

Court No. - 48

Case :- WRIT - B No. - 2023 of 2022

Petitioner :- Salauddin

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

Counsel for Petitioner :- Ajendra Kumar

Counsel for Respondent :- C.S.C., Abdul Majeed, Arun Kumar
Pandey, Sufia Saba

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Ajendra Kumar, learned counsel for petitioner and Sri Sufia Saba, learned counsel for contesting respondent.

2. This Court has passed following order on 11.10.2022 :-

"Grievance of the petitioner is that the Consolidation Officer has illegally passed an order to delete his name from plot no. 105 measuring area 0.012 hectare and plot no. 107 measuring area 0.287 hectare and the same was illegally affirmed by the Settlement Officer of Consolidation and the Deputy Director of Consolidation.

It is submitted by learned counsel for the petitioner that the land in question was allotted in favour of the petitioner by approval order dated 24.01.1990. Aforesaid allotment still stands and the same has not been challenged before any competent court. The Consolidation Officer, on the basis of the ex parte report submitted by the Assistant Consolidation Officer, has passed ex parte order dated 15.11.2007 expunging the name of the petitioner from revenue record treating the land in question as Pond under Class 6(1). One of the ground has also been taken by the Consolidation Officer to the effect that there is double entry of plot no. 105 measuring area 0.012 hectare in two khata i.e. khata nos. 102 and 107. In appeal, specific plea has been taken by the petitioner that land in question was never recorded as a pond. The Settlement Officer of Consolidation has decided the appeal without advertent to the said plea as raised on behalf of the petitioner. It is next submitted that original record has never been summoned by the consolidation courts to verify the factum of the entry of pond, however, the matter has been decided only on the basis of the report submitted by the Assistant Consolidation Officer. The Deputy Director of Consolidation has simply affirmed the order passed by the courts subordinate without verifying the facts from the original record and without advertent to the grievance of the petitioner.

Matter requires consideration.

Respondents no. 1 to 4 are represented through the learned Standing Counsel. Learned counsel for Gaon Sabha-respondent no. 5 is present.

List this matter on 05.12.2022.

In the meantime, parties shall exchange their respective affidavits.

Till the next date of listing, parties are directed to maintain status quo with respect to possession and nature of the land in question. "

3. The Court has asked following specific query to counsel for petitioner that :-

(i) Whether a copy of alleged 'Patta' is enclosed with this writ petition?

(ii) Whether details mentioned in impugned order such as 'Akar Patra' as well as basis of submission that there were double entry are enclosed with this writ petition?

4. The answer for above referred queries remained in negative.

5. It is also pointed out by learned Standing Counsel for State as well as counsel appearing on behalf of petitioner in connected PIL (bearing No. 2497 of 2023) that there is already an order against applicant in a proceeding under Section 67 of Uttar Pradesh Revenue Code, 2006 dated 18.08.2023, however, the same has also not been brought on record by filing an affidavit.

6. In the aforesaid circumstances, since petitioner has not come up with clear hand and suppressed material facts before this Court and since it is well settled that petitioner who sought to invoke writ jurisdiction has to come with clean hand. In this regard few paragraphs of a judgment passed by this Court in the case of **Anil Kumar Yadav Vs. State of U.P. and two others, 2023:AHC:193413**, being relevant are mentioned hereinafter :-

" ५. विश्लेषण व निष्कर्ष

(क). जैसा पूर्व में उल्लेखित किया गया है , याचिका कर्ता ने वर्तमान याचिका में सम्पूर्ण तथ्यों का एवं उनसे संबंधित आदेशों की प्रति के साथ उल्लेख नहीं किया है। आदेश दिनांक २०.०२.१६ व ०३.०९.१६ की प्रति भी याचिका के साथ संलग्न नहीं है। साथ ही साथ आदेश दिनांक २०.१२.२००० की प्रति भी उपलब्ध नहीं है। और न ही दोनो निगरानी की प्रति संलग्न है। याचिका में दूसरी निगरानी के संबंध में स्पष्ट रूप से कोई उल्लेख भी नहीं किया है। याची ने अपनी इच्छानुसार तथ्यों का उल्लेख किया है और इच्छानुसार तथ्यों को छुपाया या स्पष्ट रूप से उल्लेख नहीं किया है। यह कृत्य अप्रशंसनीय है।

(ख). इस स्तर पर उच्चतम न्यायालय द्वारा पारित किये गये निर्णय श्री के जयराम व अन्य प्रति बैंगलोर डेवलपमेंट अथॉरिटी व अन्य : (२०२२) १२ एस सी सी ८१५ से निम्न अंश का उल्लेख करना महत्वपूर्ण होगा:-

" ३८-....स्थापित विधि के अनुसार, जो पक्ष संविधान के अनुच्छेद ३२ के अंतर्गत इस

न्यायालय या अनुच्छेद २२६ के अंतर्गत उच्च न्यायालय के असाधारण क्षेत्राधिकार को आहूत करता है, तो यह माना जाता है कि वो सत्यवादी, स्पष्टवादी और विवर्त होगा। उसे बिना किसी निग्रह से सभी वस्तुगत तथ्यों को उद्धाटित करना चाहिए, भले ही वे उसके विरुद्ध हों। उसको तथ्यों की 'छुपा-छुपी' (हाईड एंड सीक) खेलने या उनका 'चयन और चुनने' (पिक एंड चूज) करने की अनुमति नहीं दी जा सकती, जिन्हें वह प्रकट और छुपाना (पर्दा डालना) या वो अन्य तथ्य जिनको उद्धाटित नहीं करना (छिपाना) पसंद करता है। आज्ञापत्र क्षेत्राधिकार का मूल आधार, सत्य व पूर्ण (सही) तथ्यों के प्रकटन पर आधारित है। अगर वस्तुगत तथ्य छुपाये या विकृत किये जाते हैं तो आज्ञापत्र न्यायालय की कार्यवाही ही और उपयोग असंभव हो जायेगा। याचिकाकर्ता को बिना किसी निग्रह के वांछित अनुतोष पर प्रभाव कारित करने वाले सभी तथ्यों को अवश्य ही उद्धाटित करना है। ऐसा इसलिए क्योंकि "न्यायालय विधि को तो जानता है लेकिन तथ्यों को नहीं।"

(देखें : श्री के जयराम व अन्य प्रति बेंगलोर डेवलपमेंट अथॉरिटी व अन्य : (२०२२) १२ एस सी सी ८१५) का प्रस्तर संख्या ३८)"

7. The Court is of considered opinion that since petitioner has not approached this Court with clean hand, therefore, this writ petition is **dismissed** with cost of Rs. 10000/- to be deposited by petitioner in favour of District Legal Services Authority, Amroha within three weeks from today.

8. Interim order, if any, is hereby vacated.

Order Date :- 1.12.2023

P. Pandey