

Court No. - 52

Case :- WRIT - C No. - 31427 of 2021

Petitioner :- Shiv Charan @ Pappu And Another

Respondent :- Additional Collector And 2 Others

Counsel for Petitioner :- Rajesh Dutta Pandey

Counsel for Respondent :- C.S.C.,Avinash Chandra Srivastava

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Rajesh Dutta Pandey, learned counsel for the petitioners, Shri Avinash Chandra Srivastava, learned counsel appearing for respondent no.3 and Shri Prabhakar Tripathi, learned standing counsel appearing for respondent nos. 1 and 2.

2. The case of the petitioner is that notice under Section 67(1) of U.P. Revenue Code, 2006 has been served upon them with an allegation that petitioners are having illegal possession over plot no.1013, 1011, 1012 which are adjacent to each other, situated at Village Devi Aatas, Tehsil and District Mathura and the total area from each and every plot number reflected to the tune of 216 sq. meter under the illegal possession of the petitioners.

3. After receiving notice the same has been replied in shape of objection preferred by petitioners through which it has been apprised that the petitioners have already been extended residential lease for plot no.1013 way back in the year 2010 itself and the petitioners are not having any possession over any other plot number except plot no.1013 only to the tune of 100 sq.meters pertaining to each of the petitioner. Respondent no.2 proceeded under Section 67 of U.P. Revenue Code, 2006 after having the objection preferred by the petitioners, while passing order dated 18.10.2019, the sole reliance has been given over the report submitted by concerned Lekhpal through which it has been submitted that petitioners are having possession over plot no.1013 area 92 sq.meter out of 0.772 hectare, 1011 area 8 sq.meter out of 0.037 hectare, plot no. 1012 area 16 sq.meter out of 0.049 hectare

and as such the total area which has been reflected as unauthorised occupant has been determined to the tune of 216 sq.meter.

4. Being aggrieved with the order dated 18.10.2019 petitioners preferred appeal before respondent no.1 but the same was also dismissed by way of justifying the order dated 18.10.2019 passed by respondent no.2. The vital ground for challenging the orders passed by respondent nos. 1 and 2 raised by learned counsel for the petitioners that both the revenue authorities failed to consider that the petitioners have already been extended residential lease over plot no.1013 for 100 sq.meter each, meaning thereby 200 sq.meters are already in possession of the petitioners for plot no.1013, determination as drawn by concerned revenue authorities which was submitted before respondent no.2 through which it has been determined that petitioners are in illegal possession over different plot numbers but no demarcation proceedings have ever been conducted by the revenue authorities wherein petitioners have been informed or the petitioners have ever participated.

5. Per contra, learned standing counsel vehemently opposed the prayers as made in the petition and submitted that the orders passed by respondent nos. 1 and 2 are strictly based upon the report submitted by the concerned revenue authorities and the same is only disputed by the petitioners without any substantial evidences.

6. Shri Avinash Chandra Srivastava, learned counsel appearing for Gaon Sabha informed that plot numbers mentioned during adjudication under Section 67 of U.P. Revenue Code, 2006 before respondent no.2 are now notified under town area after the order dated 31.12.2019 and as such the matter can now be re-agitated by the petitioners before Chief Executive Officer, Town Area Committee.

7. Learned counsel for the petitioners rebutted the stand taken by learned counsel for respondent no.3

on the ground that the proceedings under Section 67 have already been initiated before notification for the same land vide order dated 18.10.2019.

8. After having the rival submissions extended by the learned counsel for the parties one thing is crystal clear that determination as drawn by respondent nos. 2 and 1 is strictly on the basis of the report submitted by the concerned revenue authorities and not on the basis of any proceeding conducted under Section 24 of U.P. Revenue Code, 2006. Moreover, once the part and parcel of the plot no.1013 has already been extended in favour of the petitioners in the shape of residential lease, the allegation with regard to illegal encroachment can only be determined only after having the proper demarcation of the boundaries pertaining to the parcel of the plot no.1013 extended in shape of residential lease in favour of the petitioners and the adjoining plots thereto. On fair submission, learned standing counsel admitted that no proceedings for demarcation have ever been carried out by responsible revenue authorities and as such the same is not indicated in the order which impugned the present petition.

9. In view of the aforementioned facts and circumstances, without conducting demarcation proceeding the determination drawn by respondent no.2 is highly illegal and the adjudication made by respondent no.1 while adjudicating the appeal preferred by the petitioners through which the order dated 18.10.2019 has been held as justified, is also not sustainable.

10. In view of the aforementioned facts and circumstances of the case, order dated 18.10.2019 passed by respondent no.2 and 6.10.2021 passed by respondent no.1 are hereby set aside. Matter is remanded back to respondent no.2 for deciding afresh, if required, only after conducting demarcation proceedings with regard to the plots which have been reported as encroached by the petitioners. However, it is made clear that the above mentioned exercise shall be finalised only after affording due

opportunity of hearing to all concerned.

11. Writ petition stands **allowed** accordingly.

Order Date :- 29.11.2023

Rakesh