

Court No. - 52

Case :- WRIT - C No. - 36739 of 2023

Petitioner :- Asharam

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

Counsel for Petitioner :- Ramesh Chandra Tiwari, Diwakar Prasad Tiwari

Counsel for Respondent :- C.S.C, Arun Kumar Pandey

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Ramesh Chandra Tiwari, learned counsel for petitioner and Sri Vinod Kumar Rai, learned Standing Counsel for State-respondent nos.1 to 4 and Sri Arun Kumar Pandey, learned counsel for respondent no.5 i.e. Gram Sabha.

2. The present petition has been filed for seeking quashing of the order dated 13.02.2023 passed by Commissioner Moradabad Division, Moradabad i.e. respondent no.2 and orders dated 26.09.2022 as well as 13.09.2011 passed by Sub Divisional Magistrate, Chandausi i.e. respondent no.4.

3. It is the case of petitioner that lease of plot nos.176, 309, 334 and 552, which were recorded as fallow land (reserved for silviculture), were granted to the petitioner along with eight other persons for the purposes of plantation vide approval order dated 16.09.2007 by respondent no.4 and in pursuance of the conditions of lease, petitioner planted many trees over the said plots. On the basis of complaint/report of the concerned Lekhpal, proceedings under Section 198(4) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the 'Act, 1950') were initiated against the petitioner and other allottees, whereupon a report was called and in pursuance of the said report submitted by the Tehsildar concerned, respondent no.4 vide order dated 13.09.2011, cancelled the lease granted in favour of the petitioner and other allottees without serving notice and without providing any opportunity of hearing.

4. After cancellation of lease dated 16.09.2007, Land Management Committee passed resolution on 04.08.2012 for agriculture lease over the said plots in favour of other persons and the same was also approved by the respondent no.4 on 08.08.2012. Being aggrieved with the same, petitioner along with some other persons

preferred case under Section 198(4) of Act, 1950 before the Collector, Sambhal and vide order dated 24.09.2015 agriculture lease approved by respondent no.4 on dated 04.08.2012 in favour of one Ram Singh, was cancelled. Thereafter petitioner preferred a restoration application for recalling the ex-parte order dated 13.09.2011 and during pendency of the said restoration application, petitioner preferred an application with prayer to call a fresh report with regard to land in dispute and in pursuance of the same, fresh report was called wherein it was mentioned that several trees were planted over gata no.176 and petitioner was in possession of the same. Several reports were also called upon over applications preferred by other persons and the said reports were also in favour of petitioner, but without considering the material evidence, respondent no.4 vide order dated 26.09.2022 rejected the restoration application preferred by petitioner. Being aggrieved with the order dated 26.09.2022, petitioner preferred revision before respondent no.2 and the same was also dismissed vide order dated 13.02.2023 which impugned the present petition.

5. Learned counsel for petitioner submitted that petitioner has never breached the terms and conditions of the lease granted in his favour for the purposes of plantation, he planted several trees over the land in dispute and the report which was called, also in favour of petitioner but without considering the same, lease granted in favour of petitioner was cancelled by respondent no.4 vide order dated 13.09.2011. Learned counsel for petitioner further submitted that while preferring the revision, stand taken up by petitioner that in pursuance of Section 198(4) of U.P. Z.A. and L.R. Act, 1950, respondent no.4 i.e. Sub Division Magistrate is not competent enough to cancel the lease granted in favour of petitioner, it is only the Collector who can cancel the same but the said ground has not been taken into consideration by respondent no.2 while dismissing the revision vide order dated 13.02.2023 and as such, the same may be liable to be quashed.

6. Sri Vinod Kumar Rai, learned Standing Counsel for State-respondent nos.1 to 4 and Sri Arun Kumar Pandey, learned counsel for respondent no.5 i.e. Gram Sabha vehemently opposed the prayer as made in petition but could not dispute the fact that it is the Collector who can cancel the lease granted in favour of petitioner and not the Sub Divisional Magistrate.

7. By bare perusal of report which was submitted by responsible revenue authority, wherein it was clearly observed that petitioner has not breached the terms and conditions of the lease granted in his favour for the purposes of plantation and the same should be

extended in his favour but the said report has not been considered by responding authorities while cancelling the lease. Moreso, the stand taken up by petitioner while preferring revision that in pursuance of Section 198(4) of U.P. Z.A. and L.R. Act, 1950, respondent no.4 i.e. Sub Division Magistrate is empowered to cancel the lease granted in favour of petitioner, it is only the Collector who can cancel the same but the said ground has not been taken into consideration by respondent no.2 while dismissing the revision vide order dated 13.02.2023 and as such, the same is liable to be quashed.

8. In view of the aforesaid facts and circumstances, order dated 13.02.2023 passed by Commissioner Moradabad Division, Moradabad i.e. respondent no.2 is quashed, matter is hereby remitted back to respondent no.2 for deciding afresh after affording proper opportunity of hearing to all concerned as expeditiously as possible, preferably within a period of six months from the date of production of a certified copy of this order before him.

9. Accordingly, the present petition is **partly allowed**.

Order Date :- 30.10.2023

Vivek Kr.