

Court No. - 52

Case :- WRIT - C No. - 32755 of 2023

Petitioner :- Ramsewak Chaubey And Another

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Sanjay Kumar Singh

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Sanjay Kumar Singh, learned counsel for petitioner and learned Standing counsel for State respondents.

2. Present petition has been filed seeking a direction in nature of certiorari to quash the order dated 23.05.2017 passed by Deputy Collector (Maal) Varansi in Case no. 167/10/13 of 2016-17 (Ramu vs. State) u/s 41 of Land Revenue Act, Mauja Chandpur, Pargana Shivpur, Tehsil and District Varanasi as well as order dated 13.10.2021 passed by Sub Divisional Magistrate (Revenue), Varanasi Division, Varanasi in case no. RST/00002/2021 (Ramsewak Chaubey and others vs. Ramchander and others) u/s 24 of U.P. Revenue Code and orders dated 19.04.2023 passed by Additional Commissioner (administration) Varanasi Division, Varansi in Case no. 1961 of 2021 (Computer case no. C202114000001961 as well as case no. 1968 of 2021 (computer case no. C202114000001968) (Ramsewak Chaubey and others vs. Ramchander and others) u/s 219 of U.P.Z.A & L.R. Act, 1901.

3. It is the case of petitioners that father of private respondents namely Ramu filed a suit no. 119 of 2007-08 under Section 41 of Land Revenue Act for demarcation of plot no. 432/8 area 0.66 hectare situated at Mauja Chandpur, Tehsil Sadar, District Varanasi, without making petitioner and gaon sabha a necessary parties. In the said proceedings, the concerned Lekhpal of village Chandpur prepared a report dated 30.7.2007 which shows that due to minjumla number demarcation of disputed plot is impossible but on consent of the every khatedar whole area may be demarcated. The concerned revenue authorities submitted demarcation report along with filed book on dated 08.08.2008 and 04.05.2008 without fixing boundary of village Chandpur and Udaypur in absence village pradhan of both the village, land owner of the land situated along with disputed land and without service of notice upon concerned persons.

4. Petitioner filed objection on dated 05.03.2009 in the said proceedings since 0.20 hectare area of petitioner's araji no. 32 belonging to the village Udaypur was affected by the erroneous demarcation. On dated 28.11.2011, original suit of the respondents was dismissed in default and after lapse of one year plaintiff of suit Ramu filed restoration application which was allowed without giving any notice to petitioner but the suit was again dismissed vide order dated 23.5.2015. After the death of Ramu his heirs i.e. respondent no. 7 to 9 filed restoration application on dated 04.11.2015 against the order dated 23.05.2015 and the suit was restored, order dated 23.05.2015 was set aside and next date for hearing in the proceeding was fixed on 23.05.2017 without giving any notice to the petitioners. The Deputy Collector, Maal, District Varanasi, without giving any opportunity of hearing to the petitioner, passed order dated 23.5.2017 approving the erroneous and old demarcation report along with field book dated 08.08.2008 and 04.05.2008 overlooking the objection filed by the petitioners on dated 05.03.2009.

5. On dated 26.8.2018, when halka lekhpal came on the spot for compliance of ex party order dated 23.05.2017 then petitioners came to know about the aforesaid ex party order and he filed his objection on dated 28.06.2018 which was rejected vide order dated 31.10.2021. Being aggrieved with the order dated 31.10.2021 and 23.05.2017, petitioner filed revision before respondent no. 2 who without considering the ground taken in the revision dismissed the revision vide order dated 19.4.2023.

6. Learned counsel for petitioner challenged the impugned orders on the ground that the respondents authorities while passing the order impugned failed to consider the fact that at the time of demarcation only the authorities of village Chandapur were present and the respondent-plaintiff also had not made the authorities of village Udaipur as a party in the demarcation proceedings although the plot in question belongs to other village.

7. Learned Standing counsel although opposed the prayer as made through the instant petition but could not dispute the facts mentioned in the petition.

8. After hearing the rival submissions extended by both the parties and perusing the record, it is crystal clear that the entire grounds as mentioned in the memo of revision, which discloses with regard to array of necessary party, property in question belongs to other village and the proceedings has been culminated without any intimation or notice to the petitioner has not been dealt with while passing the order dated 19.04.2023.

9. In view of the aforementioned facts and circumstances, order dated 19.04.2023 is hereby set aside. Matter is remitted back to respondent no. 2 for deciding afresh after affording due opportunity of hearing to all the parties within a period of eight months from the date of production of certified copy of this order.

10. Writ petition stands ***allowed*** accordingly.

Order Date :- 12.10.2023

Shaswat