

Court No. - 5

Case :- WRIT - C No. - 47572 of 2010

Petitioner :- Krishna Pal Singh

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Jitendra Kumar Yadav, Tarun Agrawal

Counsel for Respondent :- C.S.C., Mrs. Vibha Srivastava

Hon'ble Piyush Agrawal, J.

1. Heard Mr. Ravi Kant, learned Senior Counsel assisted by Mr. Tarun Agrawal for the petitioner, learned Standing Counsel for State and Mrs. Vibha Srivastava, learned counsel for respondent no.2.

2. By means of present petition, the petitioner is, inter alia, praying for the following relief:-

"(i) issue a writ, order of direction in the nature of prohibition restraining the SDO / Assistant Collector 1st Class, Tundla, Distt. Firozabad from proceeding any further with Case No. 24/2009-10, Gaon Sabha Vs. Krishna Pal Singh under Section 33/39 of UP Land Revenue Act, of village Mohammedabad."

3. Learned Senior Counsel submits that the petitioner vide resolution dated 26.9.1970 approved by Sub Divisional Officer, Etmadpur on 1.5.1971, was granted agricultural lease of plot nos. 112 area 5 biswa, 113 area 1 bigha 7 biswa, 114 area 3 biswa and 116 area 4 biswa and thereafter certificate of admission to land in ZA Form 58 dated 22.6.1971 under Rule 176 of UP Z.A. & L.R. Rules, 1952 duly attested by Naib Tehsildar on 23.8.1971 under Rule 177 was given to the petitioner, thereafter name of the petitioner was recorded in the revenue record as bhumidhar with non transferable right. By order dated 18.7.1995 passed by Sub Divisional Officer converted the land as bhumidhar with

transferable rights. He further submits that the aforesaid lease was challenged by some persons before the Collector under Section 198 (4) of the Act in the year 1988 in Case No. 17 of 1987-88 (Natthi Lal and other Vs. Krishan Pal Singh) village Mohammadabad, Pargana Etmadpur on the ground of alleged irregularities but the same is dismissed by the Collector vide order dated 20.5.1988.

4. Learned Senior Counsel further submits that by notification dated 27.5.1999 issued under Sub Section (2) of Section 3 of the UP Municipalities Act, 1916, the land in question has been included in the municipal limits of Municipal Council, Tundla. The land in question is no longer vested with the Gaon Sabha, Mohammadabad; therefore, proceedings under Section 33/39 of the Act is initiated for cancelling the lease of the petitioner and to recommend the same for allotting to the other person of the choice of respondent no. 3, and take over the same forcibly without authority of law. He submits that once the notification dated 27.5.1999 has been issued, the area in question has been included in the municipal limits of Municipal Council, Tundla, therefore, the land management committee has no authority to proceed for cancellation of lease.

5. In support of his submission, he relied upon Section 5 of Municipality Act and submits that after issuance of notification, the area mentioned therein will immediately include within the municipal limits of Municipal Council, Tundla and any proceedings pending therein shall be governed under the UP Municipalities Act. He further submits that after issuance of notification dated 27.5.1999, the land in question becomes the subject matter of municipal limit of Municipal Council, Tundla

and the Gaon Sabha has no authority to proceed further, therefore, the proceedings are without jurisdiction and liable to be quashed.

6. *Per contra*, Mrs. Vibha Srivastava, learned counsel for respondent no.2 submits that since the proceedings have been initiated, the petitioner can submit his reply / objection and can also raise all the possible pleas before the competent officer under Chapter 8, Section 59 (3) of UP Revenue Code, 2006, therefore, the present petition is not maintainable. She prays for dismissing the writ petition.

7. Learned Standing Counsel also submits that instead of approaching this Court in the writ jurisdiction, the petitioner can very well submit his reply and raise all his grievances before the authority concerned.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. It has not been disputed by any of the respondents that notification dated 27.5.1999 has been issued under Sub Section (2) of Section 3 of the UP Municipalities Act, 1916 and area/ plot in question has been included under the municipal limits of Municipal Council, Tundla. Once the notification has been issued and the land in question has been included within the municipal limits of Municipal Council, Tundla, Goan Sabha/ respondent no. 2 cannot be permitted to initiate the proceedings in violation of Section 5 of UP Municipalities Act, 1916, which reads as under:-

"5. Effect of including area in [transitional area or smaller urban area.] - 5 [Where by a notification referred to in sub-section (2) of Section 3 the Governor includes any area] [transitional area or smaller urban area], such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions, issued or made under this or any other enactment and in force throughout the [transitional area or smaller urban area], at the

time immediately preceding the inclusion of the area."

10. On perusal of said section, it is clear that immediately after issuance of the notification 27.5.1999, the area/ plot in question will be the subject matter of Municipal Council, Tunda and shall be governed by the UP Municipalities Act with immediate effect.

11. On pointed query put to the learned counsel for the respondents that once the area/plots in question have been included within the municipal limits of Municipal Council, Tundla, how the proceedings can be permitted to be initiated by respondent no. 2, they could not give any satisfactory reply of the same.

12. Learned counsel for the respondents also does not dispute that by issuing the notification dated 27.5.1999 under Sub Section (2) of Section 3 of UP Municipalities Act, 1916, the land in question has been included within the municipal limits of Municipal Council, Tundla.

13. Once the fact that area / plots in question have been included within the municipal limits of Municipal Council, Tundla, has not been disputed by respondent no. 2, the proceedings cannot be permitted as the same is without authority of law in pursuance of Section 5 of the UP Municipalities Act, 1916.

14. In view of the foregoing discussions, the writ petition is **allowed** and further proceedings of Case No. 34 of 2009-10 (Gaon Sabha Vs. Krishna Pal Singh) under Section 33/39 of UP Land Revenue Act, pending before the Sub Divisional Officer / Assistant Collector, 1st Class, Tundla, Distt. Firozabad is hereby quashed.

Order Date :- 6.12.2023

Rahul Dwivedi/-