

Court No. - 52

Case :- WRIT - C No. - 25612 of 2021

Petitioner :- Haribansh Singh Yadav And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Awadhesh Kumar Malviya

Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi,Brijesh Kumar Rai,Vijai Kumar Rai

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Awadhesh Kumar Malviya,learned counsel for the petitioners, Shri Amit Gupta holding brief of Shri Bhupendra Kumar Tripathi, learned counsel for the Gaon Sabha, respondent no.5 and Shri Dhananjay Singh, learned Standing Counsel for the State-respondents.

2. It is the case of the petitioners that their residential house is existing over plot no.361 for more than 50 years but after consolidation, it has been transpired that certain area of plot no.361 on spot is lesser than the area mentioned in the records, whereupon so many other houses are already constructed which has been entered in the revenue records as Abadi along with Banjar (Gaon Sabha). Specific application under Section 28 of the U.P. Land Revenue Act has been preferred for seeking correction of the records pertaining to the area as recorded in the revenue records and existing over the spot.

3. During pendency of the proceeding, a report has been submitted by the concerned Tehsildar on 04.11.1996, which has been properly examined and inspected after verification of the records as well as spot inspection conducted by the concerned revenue authorities, wherein it has been submitted that area of plot no.361 is lesser than it has been recorded in the revenue records. Detailed map along with the report dated 04.11.1996 has been appended with the petition available at page 34 to 37.

4. While deciding the application preferred by the petitioner under Section 28 of the U.P. Land Revenue Act, no credence has been given to the report submitted on dated 04.11.1996 by the concerned Tehsildar, whereas, it has been determined that there is hardly any discrepancy in the revenue records, which enables the petitioner to prefer application, under Section 28 of the U.P. Land Revenue Act. Since, the area mentioned against plot nos. 361, 360

is the same, which is available in the revenue records as well as in the records of the consolidation and as such, the application preferred on behalf of the petitioners has been dismissed vide order dated 29.04.1999 with certain observation that, if the petitioner is aggrieved, he may prefer application under Section 11 of the U.P. Consolidation of Holdings Act, 1947 and the correction as sought by the petitioner is by enlarge in the shape of declaration of his title.

5. Being aggrieved with the order dated 29.04.1999, petitioner preferred revision before the respondent no.2, under Section 219 of the U.P. Revenue Code, 2006 and the same was also dismissed vide order dated 10.09.2021.

6. Learned counsel for the petitioners raised his argument on the ground that specific averment has been made in the memo of revision at the time of challenging the order dated 29.04.1999 that the grievances of the petitioners lies with plot no.361, which has been recorded in the revenue records as Abadi and the certain area has been clubbed with plot no.360, which is entered in the revenue records as Primary School, and in case, the report submitted by the concerned Tehsildar before the respondent no.3, during the pendency of the proceeding initiated under Section 28 of the U.P. Land Revenue Act could have been given any importance which was called by the adjudicating authority himself the same would be in shape of redressal of the grievances, but no heed has been paid or any observation has been drawn either by the respondent no.3 or by respondent no.2, which rises cause of action in favour of the petitioners for challenging the orders, which impugned the present petition.

7. While raising second set of arguments by learned counsel for the petitioners that the entire determination whatsoever has been drawn over the application preferred by the petitioner under Section 28 of the U.P. Land Revenue Act as well as revision before the respondent no.2 is only on the basis of verification and scrutiny of the records available before the revenue department as well as consolidation department but no spot inspection or any demarcation has been carried out with respect to plot no.360 as well as 361 situated at village and Post Gaura, Tehsil Jamaniya, District Ghazipur, whereas, the detailed report, which has been submitted at the time of adjudication of the application under Section 28 of the U.P. Land Revenue act by the concerned Tehsildar has not been given any credence, which was vital in the shape of deciding the application by the respondent no.3.

8. *Per-contra*, Shri Dhananjay Singh, learned Standing Counsel appearing for the respondent nos.1 to 3 vehemently opposed the prayer as well as rebutted the stand taken up by learned counsel for the petitioners.

9. Shri Dhananjay Singh, learned Standing Counsel raised his argument that the writ petition deserves to be dismissed on the ground of wrong remedy adopted by the petitioner in shape of filing application under Section 28 of the U.P. Land Revenue Act, whereas the remedy available before the petitioner was to prefer application under section 24 of U.P. Revenue Code, 2006 for seeking demarcation for plot no.361 pertaining to Abadi, whereupon, the house of the petitioners is already existing for last more than 50 years, if any in any case, the area is lesser than it is recorded in the revenue records available on the spot would have been clarified only in proceedings of demarcation and not the proceedings initiated under Section 28 of the U.P. Land Revenue Act.

10. The arguments as raised and submitted by learned Standing Counsel seems to be forceful but considering the length of prolonged litigation, which has been carried by common villager, it would not be appropriate to send him back to the origin for redressal of his grievances and directing the petitioners to prefer an application under Section 24 of the U.P. Revenue Code, 2006 but at the same time, it would be simplify the grievances, if any, pertained to the petitioners by way of issuing direction to the respondent no.3 to reconsider the application, on the basis of the report submitted by the concerned Tehsildar on 04.11.1996 or in any case, the fresh demarcation may be ordered by the respondent no.3 himself before arriving over the conclusion and finalization of the application preferred by the petitioners and the same shall be decided afresh after due opportunity of hearing afforded to all concerned.

11. The writ petitioner is allowed and the orders dated 29.04.1999 passed by respondent no.3 as well as order dated 10.09.2021 passed by respondent no.2 are hereby set aside and the matter is remitted back to the respondent no.3 for deciding afresh within a period of four months from the date production of certified copy of this order, on the basis of observation made above.

12. The writ petition stands, allowed.

Order Date :- 17.11.2023

RKM