

Court No. - 51

Case :- WRIT - C No. - 28355 of 2023

Petitioner :- Badshah And Another

Respondent :- State Of U.P. And 11 Others

Counsel for Petitioner :- Suresh Chandra Verma,Devesh Kumar Verma

Counsel for Respondent :- C.S.C.,Hari Narayan Singh,Surendra Nath Shukla,Yogita Shukla

Hon'ble Chandra Kumar Rai,J.

1. Heard learned counsel for the petitioners, Mr. Abhinav Ojha learned standing counsel for state respondents, Mr. Hari Narayan Singh for respondent no.4/Land Management Committee and Mr. Surendra Nath Shukla learned counsel for respondent nos. 5 to 9.

2.The instant petition has been filed to quash the impugned orders dated 10.4.2023 passed by respondent no.2 & 30.10.2018 passed by respondent no.3 in the proceeding under Section 128 of U.P. Revenue Code, 2006.

3.Brief facts of the case are that allotment for agricultural purpose was made in favour of private respondents along with others on 20.3.1985. Another allotment was made on 12.1.1997 in favour of 127 persons out of which allotment of 84 persons were approved. Proceeding under Section 198(4) of U.P.Z.A. and L.R. Act was initiated and Additional Collector vide order dated 27.5.2006 cancelled the allotment of 3 allottees and maintained the allotment of other allottees. The order dated 27.5.2006 has attained finality. Petitioners initiated fresh proceeding under Section 128 of U.P. Revenue Code, 2006 for cancellation of allotment made on 20.3.1985/12.1.1997 which has been registered as Case No. 00829/2018 Computerized Case No. D201803240000829 before respondent no.3/ Collector Farukabad. The aforementioned case was decided by respondent no.3 vide order dated 30.10.2018 rejecting the petitioner's application for cancellation of lease granted in the year 1985/as well as 1997. Petitioners challenged the order dated 30.10.2018 by revision being Case No. 00148/2019 Computerized Case No.- C201903000000148 before Commissioner which was heard and dismissed by Additional Commissioner vide order dated 10.4.2023 hence this writ petition.

4. Learned counsel for the petitioners submitted that the lease was executed against the provisions contained under U.P.Z.A. & L.R. Act and rules framed there under. He further submitted that the lease holders were not entitled for the agricultural lease, as such, the lease executed in favour of private respondents along with others is to be cancelled. It is next submitted that the impugned orders passed rejecting the application filed by the petitioners' lease is wholly illegal and the order has been

illegally maintained in revision.

5. On the other hand, Mr. S.N. Shukla, learned counsel for respondent nos.5 to 9 submitted that the lease was executed in favour of respondent nos.5 to 9 along with others in the year 1985. He further submitted that the limitation has been provided under Section 198 (6) of U.P.Z.A. & L.R. Act for initiating proceeding for cancellation of the lease. He further submitted that under Section 128 (1-A) of U.P. Revenue Code, 2006, the limitation has been provided for filing application for cancellation of lease but in the instant matter the proceeding has been initiated in violation of the provisions contained under Section 198 (6) of U.P.Z.A. & L.R. Act/under Section 128 (1-A) of U.P. Revenue Code, 2006. He further submitted that earlier also the proceeding for cancellation was initiated in which the lease of certain lease holders was cancelled but the lease of other lease holders remained intact and that proceeding has attained finality. He next submitted that initiation of the fresh petition at the instance of the petitioners is abuse of process of law. He also submitted that both the Courts have rejected the proceeding initiated by the petitioners for cancellation of the lease executed in favour of private respondents in the year 1985 & 1997.

6. Mr. Abhinav Ojha, learned Standing Counsel and Mr. H.N. Singh, learned Counsel for the respondent- Gaon Sabha also supported the impugned orders passed in the proceeding for cancellation of lease.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that lease was executed in favour of private respondent in the year 1985 and 1997. There is also no dispute about the fact that earlier proceeding for cancellation was initiated in which lease of the private respondent nos.5 to 9 remained intact and that proceeding has attained finality. There is also no dispute about the fact that instant proceeding under Section 128 of U.P. Revenue Code, 2006 has been initiated in the year 2017 i.e. after about 32 years and 20 years from the date of execution of the lease which is barred by the provisions contained under Section 128 (1-A) of U.P. Revenue Code, 2006.

9. In order to appreciate the controversy involved in the matter, perusal of Section 198(6) of U.P.Z.A. and L.R. Act as well as Section 128(1A) of UP revenue Code 2006 will be relevant which are as under:-

"Section 198(6) of U.P.Z.A. and L.R. Act

(6) Every notice to show cause mentioned in sub-section (5) may be issued-

(a) in the case of an allotment of land made before November 10, 1980, (hereinafter referred to as the said date), before the expiry of a period of [seven years] from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, whichever ever be later].

"Section 128(1A) of UP Revenue Code, 2006

[(1-A) Under the provisions of sub section (1), an application may be moved in the case of an allotment or lease of land made before or after the commencement of this code, within five years from the date of such allotment or lease.]

10. The finding of fact recorded by Collector while passing the impugned order dated 30.10.2018 will be relevant for perusal which is as under:-

आदेश पत्रक
न्यायालय: जिलाधिकारी

मण्डल: कानपुर, जनपद फर्रुखाबाद, तहसील: फर्रुखाबाद

वाद संख्या:- 00829/2018

कंप्यूटरकृत वाद संख्या: D201803240000829

बादशाह आदि बनाम भू०प्र०स० आदि

अन्तर्गत धारा:- 128, अधिनियम:- उत्तर प्रदेश राजस्व संहिता - 2006

पत्रावली पेश हुई। वाद की पोषणीयता/ ग्राह्यता के बिन्दु पर वादी गण एवं विपक्षीगण के अधिवक्ता व गांवसभा की ओर से विद्वान अपर जिला शासकीय अधिवक्ता राजस्व को सुना गया। वादी गण का कथन है कि विपक्षीगण भूमिहीन कृषक न होने के कारण पट्टा पाने की पात्रता में नहीं आते थे। विपक्षी संख्या - 3 रामसेवक तत्कालीन उप प्रधान मुन्तूलाल का चचेरा भाई है। विपक्षी संख्या 5 व 6 आवंटन के समय नाबालिग थे। विपक्षी संख्या 7,8,9 मौजा मसेनी तहसील सदर के निवासी है। विपक्षीगण के विद्वान अधिवक्ता द्वारा तर्क प्रस्तुत किया गया कि प्रश्नगत भूमि आवंटन वर्ष 1985 व 97 का है, जिसके निरस्तीकरण के सम्बन्ध में पूर्व में एक वाद न्यायालय अपर कलेक्टर फर्रुखाबाद के आदेश दिनांक 27.05.2006 के द्वारा निर्णीत हो चुका है, जिसके अनुसार अन्य पट्टेदार पंचम, सरवन व श्रीमती रेखा के पट्टे निरस्त किये गये तथा शेष पट्टेदारों के सम्बन्ध में कार्यवाही समाप्त कर दी गयी। इस प्रकार एक ही प्रकरण में दोबारा कार्यवाही नहीं की जा सकती है। प्रश्नगत आवंटन काफी पुराने है, जिनके सम्बन्ध में यह कार्यवाही कालबाधित है। अपर जिला शासकीय अधिवक्ता द्वारा विपक्षीगण के अधिवक्ता के तर्कों से सहमति व्यक्त करते हुए कहा गया कि आवंटन वर्ष 1985 व 97 के है, जो कि क्रमशः 32 वर्ष व 20 वर्ष पुराने है और पूर्व में ही इसी आवंटन के सम्बन्ध में न्यायालय अपर कलेक्टर द्वारा वाद निर्णीत किया जा चुका है। उक्त आधारों पर वाद कालबाधित व पोषणीय न होने के कारण निरस्त किये जाने योग्य है।

पत्रावली पर उपलब्ध तहसीलदार सदर की जांच आख्या दिनांक 08.11.17 के अनुसार प्रश्नगत भूमि आवंटन वर्ष 1985 व 97 के है, जो कि क्रमशः 32 व 20 वर्ष पुराने है। विपक्षीगण द्वारा प्रस्तुत वाद संख्या 02/2000 – 01 सरकार बनाम उर्मिला आदि के वाद में न्यायालय अपर कलेक्टर, फर्रुखाबाद द्वारा पारित आदेश दिनांक 27.05.06 की प्रमाणित प्रति के अनुसार तीन आवंटियों के (जोकि प्रस्तुत वाद में पक्षकार नहीं है), पट्टे निरस्त किये गये तथा शेष विपक्षीगण के सम्बन्ध में पट्टा निरस्तीकरण की कार्यवाही समाप्त कर दी गयी। इस प्रकार इतने वर्ष पुराने कृषि भूमि आवंटन के सम्बन्ध में पुनः वाद दायर किया जाना विधि सम्मत नहीं है। अतः वाद कालबाधित व पोषणीय न होने के कारण निरस्त किये जाने योग्य है, जोकि ग्राह्यता के स्तर पर निरस्त किया जाता है। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर की जाये।

कलेक्टर,

फर्रुखाबाद।

30.10.18"

11. This Court in the case reported in **2018 (140) RD 1 (Rishi Pal & Others Vs. State of U.P. & Others)** has held that lease cannot be

cancelled if the cancellation proceeding has been initiated beyond the prescribed period of limitation. The relevant paragraphs of the judgment is as follows:

"7. Having heard the learned counsel for the parties, I am of the view that the orders dated 1.6.2011 and 23.3.2012 cannot be sustained and are to be quashed.

8. The pattas were executed in the year 1992. Under Sub-section (6) of Section 195 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the complaint which was filed in the year 2003-04 was barred by limitation by almost six years.

9. Further, I hold that since the question of limitation goes to the very root of the matter, even though it was not agitated before the courts below, it can definitely be raised here in this Court. Section 3 of the Indian Limitation Act would also be relevant. The same is being reproduced here as under:

"Section 3.- Bar of limitation - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purpose of this Act, -

(a) A suit is instituted, -

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted -

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter-claim, on the date on which the counter-claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court"

10. The question of limitation had to be therefore looked into by the Court even if the defendant /opposite party had not raised it.

11. Further, after the application which was filed by Hardas was dismissed for non prosecution then he alone could have filed the application for restoration. State was a party whose actions were being adjudicated upon in the complaint which was filed by Hardas. It could not therefore, have supported the restoration application of Hardas.

12. The writ petition is, therefore, allowed. The orders dated 1.6.2011 and 23.3.2012 are quashed.

13. It is made clear that this relief would be confined to the petitioners who had filed the instant writ petition."

12. Considering the finding of fact recorded by the Court as well as ratio of law laid down in ***Rishi Pal (Supra)***, no interference is required against the impugned orders as the cancellation proceeding initiated by petitioners is barred by limitation which can not be extended.

13. It is also material that repeated initiation of cancellation proceeding in respect to same lease is abuse of process of law.

14. The writ petition is ***dismissed accordingly.***

Order Date :- 26.10.2023

Rameez