.5 before Hon'ble Apex Court or initiating any other proceedings if permissible under the law.

17. The ratio of law laid down by this court from time to time in respect to the controversy involved in the matter will be relevant for consideration.

18. This Court in the case of ***Baba Sukkhu Maa Prabhudevi Inter College*** *(supra)* has maintained the order for ejectment and damages passed against the institution inspite of the pendency of the exchange proceeding. The judgment passed by this Court in ***Baba Sukkhu Maa Prabhudevi Inter College*** *(supra)* is subjudice before the Hon'ble Apex Court in S.L.P C. No. 28925/2019 in which an order of status quo is operating till further orders.

19. In the case of ***Committee of Management, Vishambhar Nath Janta Inter College*** *(supra)*, this Court has held that order passed in the

proceeding under Section 67 of the U.P. Revenue Code, 2006 shall not be implemented till the decision of the case under Section 101 of the U.P. Revenue Code, 2006, the relevant portion of the judgment runs as under:-

> *"However, since the order dated 18.05.2018 has directed the decision of the application, the Collector shall decide the same and till the decision on the application under Section 101 of the U.P. Revenue Code, 2006 is taken orders if are passed u/s 67 of the Code, should not be implemented.*
>
> *The writ petition is allowed."*

20.The Division Bench of this Court in the case of the **Jagat Narain (supra)** has decided the reference in respect to proceeding under Section 122B of U.P.Z.A. and L.R. Act, the relevant Paragraph No.30 of the judgment are as follows:-

> *"30. For these reasons, we answer the reference as follows:*
>
> *(i) The law laid down by the learned Single Judge in the decisions in Ajanta Udyog Mandal Vidyalay (supra), Budhaee (supra), Sukhdeo (supra), Kishore Singh (supra) and Siya Ram (and other decisions following the same line) do not reflect the correct position in law and those decisions are hence overruled;*
>
> *(ii) A person against whom an order of eviction has been passed under Section 122-B would not be entitled to a protection against eviction on the grounds which have weighed with the learned Single Judges in the above cases. Once the legislature has, by enacting a specific provision in sub-section (4-F) of Section 122-B, made a specific statutory provision which overrides the other preceding sub-sections of Section 122-B, it would not be open for the Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, to create a new legislative category and to issue a mandamus contrary to law;*
>
> *(iii) The decision in Sukhdeo (supra) to the effect that if a person is in possession for more than 12 years, instead of eviction, an award of damages would be the appropriate relief, does not express the correct position in law. No such provision has been made by the legislature and it would not be open for the Court to introduce a new legislative category or to introduce a period of limitation as was purported to be done in the decisions of the learned Single Judge noted above."*

21. In the instant matter, no proceeding has been undertaken by

respondent no.5 for exchange of the plot whether permissible or not is another matter or challenging the order passed by this Court in the proceeding under Section 122-B of the U.P. Z.A. & L.R. Act before Hon'ble the Apex Court rather respondent no.5 is setting tight over the matter, as such, there is no option except to allow the instant P.I.L. and direct the authorities to take action for removal of encroachment from the gaon sabha land in compliance of the final order dated 28.6.2001 passed in the proceeding under Section 122-B of the U.P. Z.A. & L.R. Act as maintained by this Court while dismissing the writ petition vide order dated 23.1.2014.

22. Considering the entire facts and circumstances of the case as well as ratio laid down by this Court, **the instant P.I.L. is allowed** and respondent no.2/Collector, Gorakhpur is directed to take steps for removal of the encroachment made by respondent no.5 from plot no.198 (Old Plot No.258), area 44 decimal, within a period of 3 months from the date of production of the certified copy of the order.

23. Registrar (Compliance) is also directed to communicate this order to respondent no.2/Collector Gorakhpur within three days for necessary compliance.

Order Date :- 26.10.2023
Rameez/C.Prakash

Digitally signed by :-
RAMEEZ AHMED
High Court of Judicature at Allahabad