

Court No. - 52

Case :- WRIT - C No. - 26860 of 2021

Petitioner :- Ram Prasad

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

Counsel for Petitioner :- Om Prakash Vishwakarma

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Om Prakash Vishwakarma, learned counsel for petitioner and Sri Prabhakar Tripahti, learned counsel for the State-respondent nos.1 to 3.

2. It is the case of petitioner that in spite of order dated 13.02.2020 passed under Section 24 of U.P. Revenue Code, 2006 (in short 'Code'), the same has not been complied with in terms of Section 24(2)(b) of the Code and as such, the instant petition has been preferred for seeking proper and justified compliance of the entire proceedings which has already been initiated in shape of filing application for demarcation under Section 24 of the Code.

3. Per contra, learned Standing Counsel preferred counter affidavit, wherein certificate dated 08.12.2021 has been appended as Annexure CA-4 through which it has been demonstrated that the permanent erection and fixation of marks has already been done in presence of petitioner along with opposite party and the same has been endorsed by himself by way of putting his signature and thumb impression and as such, there is hardly any cause of action arises in favour of petitioner to pursue the instant petition, since full compliance has already been made by respondent no.3 while entertaining the application under Section 24 of the Code.

4. By way of rebutting the stands and facts mentioned in the counter affidavit, petitioner preferred rejoinder affidavit through which it has been informed that proper application has already been filed before respondent no.3 on dated 21.03.2023 through which it has been informed that the permanent marks were erected way back in the year 2021, has already been disturbed and by this way, respondent no.4 is always extending boundaries of adjacent plot and encroached over plot nos.880, 888 and 893 pertains to petitioner and as such, the same has been apprised by petitioner to respondent no.3 for ensuring compliance under Section 24(2)(b) of

the Code.

5. After hearing the rival submissions extended by learned counsel for parties as well as pleadings available on record, specifically counter affidavit preferred on behalf of respondent nos.1 to 3 which clearly demonstrates the certificate prepared on 08.12.2021, the same is reflecting only the permanent erection of marks maintained by revenue authorities but there is hardly any specific and categorical averments made in respect of further application preferred by petitioner under the same proceedings wherein part compliance has already been made.

6. For plain understanding with regard to Section 24 of the Code, the same is reproduced hereinbelow:-

"24. Disputes regarding boundaries.-(1) The Sub-Divisional Officer may, on his own motion or on an application made in this behalf by a person interested, decide, by summary inquiry, any dispute regarding boundaries on the basis of existing [survey maps or, where they have been revised in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such maps, but if this is not possible, boundaries shall be fixed on the basis of actual possession.]

(2) If in the course of an inquiry into a dispute under sub-section (1), the Sub-Divisional Officer is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the Sub-Divisional Officer shall-

(a) in the first case, ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession;

(b) in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly."

7. Section 24(2)(b) specifically provides to put the person so dispossessed in possession and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly.

8. The submission made by learned Standing Counsel with regard to permanent fixation and erection of marks in pursuance of the field book as well as report submitted by the concerned revenue authority and whereupon the demarcation has been made, but so far subsequent development which took place and apprised by petitioner, has not been taken into cognizance and as such, cause of action arises in favour of petitioner to prefer the instant petition.

9. In view of the aforesaid facts and circumstances, respondent

no.3 is hereby directed to comply with regard to provisions available under Section 24(2)(b) of the Code once the order dated 13.02.2020 has already been passed after considering the report and field book submitted by the concerned revenue authorities but the same has not been executed physically over the plot in question.

10. The abovementioned exercise shall be finalized by respondent no.3 as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order before him.

11. Writ petition stands **allowed** accordingly.

Order Date :- 7.12.2023

Vivek Kr.