

Court No. - 52

Case :- WRIT - C No. - 34036 of 2017

Petitioner :- Ashok Kumar Singhal

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

Counsel for Petitioner :- Pankaj Agarwal

Counsel for Respondent :- C.S.C.,Amresh Singh,Rajnish Pandey

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Pankaj Agarwal, learned counsel for petitioner and Sri Rajesh Kumar Tiwari, learned Additional Chief Standing counsel appearing on behalf of respondent no. 1.

2. Although the notices have been issued and the steps were taken in respect of respondent no. 3 but the same has not been responded in shape of authorizing any counsel for appearing on behalf of respondent no. 3.

3. Present petition has been filed seeking following reliefs:

"i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.4.2017 passed by Additional Commissioner (Judicial), Bareilly in Appeal No. C-20171200486 (Annexure-9 to the instant petition) and the order dated 1.12.2016 passed by Additional Collector (Administration), Bareilly in Case no. 16/16 (Annexure-7 to the instant writ petition); and allow the application of the petitioner filed under Section 38 of the Act for correcting the revenue map as prayed therein which is also evident from Form CH-41 of 1366, 1396 and extract of Khatauni of 1420-1425 Fasli as well as revenue map of the Village of 1366 Fasli as well as 1396 Fasli."

4. Learned counsel for the petitioner submitted that after operation of the consolidation in the record which has been maintained by the revenue authorities in shape of revenue map, plot no. 384 has been recorded as pond and plot no. 385/405 pertains to petitioner along with one co-sharer who is respondent no. 3 in the present petition. Application under Section 38 of U.P. Revenue Code, 2006 has been preferred by the petitioner wherein objection has been filed by respondent no. 3. During pendency of the application preferred by the petitioner under Section 38 of U.P. Revenue Code, 2006, a report has been called from Assistant Collector, Sadar, District Bareilly, and the same was submitted through Naib Tehsildar, Rithora, Tehsil Sadar, District Bareilly wherein the stand taken up by the petitioner while filing application has been

confirmed and has been submitted that the error in revenue map is apparent which is liable to be rectified, report dated 12.04.2016 has been duly perused and taken into consideration while adjudication of the application which culminated into order dated 01.12.2016. Even after having the report submitted by the concerned revenue authority, the same has been ignored and application under Section 38 of U.P. Revenue Code, 2006 preferred by the petitioner has been dismissed by the respondent no. 1 being not maintainable by elaborating the grounds that the action of the petitioner seems to be taking possession over plot no. 384 and that too without consent of the co-sharer of plot no. 385/405.

5. Being aggrieved with the order dated 01.12.2016, petitioner preferred appeal before Divisional Commissioner, Bareilly Division, District Bareilly under Section 207 of U.P. Revenue Code, 2006 but no categorical finding has been given over the submission made in the memo of appeal preferred by the petitioner. On the contrary, the same has been also decided against the petitioner vide order dated 29.04.2017 which impugned the present petition.

6. Learned counsel for the petitioner raised his arguments while assailing both the orders passed by respondent no. 1 as well as Additional Commissioner, Bareilly, District Bareilly on the ground that the petitioner never intended to exceed the area over which he is having possession in respect of plot no. 385/405 measuring 0.09 hectare, rather only the change of the plot in respect of their number as shown in the revenue map which is apparently an error after operation of the consolidation as referred through report dated 12.04.2016 submitted by concerned Naib Tehsildar.

7. While deciding the application preferred by petitioner under Section 38 of U.P. Revenue Code, 2006 there is hardly any mention with regard to acceding the same and any adverse effect has been arising with regard to the adjacent plot numbers mentioned in the map, or with regard to change of the area of other plots if the numbers will be interchanged in respect of plot no. 384 and 385/405 as prayed by the petitioner. Whereas the entire adjudication has been made only on the apprehension drawn by the revenue authority that the petitioner is trying to take possession and deciding the title over plot no. 384 by losing the interest over plot no. 385/405 which is not supported with the report which has been taken into consideration but not given any effect while deciding the same which culminated into order dated 01.12.2016 and the same has been upheld vide order dated 29.04.2017 decided

by Additional Commissioner, Divisional Commissioner, Bareilly Division, District Bareilly.

8. In view of the aforementioned facts and circumstances, order dated 29.04.2017 and 1.12.2016 passed by Additional Commissioner, (Judicial), Bareilly and respondent no. 1 respectively are hereby set aside. Matter is remitted back to respondent no. 1 for deciding afresh after due consideration of the fresh report and by way of affording opportunity of hearing to all concerned. The above mentioned exercise shall be finalised within a period of six months from the date of production of certified copy of this order.

9. Writ petition stands ***allowed*** accordingly.

Order Date :- 30.11.2023

Shaswat