

Court No. - 52

Case :- WRIT - C No. - 36691 of 2023

Petitioner :- Ghan Shyam Kushwaha And 2 Others

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Rishikesh Tripathi

Counsel for Respondent :- C.S.C.,Gopal Krishna Pandey

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Rishikesh Tripathi, learned counsel for petitioners and Sri Gopal Krishna Pandey, learned counsel appearing for respondent no. 4 and Sri Prabhakar Tripathi, learned counsel for respondent nos. 1, 2 and 3.

2. Present petition has been filed seeking following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 10.10.2022 passed by learned Additional District Magistrate (Administration), Jhansi in Case no. D201706370338 of 2017 Daniel Robert and others versus Durga Prasad Kushwaha and others under Section 30 of the U.P. Revenue Code and the judgment and orders dated 27.07.2023 and 07.08.2023 passed by the Learned Divisional Commissioner, Jhansi Division, Jhansi in Revision no. 1168 of 2022 (C-202206000001168) Ghan Shyam Kushwaha and others versus Daniel Robert and others (Annexure no. 6, 9 & 10 respectively);

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent no. 3 (Additional District Magistrate (Administration), Jhansi) to decide the preliminary objection raised by the petitioner with regard to the maintainability of the present proceeding under Section 30 of the U.P. Revenue Code move by respondent nos. 5 to 7 for correction of gata numbers in revenue map standing since 1359 fasli."

3. Without entering into the factual matrix of the matter, learned counsel for the petitioners only sought the attention of the Court over the order passed by revisional authority i.e. respondent no. 2 while adjudicating the revision, preferred by the petitioners and the same was decided vide order dated 27.07.2023, although the revision preferred by the petitioners for challenging the order dated 10.10.2022 passed by respondent no. 3 under Section 30(1) of U.P. Revenue Code, 2006 through which application preferred by the petitioners in shape of objection with regard to maintainability of the proceedings initiated by respondent no. 5, 6 and 7 has been negated and directed to proceed by way of leading the evidences.

4. Learned counsel for the petitioners submitted that a detailed application in shape of objection has been preferred before respondent no. 3 by way of re-appreciating the provisions of Section 30 read with Rule 26 of the U.P. Revenue Code, 2006 as well as U.P. Revenue Code Rules, 2016 wherein for proceeding under Section 30, power vest with Collector, only

after seeking permission from the Board with regard to plot number which is having certain co-sharer but their portion has not been partitioned. In the proceedings initiated by respondent no. 3 there is hardly any compliance or procedure adopted by the authority before accepting the prayer and proceeded contrary to the provisions mentioned in the statutory rules.

5. Being aggrieved with the order dated 10.10.2022, petitioner preferred revision and the same was also decided by way of upholding the order dated 10.10.2022 issued by respondent no. 3 but at the same time, the specific direction has also been issued by the respondent no. 2 against respondent no. 3 that at the time of proceeding, the vital submission extended by the petitioner with regard to the maintainability as referred in pursuance to Section 30(2) of U.P. Revenue Code, 2006 shall be taken into consideration.

6. Respondent no. 5, 6 and 7 preferred a correction application for seeking correction in the order dated 27.07.2023 and the same was also allowed by the respondent no. 2 vide order dated 07.08.2023 through which the referring Section 30(1) has been corrected as Section 38(1), although there was hardly any submission extended by the petitioners while preferring their objection or by the counsel for the petitioner before respondent no. 2 and 3 with regard to reference of Section 38 of U.P. Revenue Code, 2006.

7. For directing the respondent no. 3 for consideration over the Section 38 of U.P. Revenue Code, 2006 while proceeding to decide the application preferred by the respondent no. 5, 6 and 7, it will be the matter which has to be taken into consideration by the respondent no. 3 will be lesser in importance, if the same would have been given by the respondent no. 2 for strict consideration under Section 30 of the U.P. Revenue Code, 2006 for ready reference Section 30 of the U.P. Revenue Code, 2006 and corresponding Rule 26 of U.P. Revenue Code Rules, 2016 are reproduced hereinbelow:

"Section 30. Maintenance of Map and Field Book.- [(1)] The Collector shall maintain, in the manner prescribed, a map and a field book (khasra) for each such village and shall cause to be recorded therein, annually, or at such longer intervals as may be prescribed, all changes in the boundaries of the village or survey numbers, and shall also cause to be corrected, any errors or omissions which are, from time to time, detected in such map or field book (khasra).

[(2) The minjumla number shall be divided physically in the manner prescribed and revenue records including map and khasra shall be corrected accordingly.]

Rule 26. Partition scheme of minzumla numbers [Section 30(2)].- (1) The Board shall, by general or special order direct the Collector that the minzumla numbers shall be divided physically and revenue records shall be corrected accordingly.

(2) On the order under sub-rule (1) of this rule, the Collector shall get a partition scheme of minzumla numbers prepared for each village.

(3) For the purpose of preparation of partition scheme of minzumla numbers, a provisional partition scheme of minzumla numbers shall be prepared by the Lekhpal in R.C. Form-5.

(4) The provisional partition scheme of minzumla numbers shall be prepared by the Lekhpal in consultation with concerned tenure holders and Land Management Committee.

(5) In the preparation of provisional partition scheme of minzumla numbers, the following principles shall be observed :-

(a) The portion allotted to each tenure holder shall be as compact as possible.

(b) As far as possible no tenure holder shall be given all the inferior or all the superior classes of land.

(c) If the tenure holders of minzumla number are in separate possession on the spot on the basis of mutual division, the same shall, as far as possible, be allotted as per the separate possession.

(d) Every tenure holder shall, as far as possible, be allotted the area at the place on which his private source of irrigation or any other improvement is in existence.

(e) If the plot or any part thereof, is of commercial value or is adjacent to road, abadi or other land of commercial value, the same shall, as far as possible, be allotted to each tenure holder proportionately adjacent to such road, abadi or other land of commercial value.

(6) The Lekhpal shall prepare and place on record a map showing in different colours, the area given to each tenure holder.

(7) After preparation of provisional partition scheme of minzumla numbers a notice in R.C. Form-6 shall be issued to each tenure holder of the minzumla number inviting objection, if any, within the period of 15 days from the date of service of notice on the tenure holder.

(8) After receiving the objection in pursuance of the notice issued under sub-rule (7) or otherwise, the Revenue Inspector shall dispose of the objections on the basis of conciliation between the parties in consultation with the Village Revenue Committee.

(9) All the objections which have not been decided by the Revenue Inspector on the basis of conciliation shall be forwarded alongwith the provisional partition scheme to the Collector through the Sub-Divisional Officer.

(10) The Collector after affording opportunity of hearing to the parties concerned shall decide the objection, if any, and thereafter either confirm the provisional partition scheme of minzumla numbers or pass such order as he deems fit.

(11) The map, khasra and khatauni shall be corrected as per the confirmed partition scheme of minzumla numbers.

(12) Any order passed under this rule shall, subject to the revision under section 210 of the Code, be final."

8. On a precise query made before Sri Rishikesh Tripathi, learned counsel for the petitioners that how the petitioner is prejudiced with the order dated 27.7.2023 once the revisional authority has already directed respondent no. 3 for taking into consideration before proceeding in the matter instituted at the behest of respondent no. 5, 6 and 7 on the ground of the maintainability under Section 30(1) of U.P. Revenue Code, 2006, learned counsel for the petitioner submitted that once the correction application has been allowed by respondent no. 2 for substituting the Section 30(1) by Section 38(1) of U.P. Revenue Code, 2006 is by and large affecting the entire rights pertaining to the petitioner since the authority who is competent to deal under Section 38 is the Tehsildar and the authority who has to take the entire matter into consideration under Section 30(1) is the Collector and for minzumla numbers, it is only provided that without seeking prior approval of the Board no proceedings can be initiated. For appreciation of the facts mentioned in the petition extract of Section 38 is also reproduced hereinbelow:

"Section 38. Correction of [error] and omission. - *(1) An application for correction of any error or omission in the map, filed-book (Khasra) or record of rights (Khatauni) shall be made to the Tahsildar in the manner prescribed.*

(2) On receiving an application under sub-section (1) or on any error or omission otherwise coming to his knowledge, the Tahsildar shall make such inquiry as may appear to him to be necessary, and refer the case along with his report to the Collector in the case of map correction and the Sub-Divisional Officer in matter of other correction.

(3) The case shall be decided by the Collector or the Sub-Divisional Officer, as the case may be, after considering any objection filed and evidence produced before him or before the Tahsildar.

(4) Any person aggrieved by an order of the Collector or the Sub-Divisional Officer, as the case may be, under sub-section (3), may prefer an appeal to the Commissioner within a period of thirty days from the date of such order; and [the decision of the Commissioner shall, subject to the provisions of section 210, be final]]

[(5) Any forged or manipulated entry in the map, the khasra or the record of rights (khatauni) may be expunged under this section.

(6) Notwithstanding anything contained in other provisions of this Code, the Revenue Inspector may correct any undisputed error or omission in the record of rights (khatauni) or Khasra in such manner and after making such inquiry, as may be prescribed.]

Explanation. - The power to correct any error or omission under this section shall not be construed to include the power to decide a dispute involving question of title."

9. Although the submission extended by learned counsel for petitioner has been properly and vehemently opposed by Sri Gopal Krishna Pandey, learned counsel for respondent no. 4 and Sri Prabhakar Tripathi, learned counsel for respondent no. 1, 2 and 3 but at the same time they showed their agreement to decide the matter at the admission stage itself by way of avoiding the provision of service of notice upon private respondents since the entire issue which has come up for adjudication by this Court is only on the legal issue and as such the facts of the matter is remained to be adjudicated by the competent authority i.e respondent no. 3 itself.

10. Learned Standing counsels appearing for respondent no. 1 to 4, submitted that the competent authority under Section 30 is the Collector who is having power to correct the map as well as revenue records and at the same time the power of correction available only with the entries are available with the Tehsildar/Assistant Collector, since the matter which enlarged the instant petition pertains to correction of map and as such the order dated 27.07.2023 passed by respondent no. 2 by way of correcting the same order vide order dated 07.08.2023 is not sustainable in the eye of law and the same is contrary to the provisions of Section 30 of U.P. Revenue Code, 2006 as well as enabling rule that is Rule 26 of U.P. Revenue Code Rules, 2016.

11. In view of the aforementioned facts and circumstances, orders dated 27.07.2023 and 07.08.2023 are hereby set aside. Respondent no. 3 is hereby directed to decide the issue raised by petitioner with regard to the maintainability in pursuance to Section 30(1)(2) of U.P. Revenue Code, 2006 as expeditiously as possible preferably within a period of one month from the date of production of certified copy of this order. It is however made clear that proceedings of Case no. 84 of 2016 (Daniel Robert and others vs. Ghanshyam Kushwaha and others) shall only be initiated after adjudication of the objection preferred by the petitioners with regard to the maintainability of the same under Section 30(1)(2) of U.P. Revenue Code, 2006.

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

Order Date :- 1.11.2023

Shaswat