

Neutral Citation No. - 2023:AHC:224899

Court No. - 51

Case :- WRIT - C No. - 13522 of 2023

Petitioner :- Gram Sabha Tarapur

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

Counsel for Petitioner :- Bhupendra Kumar Tripathi

Counsel for Respondent :- C.S.C

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Bhupendra Kumar Tripathi, learned counsel for the petitioner/ Gram Sabha and Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for State-respondents.

2.The instant writ petition has been filed praying for a mandamus commanding the respondents to grant Financial and Administrative Approval for construction of Gram Panchayat Bhawan on Arazi No.128(M) area 0.049 hectare as per proposal of Gram Sabha dated 09.10.2022 within stipulated period.

3. This Court has passed following orders on 21.08.2023, 03.10.2023 and 17.10.2023:

21.08.2023

“1. In compliance of the earlier orders of this Court dated 23.5.2023/25.7.2023, Sri Anand Bhaskar Srivastava, learned standing counsel has placed the instruction dated 17.8.2023 before the Court which is taken on record wherein it is mentioned that plot no.128, area 0.040 hect. has been demarcated for the construction of gram panchayat bhawan and the land is vacant but there is no mention regarding the status of financial and administrative approval for the construction of the same over the plot in dispute which is the only prayer made in the writ petition.

2. On the other hand, learned counsel for the petitioner submitted that area 0.049 hect. has been demarcated for construction of the gram panchayat bhawan in respect to plot no.128. He further placed the resolution of the gram sabha which has been annexed along with the writ petition.

3. In view of the arguments advanced by learned counsel for the petitioner, learned standing counsel is granted two weeks' further time to obtain fresh instruction regarding the status of financial and administrative approval for the construction of the gram panchayat bhawan over the plot in dispute as well as instruction be also obtained regarding the area of plot no.128 which has been approved for the construction of the gram panchayat bhawan.

4. Put up this matter as fresh on 12.9.2023.”

03.10.2023

“1.This Court has directed to learned Standing Counsel to obtain instruction in the matter vide order dated 23.05.2023. On 25.07.2023 and 21.08.2023 again time was granted to learned Standing Counsel to obtain instruction in the matter.

2. Today, Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents further prayed for time to obtain instruction in the matter.

3. Respondent No.3/ Sub Divisional Magistrate, Machhalishahr, Jaunpur is directed to file personal affidavit in the matter as to why instruction has not been filed in spite of the repeated orders passed by this Court as well as letter dated 08.07.2023 sent by the Sub Divisional Magistrate Machhalishahr, Jaunpur himself seeking time to send

instruction. The personal affidavit shall be filed by next date fixed in the matter.

4. Put up this matter as fresh on 17th October, 2023.

5. Registrar (compliance) is directed to communicate this order to respondent No.3/ Sub Divisional Magistrate, Machhalishahr, Jaunpur within two days.”

17.10.2023

“1. Personal affidavit dated 16.10.2023 sworn by Sub Divisional Magistrate, Machhalishahr, Jaunpur has been filed by Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents before this Court today, which is taken on record.

2. Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents on the basis of the aforementioned affidavit submitted that area of plot no.128 is not free from encroachment, as such the relief claimed in the writ petition cannot be granted at this stage.

3. Mr. Bhupendra Kumar Tripathi learned counsel for the petitioner/ Gaon Sabha submitted that area, which was proposed for construction of the Panchayat Bhawan is very much vacant. He further submitted that plot No.128 M is very big plot as such, the initiation of the proceeding against the persons, who are in possession of the rest area will not come in the way of the petitioner to claim the relief in the matter.

4. In view of the facts mentioned above, learned counsel for the petitioner shall file specific reply to the averment made in the personal affidavit dated 16.10.2023 within ten days.

5. Put up this matter as fresh on 01.11.2023.”

4. In compliance of the orders of this Court, parties have exchanged their affidavit.

5. Learned counsel for the petitioner submitted that plot No.128 M area 1.1830 hectare is recorded as naveen parti in the revenue record. He further submitted that resolution dated 09.10.2022 has been passed for construction of Panchayat Bhawan on Arazi No.128 M area 0.049 hectare out of total area 1.1830 hectare. He further submitted that prior to the proposal of Gram Sabha, spot inspection was made by the Revenue Inspector, who submitted his report dated 07.10.2022 in which it is mentioned that plot is suitable for the construction of Panchayat Bhawan. He next submitted that in spite of the completion of all formalities, the Financial and Administrative approval has not been given by respondent No.4/ Block Development Officer, Sujanganj, Jaunpur. He submitted that petitioner/ Gram Sabha filed an application before respondent Nos.2 and 3 on 15.12.2022 for granting approval for construction of Panchayat Bhawan, but no positive steps have been taken by the authorities, hence this writ petition.

6. Mr. R. C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents submitted that total area of plot No.128 M is 1.1830 hectare and the part area of plot No.128M is under encroachment of private person as such unless encroachment is removed it will not be proper to grant Financial and Administrative approval for the construction of the Panchayat Bhawan over plot No.128 M. He further submitted that no interference is required at this stage.

7. In reply, learned counsel for the petitioner submitted that fact mentioned in paragraph No.7 of the personal affidavit filed by Sub Divisional Magistrate is not correct as the inspection conducted by the revenue team demarcated the plot No.128 in which it is mentioned that the area of Plot No.128 (M) is very much vacant on spot for the

construction of Panchayat Bhawan and the encroachment which has been made by the encroachers that area comes about 89 Ayer while the total area of plot No.128 M is 1.1830 hectare and Panchayat Bhawan has been proposed for 0.049 hectare. He further placed the particulars of 22 cases which are pending in respect to the 89 Ayer area of plot No.128 M which is mentioned in paragraph No.4 of the rejoinder affidavit filed on behalf of the petitioner/ Gram Sabha. He finally submitted that area over which the Panchayat Bhawan is to be constructed is very much vacant on spot, as such the encroachment made on the remaining area will not come in the way of the petitioner for construction of Panchaya Bhawan on plot No.128 M area 0.049 hectare.

8. I have considered the arguments advanced by the counsel for the parties and perused the record.

9. There is no dispute bout the fact that plot No.128 M area 1.1830 hectare is recorded as naveen parti in the revenue record and there is no dispute about the fact that resolution dated 09.10.2022 has been made for the construction of the Panchayat Bhawan over the area 0.049 hectare of plot No.128 M. There is also no dispute about the fact that encroachment has been made over 89 Ayer of plot No.128 M regarding which the proceeding under Section 67 of U.P. Revenue Code, 2006 is pending before the Tehsildar.

10. In order to appreciate the controversy, the proposal of the gaon sabha dated 09.10.2022 will be relevant, which is as under:

"कार्यवाही रजिस्टर

रूप पत्र संख्या 8

दिनांक	उपस्थित पंचो/ सदस्यो का नाम	प्रस्ताव नं०	की गई कार्यवाही	पंच सदस्यो का ह० या अंगूठा निशान
1	श्रीमती शान्ती देवी प्रधान	2	पूर्व सूचनानुसार आज दिनांक 9.10.2022 को भूमि	शान्ती

2	अनिल कुमार (सदस्य)		प्रबन्धक समिति तारापुर बहाउद्दीनपुर राजगढ़ की एक आवश्यक बैठक प्रा०वि० तारापुर में ग्राम प्रधान अध्यक्ष भूमि प्रबन्धक समिति की अध्यक्षता में प्रारम्भ की गयी बैठक का कोरम पूरा रहा	अनिल कुमार
3	राधेश्याम (सदस्य)			राधेश्याम
4	मुनिराज (सदस्य)			मुनीराज
5	चन्द्रेशेखर (सदस्य)			चन्द्रेशेखर
6	रेशमा देवी (सदस्य)			रेशमा देवी
7	सीता देवी (सदस्य)			सीता देवी
8	रमाशंकर (सदस्य)			ग्राम राजमढ
9	वीरेन्द्र (सदस्य)			वीरेन्द्र
10	राम सहारे (सदस्य)			राम सहारे
11	सुमन देवी (सदस्य)			सुमन
12	राधा देवी (सदस्य)			
13	विवेक रंजन (सदस्य)			
14	फूल कुमारी (सदस्य)		अतः कार्यवाही प्रारम्भ करते हुए अनिल कुमार सदस्य ने प्रस्ताव रखा की शासन द्वारा ग्राम सभा में पंचायत भवन निर्माण हेतु भूमि राजस्व विभाग द्वारा दिनांक 07/10/2022 को चिन्हित की गयी उक्त के क्रम में गाटा सं. 128/0.049 हेक्टेयर पंचायत भवन 1.263 हे० में से निर्माण हेतु सर्व सम्मत से प्रस्ताव पारित किया गया जिस पर उपस्थित सभी सदस्यो द्वारा हस्ताक्षर बनाया गया उपरोक्त प्रस्ताव पारित करने के पश्चात अध्यक्ष की अनुमति से बैठक की कार्यवाही समाप्त की गयी।	

हस्ताक्षर शान्ती देवी
भू०प्र० समिति
अध्यक्ष"

11. The averment made in paragraph No.7 of the personal affidavit filed by the Sub Divisional Magistrate as well as averment made in paragraph No.4 of the rejoinder affidavit filed on behalf of the petitioner/ Gaon Sabha will be relevant for perusal, which is as under:

Paragraph no.7 of personal affidavit:

"7. That, it is further most respectfully submitted that now, there is some new facts with regards to the land in question as there is encroachment over the land of Gata No.128 area '.2630 hectare by the Geeta devi wife of Sri Jeet Lal and Sangeeta Devi wife of Sri Shiv Shanker by making Chhappar. For kind perusal of this Hon'ble Court, the copy of the amended

instruction dated 16.10.2023 is being filed herewith and marked as Annexure No.2 to this affidavit.”

Paragraph No.4 of rejoinder affidavit to the personal affidavit:

“4. That the contents of paragraph no.7 of the said affidavit are not admitted as stated and it is further submitted that Arazi No.128 area 1.183 hectare is recorded as Navin Parti and on the basis of Proposal of Gram Sahba the Revenue Team demarcated the said land for construction of Panchayat Bhawan on 07.10.2022 and in respect to the encroachment over the land in question it is stated in para under reply that the proceeding under Section 67 of U.P. Revenue Code, 2006 is pending before the Tehsildar against 22 encroachers and again on 01.11.2022 the remaining vacant land demarcated as area 0.040 hectare for construction of Panchayat Bhawan.

It is relevant to submit here that it is wrong to say that only 0.040 hectare land remain vacant out of 1.183 hectare in fact from the perusal of report of Lekhpal it is crystal clear that total 89 Ayer land of the said Arazi has been encroached by the 22 persons and 1.094 hectare land remain vacant but the revenue authority has submitted wrong report before this Hon’ble Court and with collusion of revenue authority some persons encroach the said land after 07.10.2023 in intention to not construct the Panchayat Bhawan, the detail of encroachers as well as encroached land as under:

Arazi No. 128 area 1.183 Hectare

No.	Party Name	Case No.	Area of encroached land
1.	Lekhpal Report Vs. Shatughan	202314360300634	4 Ayer
2.	Lekhpal Report Vs. Radhey shyam	202314360300635	8 Ayer
3.	Lekhpal Report Vs. Devsaran	202314360300635	4 Ayer
4.	Lekhpal Report Vs. Dharamraj	202314360300636	8 Ayer
5.	Lekhpal Report Vs. Abhayraj	202314360300637	8 Ayer

6.	<i>Lekhpal Report Vs. Sriram</i>	202314360304463	4 Ayer
7.	<i>Lekhpal Report Vs. Lalji</i>	202314360304464	4 Ayer
8.	<i>Lekhpal Report Vs. Multan</i>	202314360304465	4 Ayer
9.	<i>Lekhpal Report Vs. Chandrabali</i>	202314360304466	4 Ayer
10.	<i>Lekhpal Report Vs. Sitaram</i>	202314360304467	4 Ayer
11.	<i>Lekhpal Report Vs. Amarnath</i>	202314360304468	4 Ayer
12.	<i>Lekhpal Report Vs. Bhagauti</i>	202314360304469	4 Ayer
13.	<i>Lekhpal Report Vs. Meena Devi</i>	202314360304470	4 Ayer
14.	<i>Lekhpal Report Vs. Vakeel</i>	202314360304471	3 Ayer
15.	<i>Lekhpal Report Vs. Munnilal</i>	202314360304472	3 Ayer
16.	<i>Lekhpal Report Vs. Munnalal</i>	202314360304473	2 Ayer
17.	<i>Lekhpal Report Vs. Nandlal</i>	202314360304474	3 Ayer
18.	<i>Lekhpal Report Vs. Khedu</i>	202314360304475	3 Ayer
19.	<i>Lekhpal Report Vs. Usha Devi</i>	202314360304476	3 Ayer
20.	<i>Lekhpal Report Vs. Ashok</i>	202314360304476	3 Ayer
21.	<i>Geeta Devi wife of Late Jeetal</i>	202314360306429	3 Ayer
22.	<i>Sangeeta Devi w/f Late Shivshankar</i>	202314360306430	3 Ayer
23.	<i>Total Encroached Area</i>		89 Ayer
24.	<i>Remaining Area</i>		1.094 Hectare

From the perusal of aforesaid detail it is clear that in Arazi No. 128 only 89 Ayer land have been encroached and at present 1.091 hectare land remain vacant on spot and as such in area

0.0490 hectare the Panchayat Bhawan will be constructed but due to malafide intention of authority concern the Panchayat Bhawan has not been constructed till date.”

12. Since the total area of the plot No.128 M is 1.1830 hectare and the resolution of the gram sabha has been passed with respect to the area 0.049 hectare for the construction of Panchayat Bhawan, as such there is no hindrance for granting Financial and Administrative approval in accordance with law for the construction of Panchayat Bhawan in plot No.128 area 0.049 hectare which is recorded as naveen parti in the revenue record and the same is very much vacant on spot. So far as encroachment over 89 ayer area of plot No.128M is concern, that is different area to the area over which panchayat bahawan is to be constructed.

13. Considering the entire facts and circumstances of the case, **writ petition is allowed** and mandamus is issued to respondent No.2/ District Magistrate, Jaunpur to grant Financial and Administrative approval in accordance with law for construction of Panchayat Bhawan in arazi No. 128 M area 0.049 hectare within a period of two months from the date of production of certified copy of this order before respondent No.2.

Order Date :- 29.11.2023

PS*