

Court No. - 51

Case :- WRIT - C No. - 36080 of 2023

Petitioner :- Brijendra Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Mahendra Kumar Yadav, Vinod Kumar Yadav

Counsel for Respondent :- C.S.C., Hari Narayan Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Mahendra Kumar Yadav, learned counsel for the petitioner, Mr. S.P. Singh Bishen, learned Additional Chief Standing Counsel for the State-respondents and Mr. Hari Narayan Singh for the respondent no.6-Gaon Sabha.

2. The instant petition has been filed against the order dated 24.9.2019, passed by respondent no.2 u/s 333 of U.P.Z.A. & L.R. Act as well as the order dated 29.4.2015, passed by respondent no.3 u/s 198 (4) of U.P.Z.A. & L.R. Act.

3. In the petition, it is mentioned that plot no.1005 area 0.21 decimal, plot no.1112 area 0.29 decimal and plot no.1113 area 0.10 decimal (old plot no.956) was recorded as *banzar* in the revenue records. It is further mentioned that allotment for agricultural purpose was made in favour of respondent no.5 in the year 1988-89. It is further mentioned that petitioner initiated a proceeding for cancellation of lease executed in favour of respondent no.5 in the year 2010. It is further mentioned that the proceeding was registered as Case No.20 of 2015. Respondent no.3/District Magistrate/Collector, Kannauj, vide order dated 29.4.2015, rejected the application filed by the petitioner. Petitioner challenged the order dated 29.4.2015 through revision u/s 333 of U.P.Z.A. & L.R. Act, which was dismissed, vide order dated 24.9.2019, hence this petition on behalf of the petitioner.

4. Stamp reporter has reported latches of 1362 days in filing the petition, which has been explained in paragraph nos.22 to 28 of the writ petition.

5. In the writ petition, ground has been taken that allotment has been made in an arbitrary manner as such the lease executed in favour of respondent no.5 is liable to be cancelled. It is further mentioned that respondent no.5 is not eligible for the allotment as such the lease executed in favour of respondent no.5 cannot be

maintained in view of the provisions contained under U.P.Z.A. & L.R. Act and the Rules framed thereunder.

6. Mr. S.P. Singh Bishen, learned Additional Chief Standing Counsel for the State and Mr. Hari Narayan Singh for the respondent no.6-Gaon Sabha submitted that proceeding for cancellation initiated by petitioner is barred by limitation as prescribed u/s 198 (6) of U.P.Z.A. & L.R. Act and u/s 128 (1-A) of the U.P. Revenue Code 2006. They further submitted that both the courts have recorded findings that proceeding is highly time barred as such the application for cancellation of lease as well as revision filed by the petitioner has been dismissed, which requires no interference by this Court.

7. I have considered the arguments advanced by learned counsel for the parties and perused the record.

8. There is no dispute about the fact that plot in dispute was allotted to respondent no.5 for agricultural purpose in the year 1988-89 and the proceedings for cancellation have been initiated in the year 2010 as pleaded in the writ petition. There is also no dispute about the fact that both the courts have rejected the claim of the petitioner on the ground of violation of mandatory condition for initiating proceeding for cancellation of lease as provided under the Act/Code.

9. In order to appreciate the controversy, perusal of Sections 198 (6) of U.P.Z.A. & L.R. Act and Sections 128 (1-A) of the U.P. Revenue Code 2006 will be relevant, which are as under :-

" U.P.Z.A. & L.R. Act, 1950:-

Section 198 (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, which ever be later.

U.P. Revenue Code 2006:-

"Section 128 (1-A) provides that any application under sub-section (1) may be moved in case of allotment of land made before the commencement of this Code, within 5 years from the date of such commencement and in case

of allotment of land made on or after..."

10. The perusal of the finding recorded by the Collector, Kannauj while passing the order dated 29.4.2015, will also be relevant, which is as under :-

"पक्षगण के विद्वान अधिवक्तागण के तर्कों को सुना एवं पत्रावली पर उपलब्ध समस्त तथ्यों/साक्ष्यों को भली-भाँति अनुशीलन किया गया। पत्रावली में शामिल छाया प्रति सी.एच.-41 के अवलोकन यह स्पष्ट है कि विवादित आराजी आवंटन के समय बंजर दर्ज थी। पट्टा निरस्तीकरण का वाद आवंटन के लगभग 56 वर्ष बाद प्रस्तुत किया गया है, देरी का भी कोई कारण नहीं दिया गया है। विपक्षी वर्तमान समय में विवादित आराजी पर संक्रमणीय भूमिधर के रूप में दर्ज है। इसके अतिरिक्त प्रतिवादी के विद्वान अधिवक्ता द्वारा दाखिल विभिन्न न्यायिक व्यवस्थाओं के अवलोकन से यह पूर्णरूपेण स्पष्ट है कि पट्टा निरस्तीकरण हेतु मियांद 07 वर्ष है, किन्तु वादी ने यह वाद लगभग 56 वर्ष बाद दायर किया गया है, जो कि मियांद के बाहर होने के कारण पोषणीय नहीं है। इसके अतिरिक्त वादी यह सिद्ध नहीं कर सका है कि वह आवंटन से किस प्रकार क्षुब्ध व्यक्ति (*Aggrieve Person*) है। वर्तमान परिस्थितियों में दावा कालबाधित (*Beyond Limitation*) होने एवं वादी आवंटन से क्षुब्ध व्यक्ति (*Aggrieved Person*) न होने के कारण वादी द्वारा प्रस्तुत वाद अ० धारा-198(4) ज०वि०अ० ग्राह्यता स्तर पर स्वीकार किये जाने योग्य नहीं पाया जाता है तथा निरस्त किया जाना न्यायोचित एवं विधिक प्रतीत होता है।

आदेश

उपरोक्त विवेचना के आधार पर वादी श्री बृजेन्द्र सिंह पुत्र बावूराम, नि० ग्राम नगला मधई मौजा बिरौली परगना तालग्राम, तहसील छिबरामऊ, जनपद कन्नौज द्वारा योजित पट्टा निरस्तीकरण का वाद दिनांकित 6.3.2009 बलहीन होने के कारण निरस्त किया जाता है। आदेश की प्रति उप जिलाधिकारी/तहसीलदार छिबरामऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित की जाये। बाद आवश्यक कार्यवाही पत्रावली संचित अभिलेखागार की जाये।

(अनुज कुमार झा)

कलेक्टर कन्नौज।"

11. The perusal of the finding of fact recorded by the Collector Kannauj reveals that cancellation proceeding is highly time barred as such the same cannot be entertained in view of the provisions contained under the Act/Code.

12. This Court in the case of ***Rishipal and others vs. State of U.P. and others*** reported in **2018 (140) RD 1** has held that application for cancellation of lease cannot be entertained after

prescribed period of limitation as provided under the Act/Code and rule framed thereunder.

13. Considering the entire facts and circumstances of the case, no interference is required against the impugned Judgement.

14. Writ petition is **dismissed**.

Order Date :- 16.11.2023 m.a.