Court No. - 52

Case :- WRIT - C No. - 29315 of 2023

Petitioner :- Babu Lal
Respondent :- The State Of Uttar Pradesh And 3 Others
Counsel for Petitioner :- Anupam Kulshreshtha
Counsel for Respondent :- C.S.C.,Avinash Chandra Srivastava

Hon'ble Saurabh Srivastava,J.

1. Supplementary affidavit preferred by learned counsel for petitioner is taken on record.

2. Heard Sri Anupam Kulshreshtha, learned counsel for petitioner and Sri Prabhakar Tripathi, learned Standing counsel for State respondents.

3. Present petition has been filed seeking following reliefs:

"a) To issue a writ, order or direction in the nature of certiorari quashing the impugned judgment & order dated 25.04.2023 (Annexure no. 7 to the writ petition) passed by the Additional District Magistrate (Administration), District-Agra, the respondent no. 2, in Appeal no. 546 of 2023 (Computerized case no. D202301010000546); Babu Lal vs. Gaon Sabha & Another, as well as the impugned judgement & order dated 30.01.2023 (Annexure no. 5 to the writ petition) passed by the Tehsildar, Tehsil-Kiraoli, District-Agra, the respondent no. 3, in Case no. 3384 of 2021 (Computerized Case no. T-202101010403384); Gaon Sabha vs. Mahesh Chand;

b) To issue a writ, order or direction in the nature of Mandamus restraining the dispossession of the petitioner and/or the demolition of the petitioner's house situated over plot no. 114 of village-Maniyan Garsani, Tehsil-Kiraoli, District Agra, on the basis of the impugned order dated 25.04.2023 and 30.01.2023, as aforesaid, passed by respondent nos. 2 and 3 respectively."

4. It is the case of the petitioner that proceedings under Section 67 of the U.P. Revenue Code, 2006 was initiated against the petitioner on the report of Lekhpal/Panchayat Secretary dated 29.07.2021 submitted before respondent no. 3 wherein it has been mentioned that petitioner has encroached upon plot no. 115 area 152 square meters of village-Maniyan Garsani, Tehsil Kiraoli, District Agra by raising construction of house over the said plot. It is further stated in the report that plot no. 115 area 0.1840 hectare is reserved for "Panchayat Ghar". On the basis of the said report, case no. 3384 of 2021 was registered against petitioner under Section 67 of U.P.

Revenue Code, 2006 before the court of respondent no. 3.

5. Petitioner filed his objection in the said proceeding alleging that plot no. 114 was the land of his ancestors and his house is over plot no. 114 since more than 50 years since the time of his grandfather and that too prior to the consolidation proceedings in the village. Petitioner has not encroached on the land of Gaon Sabha i.e. plot no. 115. After hearing the parties, the Tehsildar passed an order of ejectment dated 30.01.2023 in the said case no. 3384 of 2021.

6. Being aggrieved with the order dated 30.01.2023, petitioner preferred appeal under Section 67(5) of the Code of 2006 before the learned District Magistrate which was also dismissed vide order dated 25.04.2023 which impugned the present petition.

7. Learned Standing counsel vehemently opposed the prayer and came up with the specific instructions which is taken on record through which he submitted that the impugned orders are passed on merits and are fully justified and the instant petition is liable to be dismissed.

8. Learned counsel for petitioner submitted that petitioner along with his two brothers who have also filed writ petition in this Hon'ble Court, have jointly filed an application before the Sub Divisional Officer, Koraoli, Agra on dated 18.10.2013 under Section 101 of U.P. Revenue Code, 2006 for exchange of plot no. 115 area 0.0338 hectare of the Gaon Sabha with equal area of land of petitioner of plot no. 120 having total area 1.3995 hectare. He submitted that grievance of petitioner would sufficiently be met in case the said application under Section 101 of U.P. Revenue Code, 2006 be decided by the Sub Divisional Officer, Koraoli, Agra in a time bound manner.

9. In view of the aforementioned facts and circumstances, considering the urgency and being the matter of dwelling over the plot no. 115 for a long time Sub Divisional Officer, Koraoli, Agra is hereby directed to decide the application preferred by petitioner under Section 101 of U.P. Revenue Code, 2006 wherein all the factual position has already been narrated by petitioner for seeking exchange from the area which has been determined by the revenue authorities as encroached upon plot no. 115 by the petitioner and the same has been sought to be exchanged through plot no. 120.

10. The above mentioned exercise shall be carried out and be finalised by the concerned Sub Divisional Officer, Tehsil Kiraoli,

District Agra as expeditiously as possible preferably within a period of six months from the date of production of certified copy of this order by way of affording proper opportunity of hearing to all concerned, specifically considering the factual aspect which has been narrated in the petition that the residential accommodation situated at plot no. 115 pertains to the petitioner is old one and situated from the period before operation of the consolidation. It is the admitted fact which has been submitted by learned counsel for the petitioner that during operation of the consolidation this aspect has never been brought to the notice of the consolidation authorities to check out this portion of land, because of construction of the residential accommodation pertains to the petitioner, which culminated into shifting of area pertains to the petitioner from plot no. 115 to 120 and as such the petitioner has been determined as illegal possessor being encroacher under proceedings initiated by revenue authorities under Section 67 of U.P. Revenue Code, 2006.

11. However, it is also made clear that during pendency of the said application under Section 101 of U.P. Revenue Code, 2006, effect and operation of the order dated 30.1.2023 and 25.04.2023 passed under Section 67 of the Code of 2006 shall be inoperative. The responding authorities are permitted to execute order dated 30.1.2023 passed by respondent no. 3 and 25.4.2023 passed by respondent no. 2 only after finalisation of the application preferred by the petitioner under Section 101 of U.P. Revenue Code, 2006.

12. Writ petition stands ***disposed of*** accordingly.

Order Date :- 31.10.2023
Shaswat

Digitally signed by :-
SHASWAT SINGH
High Court of Judicature at Allahabad