

Court No. - 51

Case :- WRIT - C No. - 32483 of 2023

Petitioner :- Vibhuti And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhagwan Dutt Pandey

Counsel for Respondent :- C.S.C.,Prakash Chandra Tripathi,Sudhir Bharti

Hon'ble Chandra Kumar Rai,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned Counsel for the petitioners, Mr. Prakash Chandra Tripathi, Counsel for respondent no.4, Mr. Mridul Kumar, learned Standing Counsel for the State-respondents and Mr. Sudhir Bharti for respondent no.3, Land Management Committee.
3. The instant petition has been filed challenging the orders dated 30.8.2023 and 17.6.2009 passed by Sub Divisional Officer in the proceeding under Sections 176 or 116 of the U.P.Z.A. and L.R. Act.
4. Counsel for the petitioners submitted that partition proceeding was conducted in ex-parte manner. He further submitted that restoration application filed by the petitioners has been rejected by the Sub-Divisional Officer hence this writ petition without availing the remedy of appeal or revision as matter has been decided in ex-parte manner even the kurra prepared by Lekhpal has been confirmed by the Sub-Divisional Officer in violation of principles of natural justice. He further placed the copy of the proceeding in order to demonstrate that opportunity has not been afforded to the petitioners. He further submitted that in the kurra submitted by the Lekhpal, the right of the petitioners has been affected and the petitioners have been given share in the backside and the contesting respondents have been adjusted in the front side adjacent to the road. He submitted that impugned order be set aside and the petitioners should be given opportunity to file objection against the kurra prepared by the Lekhpal.
5. On the other hand, learned Counsel appearing for respondent no.4 submitted that proper opportunity was afforded to the parties and the order has been passed by the Sub Divisional Officer in the suit for partition filed in the year 2008-2009. He further submitted that kurra submitted by the Lekhpal was confirmed by the Court vide order dated 17.6.2009 after issuing summon to the parties. He further submitted that final decree has been prepared and the possession has been delivered to the parties, as

such, writ petition against the order of the Sub Divisional Officer dated 17.6.2009 and 30.8.2023 is not maintainable rather the petitioners should avail remedy as provided under the U.P.Z.A. and L.R. Act or the U.P. Revenue Code, 2006 by way of appeal before appropriate Court.

6. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

7. There is no dispute about the fact that suit for partition has been decreed by the Trial Court and even the final decree has been prepared in the suit proceeding.

8. In order to appreciate the controversy, the perusal of the order dated 30.8.2023 will be relevant which is as under:-

" आदेशक पत्रक

न्यायालय: उपजिलाधिकारी

मण्डल: गोरखपुर, जनपद: महाराजगंज, तहसील: फरेन्दा

वाद संख्या:- **RST/47/2009-2010**

कंप्यूटरीकृत वाद संख्या:- **T201605470403299**

सुदामा बनाम विभूती आदि

अन्तर्गत धारा:-**176**, अधिनियम:- उ०प्र० ज०वि०भू०व्य० अधिनियम, **1950**

"मैंने उभयपक्षों के विद्वान अधिवक्तागण की तर्कपूर्ण बहस को सुना एवं पत्रावली का अवलोकन किया। दिनांक **08.08.2023** को उभय पक्षों की उपस्थिति में स्वयं क्षेत्रीय लेखपाल के साथ आपत्तिकर्ता तथा रेस्टोरेशनकर्ता को सना तथा स्थलीय निरीक्षण किया। प्रस्तुत वाद में पूर्वाधिकारी द्वारा प्रारम्भिक आदेश दिनांक **18.03.2009** को पारित किया गया, जिसके अनुपालन में क्षेत्रीय लेखपाल द्वारा कुर्राफाट व नक्शा रंगभेदी दिनांक **20.04.2009** को तैयार कर प्रस्तुत किया गया जिसकी पुष्टि पूर्व पारित आदेश दिनांक **17.06.2009** द्वारा कर दिया गया जिसके विरुद्ध विभूति व सभूति द्वारा कायमी प्रार्थना पत्र दिनांक **04.08.2012/09.08.2012** को तीन साल बाद प्रस्तुत किया गया। पत्रावली में पुनः मौके की रिपोर्ट मगायी गयी। राजस्व निरीक्षक द्वारा दिनांक **21.02.2023** को अपनी आख्या एवं नक्शा रंगभेदी दाखिल किया गया राजस्व निरीक्षक की आख्या के अनुसार सभी पक्ष अपने-अपने अंश व हिस्से की भूमि पर मकान निर्माण कर चुके हैं। कायमी प्रार्थना पत्र दिनांक **09.08.2012** तथा आपत्ति दिनांक **18.03.2023/26.07.2023** की बिन्दुवार उभयपक्षों की सुनवाई व बहस तथा क्षेत्रीय लेखपाल के फाट दिनांक **20.04.2009** तथा राजस्व निरीक्षक की आख्या दिनांक **21.02.2023** उभयपक्षों की उपस्थिति में मौके पर स्थलीय निरीक्षण दिनांक **08.08.2023** के उपरान्त इस मत पर पहुंचा हूँ कि फाट दिनांक **20.04.2009** के अनुसार सभी पक्ष काबिज हैं। अतः यह कहना है कि उन्हें इस फाट की जानकारी नहीं थी। सतय साबित नहीं हो रहा है। अतः आदेश दिनांक **17.06.2009** को निरस्त कर पुनः सुनवाई करने का कोई युक्तियुक्त आधार नहीं है। अतः कायमी प्रार्थना पत्र विभूति व सभूति दिनांक **04.08.2012/09.08.2012** पोषणीय नहीं है, जो निरस्त किये जाने योग्य है।

आदेश

उपर्युक्त विवेचना के आधार पर कायमी प्रार्थना पत्र विभूति व सभूति पुत्रगण देवीदीन दिनांक

04.08.2012/09.08.2012 निरस्त किया जाता है। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।

(रमेश कुमार)

उप जिलाधिकारी

फरेन्दा -महराजगंज। "

9. Considering the findings of fact recorded by Sub Divisional Officer while rejecting the restoration application filed by petitioners, there is no scope of interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

10. It is also material that kurra has been confirmed and final decree has been prepared in the suit for partition suit in the year 2009, as such, the writ petition against the order of Sub Divisional Officer rejecting the restoration application cannot be entertained at all.

11. Writ petition is accordingly **dismissed** with liberty to petitioners to initiate proper proceeding as provided under the Act/ Code and Rules framed thereunder.

Order Date :- 12.10.2023

Vandana Y.