

Court No. - 51

Case :- WRIT - C No. - 19167 of 2023

Petitioner :- Smt. Puttan And Another

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

Counsel for Petitioner :- B.K.Singh Raghuvanshi, Akshay Raghuvashi

Counsel for Respondent :- C.S.C., Hari Narayan Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Akshay Raghuvanshi, learned counsel for the petitioners, Sri Hari Narayan Singh, learned counsel appearing for respondent no.4/gram panchayat and Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents.

2. The instant petition has been filed for the following reliefs:-

"i. Issue a writ, order or direction in the nature of mandamus commanding the respondent nos.2 and 3 to restrain the interference of the respondent no.4 in the non agricultural land of the petitioners i.e. Khata No.00065, new number .632M., area 0.0610 hectare, Khata No. 330 Gata No. 632M, area 0.610 hectare, total area 0.1830 hectare situated in village- Hridayapur Mazra Gogumau, Tehsil- Billhaur, Police Station- Choubepur, District- Kanpur Nagar in pursuance of the order dated 24.03.2014 passed by respondent no.2 in Case No. T-2014034192543/2014 (Smt. Puttan and other versus State of U.P.).

ii. Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 & 3 to restrain the respondent no.4 to interfere in peaceful possession of the petitioners over the plot in question and remove the construction made by respondent no.4 over the plot in question.

iii. Issue an appropriate writ, order or direction directing the respondent no.2 to pass the appropriate order/direction on the representation dated 17.02.2023 of the petitioners pending before him."

3. This Court on 29.8.2023, directed the learned counsel for the gaon panchayat to obtain instruction in the matter.

4. On 19.9.2023, instruction dated 29.8.2023 was placed before the Court by the counsel for the gram panchayat, accordingly, counsel for the petitioner was granted time to file reply to the instruction dated 29.8.2023. Learned counsel for the petitioners has placed on record the reply to the instruction.

5. Learned counsel for the petitioner submitted that the plot in dispute has

been declared as non-agricultural in Case No.T2014034192543/2014 (Smt. Puttan and Other vs. State of U.P.), under Section 143 of the U.P. of the U.P. Z.A. & L.R. Act, passed by the S.D.O., Billhaur, Kanpur Nagar. He submitted that the authorities have started interference with the possession of the petitioners, hence this writ petition. He further submitted that the facts mentioned in the instruction, are not correct. He also submitted that the petitioners are claiming right in respect to the area regarding which he purchased the plot by way of registered sale deed and the plot in dispute has been declared non-agricultural in the proceeding under Section 143 of the U.P. Z.A. & L.R. Act, as such, there is no dispute regarding the title of the plot in dispute.

6. On the other hand, Sri Hari Narayan Singh, learned counsel appearing for the gram panchayat and Sri Abhishek Shukla, learned Addl. C.S.C. submitted that plot no.632 is a big plot and the petitioners are trying to encroach the area beyond their share. They also submitted that the state and the gram panchayat are not interfering with the right/title/possession of the petitioners regarding which they had obtained sale deed and the land has been declared as non-agricultural. They also submitted that no interference is required in the matter, the writ petition is liable to be dismissed.

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 plot no.632 has been declared non-agricultural under Section 143 of the U.P. Z.A. & L.R. Act.

9. The instruction submitted by the gram panchayat would be relevant for perusal which is quoted hereunder:-

पत्रांक दिनांक 17.09.23

सेवा में,

श्रीमान हरिनारायण सिंह

स्थायी अधिवक्ता ग्राम सभा

उच्च न्यायालय प्रयागराज उ०प्र०

विषय- रिट याचिका सं० 19167/2023 पुत्तन देवी पत्नी प्रभू व मन्जू पत्नी साजन बनाम उ०प्र०

सरकार व अन्य के सम्बन्ध में।

महोदय,

सादर अवगत कराना है।

1. यह कि घसीटे S/O भिखारी व तेजा S/O भिखारी को 1966 में गाटा सं० 632 मि० में कृषि भूमि का पट्टा हुआ था।

2. यह कि घसीटे व तेजा की मृत्यु के बाद इनके पुत्र बेचेलाल S/O घसीटे व छेदी लाल S/O तेजा का वरासत में राजस्व अभिलेखों में दर्ज हो गया।
3. यह कि इसके बाद वादी मुकदमा पुत्तन देवी व मन्जू ने वर्ष 2003 में बेचे लाल व छेदी लाल से उनकी जमीन का बैनामा करवाया था।
4. यह कि मुकदमा वादी ने जो जमीन 632 मि० में बेचेलाल व छेदीलाल से बैनामा कराया है वह जमीन आज भी रिक्त पड़ी है रिक्त पड़ी जमीन पर ग्राम सभा को आपत्ति नहीं है।
5. यह कि मुकदमा वादी अपनी जमीन जिस पर कि विक्रेता बेचेलाल व छेदीलाल काबिज थे को छोड़कर सड़क के दूसरी दिशा में जहां ग्राम सभा द्वारा खेल मैदान और गौशाला का निर्माण वर्ष 2020-21 में कराया था उस जमीन को अपनी बता रहे हैं जो कि गलत है वहां पर गौशाला का लगातार संचालन है।
6. यह कि गाटा सं० 632 काफी बड़ा नम्बर है जिसमें तालाब के पास उक्त पुत्तन आदि की जमीन अब भी रिक्त पड़ी है तथा मुकदमा वादी ने जिससे जमीन खरीदी है उनका स्वयं का बयान है कि उपरोक्त बिक्रीत भूमि अब भी रिक्त पड़ी है और वहां पर ग्राम सभा का कोई कब्जा नहीं है।

10. In view of the rival submission of the learned counsel for the parties and in the light of the instruction of the gram panchayat, there is no scope of interference in the matter in exercise of jurisdiction under Article 226 of the Constitution of India. The petitioners should avail proper remedy by filing a suit regarding the relief claimed in the writ petition.

11. The writ petition is disposed of with the liberty to the petitioners to avail proper remedy before the civil court, in accordance with law.

Order Date :- 6.11.2023

C.Prakash