

Court No. - 51

Case :- WRIT - C No. - 25971 of 2023

Petitioner :- Shaileshwar Prasad And 3 Others

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

Counsel for Petitioner :- Virendra Singh, Abhishek Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Virendra Singh, learned counsel assisted by Mr. Abhishek Tiwari, learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. With the consent of the learned counsel for the parties, the writ petition is being heard and disposed of finally without inviting counter affidavit.

3. Brief facts of the case are that plot No.279 area 3.11 acre was recorded in the khatauni of 1356 fasli and 1359 fasli in the name of Gokul Chand, Joti Bhushan, Bandhu Nandu s/o Jhuri, Chunni Lal s/o Bhondhu, Birju s/o Rengai and they were shown in possession also. After abolition of zamindari, Bandhu, Nandu, Chunni, Birju became sirdar and later on bhumidhar of the plot in dispute. Accordingly, Shiv Lal s/o Bandhu, Harishchand s/o Nandu, Uma Shankar, Ram Narain minor s/o Nandu and Smt Parmeshwari Devi w/o Chunni, Birju s/o of Raengai, Ram Nath s/o Munni were recorded as bhumidhar of Plot No.279 area 3.11 acre. The aforesaid tenure holder have executed a registered sale deed in favour of Jaggan s/o Ram Singh petitioners' father on 26.10.1966. Accordingly, petitioners' father became bhumidhar of the said plot and name of Jaggan was accordingly recorded in the revenue record in 1374 fasli. After the death of Jaggan name of the petitioners were recorded being legal heirs of the deceased over plot No.279 are 3.11 acres. Petitioners' father filed a original suit no.

378 of 1979 against the Rajendra and others which was decreed by the trial court vide judgment and decree dated 14.10.1997 and civil appeal filed against the judgment and decree of the trial court, was dismissed vide judgment and decree dated 23.02.2016. Second appeal filed by Rajendra against the judgment and decree of the courts below was also dismissed by this Court vide judgment dated 09.05.2016. Plot No.267 area 0.142 hectare was recorded as class 6 (1) category land regarding which there is no dispute in the instant petition. One Tej Bahadur Singh, S/o Kallu filed P.I.L. No.27416 of 2015 in which this Court vide order dated 13.05.2015 has directed the District Magistrate to decide the representation in accordance with law. Tej Bahadur Singh filed a contempt petition No.1439 of 2016 which was disposed of vide order dated 31.03.2016. A proceeding was initiated for expunging the entry of plot No.279 in the year 2015 accordingly Naib Tehsildar submitted a report which was forwarded before the Sub Division Officer, and Sub Divisional Officer vide order dated 27.04.2015 passed the order under Section 33/39 of U.P. Land Revenue Act restraining the parties to execute the sale deed. Against the order dated 27.04.2015 a revision was filed by petitioners and revisional court vide order dated 09.06.2015 set aside the order dated 27.04.2015 and directed the Sub Divisional Officer to decide the proceeding in respect of maintainability. Sub Divisional officer vide order dated 18.11.2015 has held that the petitioners are recorded tenure holder of plot No.279 and entry continued with effect from 1291 fasli. It is also held that plot No.279 was never recorded as pond. Against the order dated 18.11.2015 State has filed revision before the Commissioner which was allowed by the Commissioner, Varanasi Division Varanasi vide order dated 23.01.2021 in view of ratio of law laid down by Hon'ble Apex Court in the case of **Hinch Lal Tiwari vs.**

Kamala Devi and others reported in 2001 (6) SCC 496 and plot in dispute was ordered to be recorded as pond. Petitioners challenged the order dated 23.01.2021 before the Board of Revenue under Section 333 of U.P.Z.A.& L.R. Act which was registered as revision No.445 of 2021 computerized Case No. AL2021147000445 and the same was allowed in part vide order dated 25.05.2023 setting aside the order of Commissioner dated 23.01.2021 and remanded the matter before the Commissioner to decide the dispute afresh. Hence this writ petition for implementation of the order passed by the Board of Revenue dated 25.05.2023 as well as for quashing the order dated 08.09.2023 passed by Deputy Collector Revenue Varanasi during pendency of the writ petition.

4. This Court on 22.08.2023 directed the State to obtain instruction in the matter.

5. On 03.10.2023 following order was passed by this Court:-

"1. In compliance of the order of this Court dated 22.08.2023, instruction dated 11.09.2023 has been placed before the Court, which is taken on record.

2. In the instruction dated 11.09.2023, the order dated 08.09.2023 passed by Deputy Collector (Revenue), Varanasi has been annexed, by which the application dated 05.06.2023 filed by the petitioner for implementation of the order passed by the Board of Revenue in the revenue records, has been refused on the ground that by the order of the Board of Revenue matter has been remanded back, as such there is no necessity for implementation/ incorporation of the order in the revenue records.

3. In reply, counsel for petitioner submitted that each and every orders passed in the proceedings are to be implemented/ incorporated in the revenue records, hence the order dated 08.09.2023 passed by the Deputy Collector (Revenue), Varanasi, during pendency of the instant writ petition, is wholly illegal.

4. Counsel for petitioner shall file amendment application

challenging the order dated 08.09.2023 within ten days.

5. Learned Standing Counsel shall serve the copy of instruction dated 11.09.2023 along with the copy of the order dated 08.09.2023 upon the counsel for the petitioner during the course of the day.

6. Put up this matter as fresh on 16.10.2023."

6. On 16.10.2023 following order was passed by this Court:

"Re: Amendment Application No.2/2023.

1. Heard learned counsel for the parties.

2. In view of the facts mentioned in the affidavit in support of the amendment application, the application is allowed.

3. Counsel for the petitioners is permitted to make necessary amendment in the writ petition as well as in the records of the standing counsel during the course of the day.

Order on writ petition

1. Sri Abhishek Shukla, learned Addl. C.S.C. is directed to obtain instructions to the amended petition within two weeks.

2. Put up this matter as fresh on 1.11.2023"

7. Learned counsel for the petitioners submitted that order passed by the Board of Revenue setting aside the order passed by the Commissioner is to be implemented in the revenue record. He further submitted that petitioners are recorded tenure holder of the plot in dispute and the proceeding initiated under Section 33/39 of U.P. Land Revenue Act 1901 has been dismissed in the year 2015, but revision filed by State has been allowed by the Commissioner for recording the land as pond, which has been set aside in revision by the Board of Revenue, as such order passed by Board of Revenue is to be implemented in the records as earlier the order passed by the Commissioner

was implemented in the revenue records. He further submitted that each and every order passed in the proceeding is to be implemented in the revenue record, as such the impugned order passed by the Deputy Collector that order passed by Board of Revenue is remand order as such there is no requirement for the implementation of order passed by the Board of Revenue is wholly illegal. He further submitted that impugned order should be set aside and direction be issued to the authorities to implement / incorporate the order passed by Board of Revenue dated 25.05.2023 in the revenue record.

8. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that authorities have not incorporated/ implemented the order passed by the Board of Revenue as the matter has been remanded before Commissioner for fresh consideration of the revision filed by State, as such after final adjudication of the dispute the revenue record will be corrected.

9. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

10. There is no dispute about the fact that proceeding under Section 33/39 of U.P. Land Revenue Act, 1901 initiated by the State has been decided in favour of the petitioners by Sub Divisional Officer vide order dated 18.11.2015 and the petitioners were held to be recorded tenure holder since before abolition of zamindari. There is also no dispute about the fact that order passed by the Sub Divisional Officer dated 18.11.2015 has been set aside in revision filed by State vide order dated 23.01.2021 passed by Commissioner. There is also no dispute about the fact that Board of Revenue vide order dated 25.05.2023 allowed the revision filed by petitioners setting aside the order dated 23.11.2021 passed by

Commissioner and remanded back the matter before the Commissioner to decide the revision afresh.

11. It is well settled principle of law that each and every order passed in the proceeding is to be incorporated in the records as such the reason assigned in the impugned order dated 08.09.2023 that since the matter has been remanded back before Commissioner for fresh consideration as such there is no requirement to incorporate the order in the record is erroneous.

12. It is very material that under the remand order dated 25.05.2023 passed by Board of Revenue the revisional order dated 23.01.2021 passed by Commissioner recording the plot in dispute as pond has been set aside and matter is to be examined afresh as such there should be implementation of the order passed by Board of Revenue, which shall be subject to further decision by Commissioner but authorities cannot take stand that order is remand order as such the same will not be incorporated in the records.

13. Considering the entire facts and circumstances of the case, the impugned order dated 08.09.2023 passed by the Deputy Collector Revenue Varanasi is liable to be set aside and same is hereby set aside. **Writ petition is allowed.** Respondent No.2 Ziladhikari, Varanasi and respondent No.3 Up Zila Adhikari, Revenue Varanasi are directed to implement/ incorporate the order dated 25.05.2023 passed by the Board of Revenue in revision No.445 of 2001 computerized Case No.20AL2021147000445 (Shaileshwar Prasad and others vs. State of U.P. and others) in the revenue records within a period of six weeks from the date of production of certified copy of this order.

Order Date :- 1.11.2023/PS*