

Court No. - 51

Case :- WRIT - C No. - 22911 of 2023

Petitioner :- Bankey Lal

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

Counsel for Petitioner :- Arun Kumar Gupta

Counsel for Respondent :- C.S.C., Sher Bahadur Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Akhtar Ali, holding brief of Mr. Arun Kumar Gupta, learned counsel for the petitioner, Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sher Bahadur Singh, learned counsel for respondent No.4/Gram Sabha.

2. With the consent of the parties, matter is being heard and disposed of without inviting counter affidavit.

3. Brief facts of the case are that plot number 38/3 area 0.194 hectare situated in Village-Chatdang @ Baldevpur, Pargana, Tehsil and District-Pilibhit was initially recorded in the name of Gaon Sabha as Navin Parti. Petitioner belongs to schedule caste community/ category and was landless agricultural labourer. Petitioner remained in possession over the plot No.38/3 accordingly petitioner was granted benefit of Section 122-B(4F) of U.P.Z.A.&L.R. Act vide order dated 20.07.2010 as such petitioner was recorded as bhumidhari with non-transferable right in Class- 6(2) Category. Petitioner applied for recording his name as bhumidhar with transferable right, after expiry of required period, which has been rejected by the impugned order dated 24.03.2023

passed by UP-Ziladhikari, Tehsil-Sadar, District-Pilibhit. Revision filed by the petitioner under Section 210 of U.P.Revenue Code, 2006, has been also dismissed vide order dated 24.05.2023, hence this writ petition on behalf of the petitioner challenging the order dated 24.03.2023, passed by Sub-Divisional Officer, Sadar, District-Pilibhit and order dated 24.05.2023 passed by Additional Commissioner (Administration) Bareilly Division, Bareilly.

4. This Court vide order 26.09.2023 has passed the following order:

"1. Counsel for the petitioner submitted that petitioner was granted benefit of Section 122-B (4-F) of U.P.Z.A. and L.R. Act by the authority vide order dated 20.7.2010. He further submitted that order dated 20.7.2010 has attained finality and petitioner was recorded as bhoomidhar with non-transferable rights. He further submitted that petitioner initiated proceeding for recording the petitioner as bhoomidhar with transferable rights which has been refused on misconceived ground that proceeding for cancellation of lease is pending. He submitted that revision filed by the petitioner has also been dismissed in arbitrary manner.

2. Mr. Govind Kumar Saxana, learned Additional Chief Standing Counsel for the State-respondents is granted two weeks time to obtain instruction on the point as to whether the petitioner can be refused the relief for declaring him as bhoomidhar with transferable rights when the order by which the petitioner was given benefit under Section 122-B (4-F) of U.P.Z.A. and L.R. Act has attained finality.

3. Put up this matter as fresh on 13.10.2023. "

5. Again on 13.10.2023 the Court has granted time to State to obtain instruction in the matter.

6. In compliance of the order of this Court dated 13.10.2023, Mr. R. C. Srivastava, learned Additional Chief Standing Counsel for the State-respondent has placed instruction dated 06.11.2023 before the Court, which is taken on record.

7. Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State-respondents on the basis of the instruction submitted that State has filed a restoration application dated 28.02.2023 against the order 20.07.2020 after thirteen years, which has been registered as Restoration Case No. T 202312560102096 and next date fixed in the matter is 14.11.2023. He further submitted that petitioner's prayer for recording his name as bhumidhar with transferable right shall be considered after disposal of aforementioned restoration application.

8. Learned counsel for the petitioner submitted that order passed on 20.07.2010 has not been set aside, as such petitioner is entitled to be recorded as bhumidhar with transferable right after expiry of required period for the same. He further submitted that mere filing of Restoration application by State after 13 years cannot stop the authority to record the name of the petitioner as bhumidhar with transferable right. He further submitted that impugned orders are wholly illegal and are liable to be set aside. He further submitted that a suitable direction be issued to respondents to record the name of the petitioner as bhumidhar with transferable right forthwith.

9. Mr. R. C. Srivastava, learned Additional Chief Standing Counsel for the State-respondent and Mr. Sher Bahadur

Singh, learned Counsel for respondent No.4/ Gram Sabha further submitted that impugned orders have been rightly passed as no opportunity was afforded to the State/ Gaon Sabha before passing the order dated 20.07.2010. He further submitted that after disposal of restoration case, the prayer of the petitioner can be considered. He further submitted that no interference is required in the matter and writ petition is liable to be dismissed.

10. I have considered the argument advanced by the learned counsel for the parties and peruse the record.

11. There is no dispute about the fact that order dated 20.07.2010 passed under Section 122-B, 4(F) of U.P.Z.A. & L.R.Act, in favour of the petitioner has not been set aside till date and petitioner's name are recorded as bhumidhar with non-transferable right with effect from 20.07.2010. There is also no dispute about the fact that restoration proceeding initiated by the State after 13 years against the order dated 13.07.2010 is pending before the court concerned.

12. In order to appreciate the controversy involved in the writ petition perusal of order dated 20.07.2010 passed by the court will be relevant, which is as under:

न्यायालय उपजिलाधिकारी (सदर)/असिंकले (प्रथम श्रेणी) पीलीभीत
वाद सं०-01/2009-10
धारा-122 बी, 4(एफ)/229 बी, ज० वि० एवं भू० व्य० अधिनियम
ग्राम चाट डांग उर्फ बल्देवपुर
परगना-पीलीभीत
तहसील व जिला पीलीभीत
ओमप्रकाश वनाम सरकार सरकार।

निर्णय:-

प्रश्नगत वाद तहसीलदार पीलीभीत संस्तुति दिनांक 12.04.2010 के आधार पर इस न्यायालय में योजित हुआ। तहसीलदार पीलीभीत ने अपनी उक्त रिपोर्ट में अवगत कराया है कि आवेदकगण पुत्र तिलकराम, व बांके लाल पुत्र उमराय लाल निवासी ग्राम-चाट डांग उर्फ

बल्देवपुर अनुसूचित जाति के हैं एवं इनके पास 1.260 हे० से कम भूमि है। उक्त व्यक्ति का प्रश्नगत भूमि गाटा सं०-42 रकबा 0.117 हे० व गाटा सं०-71 रकबा- 0.085 हे० कुल 2 किता रकबा- 0.202 हे० पर ओमप्रकाश पुत्र तिलकराम निवासी ग्राम चांट डांग उर्फ बल्देवपुर का एवं गाटा सं०-38/3 रकबा-0.194 हे० पर बांके लाल पुत्र उमराय लाल निवासी ग्राम का कब्जा दिनांक 13.5.2007 से पूर्व का है। स्थल पर भूमि की पैमाइश की जा चुकी है। आवेदक धारा-122 वीं,4(एफ) का लाभ पाने के पात्र हैं। अन्त में 122 वीं,4(एफ) का लाभ दिये जाने की संस्तुति की गयी है।

वाद दर्ज रजिस्टर होकर पक्षगण को सम्मन निर्गत किये गये जो निष्पादन उपरान्त संलग्न पत्रावली हुये। प्रतिपक्षी द्वारा उद्धरण खतौनी, फर्द खसरा, जो०च०आकार पत्र-45 व इस न्यायालय द्वारा पूर्व पारित आदेश दिनांक 15.2.2010 वाद सं०-05/2009-10 धारा-202 ज०वि०एवं भू०व्य०अधिनियम ग्राम चांट डांग उर्फ बल्देवपुर परगना तहसील व जिला पीलीभीत की छायाप्रति प्रस्तुत की गयी।

मैंने उभयपक्षों के विद्वान अधिवक्ता की बहन को सुना एवं पत्रावली पर उपलब्ध समस्त साक्ष्य का भली भांति परिशीलन किया। तहसीलदार पीलीभीत ने अपनी संस्तुति दिनांक 12-4-2010 में अवगत कराया ओमप्रकाश पुत्र तिलकराम, व बांके लाल पुत्र उमराय लाल निवासी ग्राम-चांट-डांग उर्फ बल्देवपुर लगातार काबिज काश्त है एवं अनुसूचित जाति के ... हैं, शासनादेश के अनुसार मई 2007 से पूर्व से कब्जेदार होने व अनुसूचित जाति के धोबी होने के कारण 122 वीं(4 एफ) का लाभ पाने के पात्र हैं, पत्रावली में संलग्न जो०च०आकार पत्र-45 में गाटा सं०-38, गाटा सं०-42 व गाटा सं०-71 नवीन परती अंकित है। वाद सं०-05/2009-10 धारा-202 ज०वि०एवं भू०व्य०अधिनियम ग्राम चांटडांग उर्फ बल्देवपुर परगना तहसील व जिला पीलीभीत में पारित आदेश दिनांक 15.2.2010 के अंतर्गत प्रतिपक्षीगण का आसामी पट्टा पांच वर्ष की अवधि पूर्ण हो जाने के कारण निरस्त किया गया है, जिससे वादीगण का प्रश्नगत भूमि पर कब्जा दिनांक 13-5-2007 से पूर्व का होना प्रमाणित है। प्रतिपक्षीगण को धारा-122 बी(4 एफ) ज०वि०एवं भू०व्य०अधि० का लाभ दिया जाना न्यायोचित है।

आदेश

अतः उक्त विवेचना के परिप्रेक्ष्य में भूमि स्थित ग्राम चांटडांग उर्फ बल्देवपुर परगना तहसील व जिला पीलीभीत खाता सं०-269 गाटा सं०-38/3 रकबा-0.194 हे० पर बांके लाल पुत्र उमराय लाल निवासी ग्राम-चांटडांग उर्फ बल्देवपुर व खाता सं०-26 गाटा सं०-42 रकबा-0.117 हे० व गाटा सं०-71 रकबा-0.815 हे० कुल 2 किता रकबा-0.202 हे० पर ओम प्रकाश पुत्र तिलकराम निवासी ग्राम-चांटडांग उर्फ बल्देवपुर धारा-122 बी(4 एफ) ज०वि०एवं भू०व्य० अधि० के अंतर्गत शासनादेश के अनुपालन में श्रेणी-2 दर्ज अभिलेख किया जाये। आदेश की एक प्रमाणित प्रति तहसीलदार पीलीभीत को अनुपालनार्थ प्रेषित की जाये। पत्रावली वाद आवश्यक कार्यवाही संचित अभिलेखागार की जाये।

दिनांक 20-07-2010

(पी०एस०राणा)
उपजिलाधिकारी (सदर)
असि०कलेक्टर(प्रथम श्रेणी)
पीलीभीत।

आज यह आदेश मेरे द्वारा सतिथि हस्ताक्षर होकर खुले न्यायालय में उद्घोषित हुआ।
दिनांक 20-07-2010

13. Perusal of order reveals that State was afforded opportunity before passing the impugned order under Section 122-B, 4 (F) of U.P.Z.A.&L.R. Act as such filing restoration application after 13 years by the State is nothing but in order to harass the petitioner who was granted benefit under Section 122-B 4(F) of U.P.Z.A.&L.R. Act in accordance with law.

14. It is also material that order dated 20.07.2010 has not been set aside till date and petitioner's name is recorded as bhumidhar with non-transferable right with effect from 20.07.2010, as such, petitioner is entitled to be recorded as Bhumidhar with transferable right.

15. Considering the entire facts and circumstances of the case, the impugned order dated 24.05.2023 passed by respondent No.2 and 24.03.2023 passed by respondent No. 3 cannot be sustained in the eye of law, therefore, impugned order are hereby set aside and writ petition stands allowed. Respondent No. 3, Sub-Divisional Officer Sadar, Pilibhit is directed to record the name of petitioner over plot No. 38/3, area 0.194 hectare as Bhumidhar with transferable right within period of six weeks from the date of production of certified copy of this order before respondent No.3.

Order Date :- 7.11.2023

PS*