

Court No. - 52

Case :- WRIT - C No. - 37122 of 2023

Petitioner :- Nand Kishor

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

Counsel for Petitioner :- Shiv Bahadur Singh, Anjani Kumar Dubey

Counsel for Respondent :- CSC, Hari Narayan Singh

Hon'ble Saurabh Srivastava, J.

1. Heard learned counsel for the parties and perused the record.
2. The writ petition is directed against the order dated 30.01.2010 passed by respondent no. 3, Assistant Collector/Tehsildar, Sadar, District Kannauj evicting the petitioner from the land in dispute and the order dated 27.09.2023 passed by Collector, Kannauj, respondent no. 2, in Case No. 3418 of 2018 rejecting the revision preferred by the petitioner.
3. Brief facts, giving rise to the present dispute, as emerge from the record, are that illegal encroachment was complained against petitioner over an area of 0.259 hectare of Plot No. 76 situated in village Godhani, Tehsil and District Kannauj by one Smt. Bina Pandey whereupon proceedings were directed to be initiated by Board of Revenue vide order dated 02.02.2009. Pursuant to the said order, an alleged spot inspection was done and report dated 11.01.2010 was submitted, wherein the words "*Mauke Par Paimaish Ki Gai*" were added behind back of the petitioner, petitioner filed objection on 28.01.2010. However, without considering the objection of the petitioner, order dated 30.01.2010 was passed by Assistant Collector/Tehsildar, Sadar, District Kannauj, respondent no. 3. Petitioner challenged the said order in Revision being Revision No. 2 of 2010. which came to be allowed in favour of petitioner vide order dated 05.06.2010 passed by Collector, Kannauj, respondent no. 2. However, it is stated that without any resolution of the Land Management Committee, D.G.C. (Revenue) himself moved an application seeking recall of the order dated 05.06.2010 which stood allowed ex parte on 31.08.2010. Being aggrieved, petitioner filed Writ Petition No. 30731 of 2011 which came to be disposed of on 25.05.2011. In furtherance of the said order passed by this Court, it is stated that the revision preferred by the petitioner was again heard and the same was dismissed by respondent no. 2 vide order dated 27.09.2023.
4. Learned counsel for the petitioner submitted that once the revision preferred by the petitioner was allowed in his favour, it was not proper on the part of D.G.C. (Revenue) to move recall application without any resolution of the Land Management Committee and, even if so, there was no justified reason or occasion

for respondent no. 2 to allow the same without affording any notice or opportunity of hearing to the petitioner and, therefore, the subsequent revisional order as well as the order recalling the order dated 05.06.2010 whereby the revision was allowed in favour of the petitioner are liable to be set aside.

5. I find force in the submission. Since the revision preferred by the petitioner was decided finally on merits after hearing both the parties, there was no justified reason to recall the said order, that too, without affording any opportunity to the revisionist in the revision. When confronted, learned Standing Counsel also could not persuade this Court to take a different view than what has been argued by learned counsel for the petitioner.

6. In the result, the writ petition is allowed. Order dated 27.09.2023 passed by Collector/respondent no. 2 dismissing the revision of the petitioner and the order dated 31.08.2010 passed by respondent no. 2 allowing the restoration application without affording opportunity of hearing to the petitioner are set aside. Matter is remitted back to respondent no. 2 to consider and decide the restoration application moved by D.G.C. (Revenue) seeking recall of the order dated 05.06.2010, afresh after due opportunity of hearing to the petitioner.

Order Date :- 30.10.2023

P.Sri.