

Court No. - 52

Case :- WRIT - C No. - 35074 of 2023

Petitioner :- Shrawan Kumar Singh And 2 Others

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

Counsel for Petitioner :- Rahul Sahai

Counsel for Respondent :- CSC, Sher Bahadur Singh

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Saumitra Anand, Advocate holding brief of Sri Rahul Sahai, learned counsel for petitioners and Sri Vinod Kumar Rai, learned Standing counsel appearing for respondent nos. 1 to 4 and Sri Sher Bahadur 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 for quashing the impugned order dated 30.6.2023 passed by the respondent no. 2 in Case no. 486/2023 (computerized case no.C202312000000486 (Shrawan Kumar Singh & ors, Vs. State of U.P.) and order dated 28.3.2023 passed by the Sub Divisional Magistrate, Sadar, Budaun in Case No.4372, Computerized Case no. T202312070104372 (Amarpla Singh Vs. State of U.P.) (Annexure 1 and 2 of the writ petition) respectively."

3. It is the case of the petitioner that 1/4th share of plot no. 429 area 0.427 hectare has already been declared as non-agricultural vide order dated 09.12.2011 and certain construction has been raised by petitioner over the same portion of plot no.429. After the gap of 12 years proceedings under Section 80 read with Rule 86 to 88 of U.P. Revenue Code Rules, 2016 has been initiated under the provisions of Section 80(2) of U.P. Revenue Code, 2006, wherein the notices have been issued to the petitioner and a report has been sought by concerned Naib Tehsildar which culminated into order dated 28.03.2023 passed by respondent no. 3.

4. Learned counsel for the petitioner raised his argument for assailing the order which impugned the present petition on several other grounds inter alia precisely on the ground that the order dated 28.03.2023 is in shape of recalling the order dated 09.12.2011 through which 1/4th of plot no. 429 has been declared

as non-agriculture and the same is not permissible in the eye of law.

5. It is further submitted by learned counsel for petitioner that no proceedings as defined under Rule 88 of U.P. Revenue Code Rules, 2016 has ever been adopted before determining that only 42 sq. meter of 1/4th of plot no. 429 has been utilised for non-agricultural purposes and the averment made with regard to the order dated 09.12.2011 that the same has been obtained by the petitioner with collusion of concerned Lekhpal without seeking any partition for the same.

6. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for the petitioner and supported the order dated 28.03.2023 on the basis of the instructions and submitted that the order dated 09.12.2011 was obtained by the petitioner without any information/notice to the State since the application under Section 80 of U.P. Revenue Code, 2006 has been preferred by the District Government Counsel (revenue) District Budaun.

7. After hearing the rival submissions extended by learned counsels for the parties, it has been transpired from the pleadings available in the records that the order dated 09.12.2011 has been passed over the detailed report submitted by the then concerned Tehsildar and the order impugned has been passed by the respondent no. 3 over the restoration application preferred by learned District Government Counsel only, although the application preferred by District Government Counsel has not been appended to the petition but the same has been requested to learned counsel for petitioner who is having the copy of the same in his record and after perusal of the same, it has been transpired that there is hardly any averment available on behalf of the State Government for filing restoration application for seeking recall of the order dated 09.12.2011 and there is no denial of the report submitted by the Tehsildar at the time of adjudication over the application preferred by the petitioner under Section 80 of U.P. Revenue Code, 2006. Although the respondent no. 1 is entitled to declare the portion of land as agricultural if the same has already been declared for non-agricultural purpose but the same has not been used for non-agricultural purposes and the procedure has

already been properly defined under Section 80(2) of U.P. Revenue Code, 2006 and the concerning rules are available under Rule 86 to 88 of U.P. Revenue Code Rules, 2016. The determination drawn by the respondent no. 3 that only 42 sq. meter area of plot no. 429 has been used for non-agricultural purpose and as such rest of the portion which was already declared as non-agricultural vide order dated 09.12.2011 has again been remained same as agricultural by way of modifying the order dated 09.12.2011 is highly illegal and the same is not in consonance with the procedure defined under the statutory provisions contained under U.P. Revenue Code, 2006.

8. In view of the aforementioned facts and circumstances, orders dated 28.03.2023 and 30.06.2023 passed by respondent no. 3 and 2 respectively are hereby set aside. However responding authorities will be at liberty to proceed, if required in pursuance to Section 80(2) along with the procedure defined under Rule 86 to 88 of U.P. Revenue Code Rules, 2016.

9. Writ petition stands **allowed** accordingly.

Order Date :- 23.11.2023

Vivek Kr.