

Court No. - 52

Case :- WRIT - C No. - 36260 of 2023

Petitioner :- Diwakar And 2 Others

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

Counsel for Petitioner :- Yashwant Singh

Counsel for Respondent :- C.S.C.,Rameshwar Prasad
Shukla,Vijay Bahadur Yadav

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Yashwant Singh, learned counsel for petitioners and Sri Dhananjay Singh, learned Standing Counsel for the State-respondent nos.1 to 3, Sri Rameshwar Prasad Shukla, learned counsel for respondent no.6 i.e. Gram Sabha as well as Sri Vijay Bahadur Yadav, learned counsel for respondent nos.4 and 5.

2. Present petition has been preferred for seeking quashing of the order dated 30.08.2023 passed by respondent no.2 i.e. Commissioner, Azamgarh Division, Azamgarh and order dated 03.02.2023 passed by respondent no.3 i.e. Sub Divisional Magistrate Budhanpur, District Azamgarh and further not to make any pathway in the Western side of gata no.295 pertains to petitioners.

3. It is the case of petitioners that grandfather of petitioners, namely, Bhullar purchased gata no.295 area 149 kadi from one Basdeo and gata no.295 area 149 kadi from one Vishwanath through registered sale deeds and in pursuance of the same, name of petitioners recorded in fasli year 1425-1430. Father of petitioners moved an application under Section 24 of U.P. Revenue Code, 2006 for demarcation of gata no.295 pertains to petitioners. When no action was taken by respondent no.3 over the said application, father of petitioner approached this Court by way of filing Writ C No.34754 of 2021 and the same was disposed of vide order dated 21.01.2022 directing the respondent no.3 to demarcate the land pertains to petitioners within four months. When the said order of Writ Court was not complied with within time, father of petitioner approached this Court by way of filing Contempt Petition No.6850 of 2022 and the same was disposed of vide order dated 17.11.2022 directing the responding authority to comply with the order dated 21.01.2022 within three months.

4. Learned counsel for petitioners submitted that being annoyed with the order dated 17.11.2022, respondent no.3 rejected Case No.2070 of 2022, under Section 24 of U.P. Revenue Code, 2006 preferred by father of petitioner vide order dated 03.02.2023, being aggrieved with the same, petitioners preferred Appeal No.C202315000000256, under Section 24(4) of U.P. Revenue Code, 2006 before respondent no.2 and the same was also dismissed vide order dated 30.08.2023 which impugned the present petition.

5. Learned counsel for petitioners argued that there is no pathway in the revenue record over gata no.295, the wrong findings recorded by both the courts which were based on only the report submitted by revenue authorities, may not be sustainable in the eye of law.

6. Sri Dhananjay Singh, learned Standing Counsel for the State-respondent nos.1 to 3, Sri Rameshwar Prasad Shukla, learned counsel for respondent no.6 i.e. Gram Sabha and Sri Vijay Bahadur Yadav, learned counsel for respondent nos.4 and 5 vehemently opposed the prayer as made in the petition on the ground that it has been crystal clearly mentioned in the reports submitted by concerned revenue authorities that land in dispute is situated between the borders of two village and people are living both sides of the disputed land and one case regarding gata no.294 which is adjacent to gata no.295, is pending between civil court and as such, demarcation cannot be possible.

7. Argument as raised by learned counsel for respondents seems to be forceful.

8. Learned counsel for petitioners has not controverted the reports submitted by concerned revenue authorities anywhere, wherein it has also been mentioned that one old pathway is situated over there and as such, he failed to show the finding recorded by both the courts concerned to be illegal in any manner.

9. In view thereof, this petition being devoid of merit, is hereby **dismissed**.

Order Date :- 6.11.2023

Vivek Kr.