

Court No. - 52

Case :- WRIT - C No. - 35233 of 2023

Petitioner :- Ram Dayal And 3 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashok Gupta, Akash Kishan

Counsel for Respondent :- C.S.C., Achal Singh

Hon'ble Saurabh Srivastava, J.

1. Heard Sri C.S. Agnihotri holding brief of Sri Akash Kishan, learned counsel for petitioner and learned Standing counsel for State respondents and Sri Achal Singh, learned counsel for respondent no. 5.

2. Present petition has been filed seeking following reliefs:

"i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 17.04.2023 passed by respondent no. 3 in Case no. 1/2023 under Section 67(5) of U.P. Revenue Code, 2006 and order dated 31.10.2022 passed by the respondent no. 4 in case no. 834/2018 under Section 67 of U.P. Revenue Code, 2006."

3. It is the case of petitioner that plot no. 885 (old no. 911M) area 0.113 hectare, situated at village Kashai, District Chitrakoot, recorded as khalihan and abadi was purchased by the father of the petitioners namely Ram Khelawan from one Ram Bhawan in the year 1984-85 and since then petitioners are residing over the said plot. During consolidation proceedings only 0.28 ares area of plot no. 885 was reserved as khalihan.

4. On the basis of report dated 16.02.2018, submitted by Chairman/Secretary, Land Management Committee, village Kashai, Tehsil Karwi, District Chitrakoot (respondent no. 5), the Tehsildar (respondent no. 4) issued show cause notice (R.C form-20) dated 17.03.2018 and 10.04.2018 against petitioners for vacating the land and asking them to deposit Rs. 50,85,000/- as damages, without making any spot inspection and demarcation.

5. Petitioners filed objection to the notice dated 17.03.2018, before respondent no. 4, explaining all the facts. Petitioner was having no knowledge about any date for the hearing of the proceedings initiated against him under Section 67 of U.P. Revenue Code, 2006 and respondent no. 4 has passed an ex party order on dated 30.09.2019, against petitioners for eviction, imposing Rs.12,63,750/- as damages.

6. Being aggrieved with the order dated 30.09.2019, petitioner filed a restoration application which was allowed and petitioners were granted liberty to adduce evidence and petitioners did so but without considering the evidence and record, respondent no. 4 passed another order dated 31.10.2022 while amending the order

dated 30.09.2019, by virtue of which the amount of damages has been enhanced to the tune of Rs. 38,13,759/-.

7. Being aggrieved with the order dated 31.10.2022, petitioners filed an appeal under Section 67(5) of U.P. Revenue Code, 2006 before the District Magistrate, Chitrakoot (respondent no. 2) which was also dismissed vide impugned order dated 17.04.2023 by respondent no. 3 without considering the record and evidence and damages has been reduced to tune of Rs. 2,54,000/-.

8. Learned counsel for petitioners challenged the impugned orders on the ground that respondent no. 3 and 4 while passing the impugned orders, ignored the fact that respondent no. 5 in its report dated 16.02.2018, did not mention any demarcation or measurement that should have been compulsorily done but instead only boundaries of land in questions have been mentioned. Plot no. 911 is a big plot and after consolidation proceedings, the said plot has been converted into plot no. 881, 882, 884 & 885 and a total area of 28 Ares have been reserved for Khalihan in the consolidation proceedings which is at plot no. 885, moreover, the house of the petitioner do not fall within the ambit of the Khalihan that has been reserved in plot no. 885.

9. Learned Standing counsel vehemently opposed the prayer made by learned counsel for petitioner and stated that the impugned orders have been passed on merits and they do not contain any infirmity but he could not dispute the facts mentioned in the petition.

10. After hearing the rival submissions extended by both the learned counsels for the parties and perusing the record, it is crystal clear that respondent no. 3 while passing the impugned order dated 17.04.2023 failed to consider the vital aspect which has been highlighted through the revenue records that the total area of plot no. 885 is 0.113 hectare which comprised khalihan as well as abadi but at the same time under CH form 41 and 45 it has been specifically recorded that plot no. 885 is having area of 0.28 hectare pertains to khalihan, whereas proceeding which has been culminated into order, which impugned the present petition is determining the area of 0.113 hectare which is directly and adversely affecting the possession of the petitioner and determining the petitioner as an encroacher over the property pertains to public utility which is evident from the perusal of the record that the determining and decisive revenue authorities have already exceeded the area pertains to khalihan and the same has not been taken into consideration while adjudicating the appeal preferred by the petitioner before respondent no. 2.

11. In view of the aforementioned facts and circumstances, order dated 17.04.2023 passed by respondent no. 3 is hereby set aside. Matter is remitted back to the respondent no. 3 for deciding afresh after due consideration of the vital aspect which has been highlighted through the revenue records that the total area of plot no. 885 is 0.113 hectare which comprised khalihan as well as abadi but at the same time under CH form 41 and 45 it has been specifically recorded that plot no. 885 is

having area of 0.28 hectare pertains to khalihan.

12. Writ petition stands ***partly allowed***.

Order Date :- 18.10.2023

Shaswat