

Court No. - 51

Case :- WRIT - C No. - 21221 of 2023

Petitioner :- Sushila Devi

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Raj Kumar Singh

Counsel for Respondent :- CSC

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Raj Kumar Singh, learned counsel for the petitioner, Sri R.C. Srivastava, learned Addl. C.S.C. for the state-respondents and Sri Pankaj Kumar Gupta, learned counsel for respondent no.7-gaon sabha.

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

"A. Issue a writ, order or direction in the nature of certiorari, quashing the impugned notice/explanation dated 20.7.2022, issued by the respondent no.3/Sub Divisional Magistrate, Tehsil Harraiya, District Basti, rejecting the residential patta of the petitioner with respect to gata no.119kha, admeasuring area 1 bigha 7 bishwa and 8 dhoor, situated at village Parashurampur, Tehsil Harraiya, District Basti and record for the aforesaid land in the name of gaon sabha.

B. Issue a writ, order or direction in the nature of mandamus, directing the respondents to restraining them not to interfere in the peaceful possession of the applicant / petitioner over his residential patta land granted and approved in the year 1986 and its house constructed over plot no.119kha, admeasuring area19 dhur, situated at village Parashrampur, Gram Sabha Parashrampur, Tehsil Harraiya, District Basti.

C. Issue a writ, order or direction in the nature of mandamus, directing the respondents not to disturb and interfere in the construction and repair of new house in place of dilapidated kaccha house of the petitioner over the patta land in question."

3. The brief facts of the case are that petitioner was granted residential lease in the year 1986 in respect to plot no.119-kha, area 19 *dhur*, situated at village Parashrampur, Tehsil Harraiya, District Basti. The proceeding for cancellation of petitioner's lease has been initiated in the year 2022, under Section 66 of the U.P. Revenue Code, 2006 which has been registered as Case No.D202217140001242, under Section 66 of the U.P. Revenue Code, 2006 before the Collector, Basti. It is further alleged that illegal interference was made with respect to the plot in dispute of the petitioner, as such, Writ C No.22558/2022 was filed at the instance of the petitioner before this Court which was disposed of vide order dated 8.9.2022 with the direction that if petitioner carries out any repair work over the plot in dispute, then respondent shall not make any interference with the same as the petitioner is the valid patta holder of

plot no.119-kha, area 19 dhur. Again, interference was made with respect to the plot in dispute. Hence, this writ petition.

4. Counsel for the petitioner submitted that petitioner is valid patta holder of the plot in dispute and the same has not been cancelled even after expiry of more than 30 years. He further submitted that proceeding under Section 66 of the U.P. Revenue Code, 2006 has been initiated in respect to the petitioner's lease which is nothing but an abuse of the process of law in view of the provisions contained under the U.P. Revenue Code and the Rules framed thereunder. He further submitted that proceeding of the notice dated 20.7.2022 be quashed and mandamus be issued, restraining the other side from interfering with the possession of the petitioner's lease granted in accordance with law in the year 1992.

5. On the other hand, Sri R.C. Srivastava, learned Addl. C.S.C. and Sri Pankaj Kumar Gupta, learned counsel for the respondent-gaon sabha submitted that proceeding for cancellation of lease is pending before the Collector, Basti, as such, no interference is required in the matter. They further submitted that petitioner should participate in the pending proceeding and can apply for interim relief in the pending proceeding rather the instant writ petition before this Court.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that petitioner was granted residential lease in the year 1986 which was approved in accordance with law. There is also no dispute about the fact that petitioner is in possession of the plot in dispute.

8. In order to appreciate the controversy, the earlier order passed by this court on 8.9.2022 in Writ C No.22558/2022 will be relevant for perusal which is quoted hereunder:-

"Instructions filed today be kept on record.

The petitioner claims to have been in possession over plot no. 119Kha measuring 19 dhur in Village- Gram Sabha Parashrampur, Tehsil- Haraiya, District- Basti, because of patta, which was granted in her favour on 19.7.1993.

The case of the petitioner is that in the last two years, when she was trying to make certain repairs in the house constructed over the land, which was granted to her by the State, the respondent no.5/ the Halka Lekhpal Sri Anurag Patel started interfering with her working and restrained her from continuing with the repair work.

When the instant writ petition was filed, instructions were called for and in the instructions, specifically, it has been stated as follows:

"Purva nirmit makaan ka ek bhhag chhatigrast ho gaya hai. Ek bhaag

mein apne putron evam putravadhu ke saath rah rahi hai. Koi vivad pichhle 30 varshon se nahin aya jaisa ki sthaleeya jaanch ke dauran upasthit vyaktiyon ne bataya hai."

Learned Standing Counsel has also made a categorical statement in the Court that no interference whatsoever, is being done with the petitioner's repairing work.

Under such circumstances, the writ petition is disposed of with a direction that if the petitioner carries out any repair work, then the respondents shall not in any manner interfere in the same."

9. The instruction of the S.D.O., Harraiya, District dated 9.9.2023 will also be relevant which is as under:-

स्थलीय निरीक्षण में पाया गया कि।

1. संतू पुत्र बाबूलाल 0.036 हे० भूमि पर काबिज है।
2. अमित कुमार, विकास पुत्रगण हरी सिंह व पूजा, ज्याति, खूशबू पुत्रीगण हरीसिंह कुल आवंटित क्षेत्रफल 0.119 हे० में से केवल 0.025 हे० भूमि पर कब्जा है, शेष भाग में जल भराव की स्थिति है।
3. सुशीला देवी पत्नी मथुरा प्रसाद का स्थल पर आबादी के रूप में 0.012 हे० भूमि पर काबिज है।
4. इसी आराजी के आंशिक भाग पर अखिलेश प्रताप सिंह पुत्र प्रभुनाथ सिंह निवासी साकिन 7/302 मलहार डीलक्स सहारा ग्रेस जानकीपुरम लखनऊ द्वारा दीवाल बनाकर व मिट्टी पाटकर अवैध कब्जा किया है, जिस पर धारा 67(1) के तहत कार्यवाही की जा चुकी है , जिसका मुकदमा नम्बर T202317140109160 है, जिसमें सुनवाई हेतु दिनांक 22.09.2023 तिथि नियत है।
5. उक्त गाटे के शेष क्षेत्रफल में जल भराव की स्थिति है।
इस सम्बन्ध में नायब तहसीलदार की आख्या दिनांक 09.09.2023 गाटा संख्या 119 का स्थलीय भूचित्र व स्पार्ट मेमो तथा स्थलीय फोटोग्राफ संलग्नक 2,3,4 व 5 के रूप में सादर अवलोकनार्थ संलग्न है।
4. यह कि मा० उच्च न्यायालय को सादर अवगत कराना है कि गाटा संख्या 119 ख मि० के रकबा 0.030 हे० पर अवैध रूप से किये गये स्थायी बाउड्रीवाल निर्माण के विरुद्ध न्यायालय तहसीलदार (न्यायिक) हरैया-बस्ती के न्यायालय में उ०प्र० राजस्व संहिता 2006 की धारा 67(1) के अन्तर्गत नियमानुसार वाद संख्या 9160/2023 कम्प्यूटरीकृत वाद संख्या T202317140109160 गाँव सभा बनाम अखिलेश प्रताप सिंह संस्थित करते

हुए नियमानुसार अवैध कब्जेदार को सुनवाई का समुचित अवसर दिये जाने के उद्देश्य नोटिस जारी की गई है तथा वाद में सुनवाई हेतु अग्रिम तिथि 22.09.2023 नियत है।

इस सम्बन्ध में न्यायालय तहसीलदार न्यायिक के न्यायालय में संस्थित वाद का सारांश पत्र संलग्न 06 के रूप में सादर अवलोकनार्थ संलग्न है।

अतः मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 24.08.2023 के अनुपालन में प्रकरण से सम्बन्धित संक्षिप्त अनुदेश सादर प्रेषित है।

10. A perusal of the instruction submitted by the S.D.O. as well as the order granted by this Court in earlier Writ C No.22558/2022 including the initiation of proceeding under Section 66 of the U.P. Revenue Code, 2006, the interest of justice requires that the instant petition be disposed of, directing the Collector, Basti to decide the pending Case No.D202217140001242, under Section 66 of the U.P. Revenue Code, 2006, in accordance with law and till the disposal of the pending case, no interference be made with the petitioner's possession in respect to plot no. 119-kha, area 19 *dhur*.

11. Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, the instant writ petition stands disposed of, directing respondent no.2/Collector, Basti to conclude the proceeding of aforementioned case under Section 66 of the U.P. Revenue Code, 2006, expeditiously, preferably within a period of 4 months from the date of production of the certified copy of the order, in accordance with law. It is further directed that till the disposal of the aforementioned case, no interference shall be made with the possession of the petitioners in respect to plot no.119-kha, area 19 *dhur*, which was allotted to the petitioner in 1986.

Order Date :- 16.10.2023
C.Prakash