

Court No. - 52

Case :- WRIT - C No. - 31551 of 2021

Petitioner :- Ac Brothers Exports Pvt. Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kshitij Shailendra, Akanksha Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava, J.

1. Heard Ms. Akanksha Mishra, learned counsel for petitioner and Sri Raj Kumar Singh, learned Standing counsel appearing on behalf of respondents.

2. Present petition has been filed seeking following reliefs:

"i) issue a writ or direction or pass an order in the nature of certiorari quashing the impugned order dated 05.10.2021 passed by Sub-Divisional Officer, Tehsil Kanth, District Moradabad in Case No. RST/3681/2021 (T202113540603681) under Section 80 of U.P. Revenue Code, 2006 (A.C. Brothers Exports Pvt. Ltd. Vs. State) (Annexure No. 1 to the writ petition) as well as impugned order dated 29.10.2021 passed by Commissioner, Moradabad Division, Moradabad in Appeal No. 1871/2021 Computerized No.- C202113000001871 (under Section 210 of U.P. Revenue Code, 2006) (M/s AC Brothers Exports Pvt. Ltd. Vs. U.P. State) (Annexure No. 2 to the writ petition);"

3. It is the case of the petitioner that a declaration has been sought under Section 80 of U.P. Revenue code, 2006 vide order dated 02.09.2021 which has been passed in favour of the petitioner after detailed report submitted by the concerned Tehsildar, learned counsel for the petitioner submitted that the declaration made in favour of the petitioner was after consideration of the report and as such the entire procedure initiated by respondent no. 2 while declaring the plot no. 2378 area 0.290 hectare, plot no. 2379 area 0.403 hectare, plot no. 2380 area 0.635 hectare, plot no. 2383 area 1.266 hectare, plot no. 2384 area 0.471 hectare, plot no. 2427 area 1.222 hectare total 6 plots measuring 4.287 hectares as non agriculture in favour of the petitioner was justified in nature.

4. Being aggrieved with the order dated 02.09.2021, through panel counsel, respondent no. 1 preferred application on dated 04.10.2021 under Section 80(7) of U.P. Revenue Code, 2006 read with Section 151 of Code of Civil Procedure, 1908 for seeking cancellation of the order dated 02.09.2021.

5. Learned counsel for the petitioner submitted that, after receiving application dated 04.10.2021 preferred by respondent no. 1, the same has been entertained and decided *ex parte* by the respondent no. 2 vide order dated 05.10.2021 which rises cause of action in favour of the petitioner for filing revision under Section 210 of

U.P. Revenue Code, 2006 before the respondent no. 3 on several other grounds *inter alia* precisely on the ground that application under Section 80(7) of U.P. Revenue Code, 2006 is not at all maintainable for recalling the order dated 02.09.2021 and the entire proceedings whatsoever has been carried out by respondent no. 2 was an *ex parte* and the same has been decided in favour of respondent no. 1 without affording any opportunity of hearing in favour of the petitioner. While entertaining the revision preferred by the petitioner it has been observed by the respondent no. 3 that only the matter instituted by the petitioner under Section 80 of U.P. Revenue Code, 2006 has been restored and the same has not been till decided finally by the respondent no. 2 and as such the revision preferred by the petitioner is not maintainable since all the parties are at liberty to raise their contentions before the respondent no. 2.

6. Learned counsel for the petitioner submitted that the order dated 02.09.2021 passed in favour of the petitioner has already been restored vide order dated 05.10.2021 passed by respondent no. 2 and as such the same attained finality in pursuance to the application preferred by the petitioner under Section 80 of U.P. Revenue Code, 2006 and as such the observation made by respondent no. 3 regarding maintainability of the revision is illegal and the same is not sustainable in the eye of law.

7. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for the petitioner on the ground that application preferred on behalf of respondent no. 1 for seeking cancellation of the order dated 02.09.2021 under Section 80(7) of U.P. Revenue Code, 2006 but at the same time respondent no. 2 while cancelling his earlier order dated 02.09.2021 issued notices to the parties and fixed for further hearing and thereafter the revision has been filed which was also dismissed vide order dated 29.10.2021 and both the orders passed by respondent no. 2 and 3 has been put under challenge through the instant petition wherein the interim protection has been granted in favour of the petitioner vide order dated 02.12.2021, and as such no proceedings attained finality till today.

8. Learned Standing counsel further submitted that there is hardly any prejudice caused to the petitioner either by order dated 05.10.2021 or by order dated 02.09.2021 since the opportunity is available before the petitioner for submitting their contentions before the respondents no. 2 in pursuance to the order dated 05.10.2021.

9. After hearing the rival submissions extended by learned counsels for the parties and perusing the records appended along with the pleadings exchanged during pendency of the petition as well as provisions available, under Section 80 and 82 of U.P. Revenue Code, 2006, it is crystal clear that contentions as raised by learned counsel for petitioner with regard to maintainability of the application for seeking cancellation of the order dated 02.09.2021 under Section 80(7) of U.P. Revenue Code, 2006 was not maintainable and the proper remedy available before the

responding authorities is to proceed under Section 82 of U.P. Revenue Code, 2006 for cancellation of the declaration as made by respondent no. 2 is slightly misconceived. The information available in the petition as well as raised at the time of extending arguments on behalf of the petitioner, learned counsel for the petitioner referred to word "निरस्त" as recall whereas the literal english meaning of word "निरस्त" is cancel and the same has been sought by the responding authority through application preferred under Section 80(7) of U.P. Revenue Code, 2006 read with Section 151 of Code of Civil Procedure, 1908, whereupon the only adjudication as made by respondent no. 2 is for cancelling the order dated 02.09.2021 and fixed the matter for further hearing after issuing notices to all concerned.

10. Revision preferred by petitioner was also decided on same terms by way of recording the reasoning that the opportunity is still available to the petitioner before respondent no. 2 for raising all the grounds available for seeking declaration under Section 80 of U.P. Revenue Code, 2006 which is still pending to be finally adjudicated and the same has not been decided and as such the revision preferred by the petitioner was not maintainable. Although the order dated 05.10.2021 passed by respondent no. 2 by way of cancelling the order dated 02.09.2021 was virtually final in nature but at the same time once the matter has been posted for further hearing by way of issuing notices to all concerned, actually pending at the stage of deciding afresh by the same authority i.e. respondent no. 2. The ground taken up by learned counsel for petitioner for challenging the order dated 05.10.2021 being the *ex parte* is also not sustainable since the opportunity has been provided through order dated 05.10.2021 itself and posted the matter for further hearing.

11. In view of the aforementioned facts and circumstances, petitioner is at liberty to contest the matter under Section 80 of U.P. Revenue Code, 2006 before the respondent no. 2 wherein respondent no. 1 may also prefer all the grounds for seeking rejection of the application preferred by petitioner. Respondent no. 2 is hereby directed to finalise the entire proceedings in pursuance to the order dated 05.10.2021 as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

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

Order Date :- 11.12.2023

Shaswat