

Court No. - 51

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 4904 of 2018

Petitioner :- Harvir Singh

Respondent :- State Of U.P. And 11 Others

Counsel for Petitioner :- Amulya Ratan Srivastava, Gopal Srivastava, Santosh Yadav, Sunil Kumar, Vimal Chandra Pathak

Counsel for Respondent :- C.S.C., Rohit Shukla, Sunil Kumar Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sanjay Yadav, learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-Respondent Nos. 1, 2, and 3, and Mr. Sunil Kumar Singh, learned counsel for respondent No. 4/Gaon Sabha.

2. The brief facts of the case are that Plot No. 452-ka area 0.4680 hectare is recorded as Dahar Class 6 (1) Category submerged land, plot No. 452-kha area. 0.8860 hectare is recorded as Banjar and plot No. 452-ga area 0.7080 hectare is recorded as Pond Class 6 (1) Category submerged land in the revenue record. The aforementioned lands are situated in Village-Karauli Bangar, Pargana and Tehsil-Jewar and District-Gautambudh Nagar. It is further mentioned in the petition that private respondent Nos. 5 to 12 have illegally raised construction in the disputed plot No. 452-ga. There is no mention of plot No. 452 Kha in the petition. Petitioner has already preferred a Public Interest Litigation No. 49755 of 2017, which was disposed of by this Court by order dated 27.10.2017 directing Tehsildar to inquire the matter and decide the

dispute in accordance with law. On the basis of the order dated 27.10.2017 passed by this Court proceeding under Sections 67 (1) of U.P. Revenue Code, 2006 has been initiated against the private respondent No. 5. Respondent No. 5 initiated a proceeding for exchange as provided under Section 101 of U.P. Revenue Code 2006 to exchange his Bhumidhari Plot No. 469 from plot No. 452 kha which is recorded as banjar land. The aforementioned exchange proceeding was decided by the Court by order dated 5.10.2018, directing for exchange of petitioner's Bhumidhari Plot No. 469 from Banjar Plot No. 452 Kha. The proceeding under Section 67 of U.P. Revenue Code 2006 registered against the private respondent Nos. 5 to 12 has been decided by order dated 22.10.2018, dropping the proceeding against private respondent. Hence, this Public Interest Litigation on behalf of petitioner for the following relief:

"(a) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 22 October 2018 passed by respondent no. 3 in Case No.00174/2018 (Computerized Case No. T 201811270300174) Gram Sabha Vs Udaivir and others, under Section 67 of Uttar Pradesh Revenue Code-2006, Mauja- Karauli Bangar, Pargana & Tehsil- Javar, District-Gautam Budh Nagar .

(b) Issue a Writ order or direction in the nature of certiorari quashing the order dated 05 October 2018 passed by respondent no. 2 in Case No. 04206/2018 (Computerized Case Pargana and 201811270304206) Jaypal Singh Vs State, Under Section 101 Uttar Pradesh Revenue Code-2006.

(c) Issue a writ order or direction in the nature of mandamus commanding the respondents to remove the illegal possession of the respondent nos. 5 to 12 from the disputed plot."

3. This court has directed the learned Standing Counsel to obtain instruction in the matter vide order dated 03.12.2018. After receiving the instruction, this Court by subsequent order dated 10.01.2019, directing the Collector Gautam Bhud Nagar to file a personal affidavit as well as counter affidavit in the matter.

4. In compliance of the order of this Court, Collector, Gautam Bhud Nagar has filed a personal affidavit as well as counter affidavit in the matter.

5. Petitioner has filed rejoinder affidavit in reply to the counter affidavit filed by the State.

6. Learned counsel for the petitioner submitted that plot in dispute is public utility plot i.e. dahar and pond, as such, proceeding for exchange cannot be allowed by the Court. He further submitted that provision prescribed under Section 101 of U.P. Revenue Code 2006 has not been followed by the Court concern, as such, the entire proceeding is vitiated by manifest error of Law. He further submitted that proceeding under Section 101 of U.P. Revenue Code 2006 has been also decided in arbitrary manner in respect to the public utility plot, as such, the order for exchange passed under Section 101 of U.P. Revenue Code 2006 and order for dropping the proceeding under Section 67 (1) of U.P. Revenue Code 2006 are wholly illegal and liable to be set aside. He further placed reliance upon the judgment of this court **reported in 2017, (136) RD Page 763, Shiv Muratt Vs. Board of Revenue and others** in order to

demonstrate that exchange cannot be allowed if the same has not been decided in accordance with the provision prescribed under the Code as well as Rules framed thereunder.

7. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sunil Kumar Singh, learned Counsel for respondent No.4/ Gaon Sabha submitted that the revenue entry of C.H. Form 41, CH Form 45, Khatani of 1359, 1360, 1563-1365, 1366-1369, 1370-1372, 1383-1390, 1391-1396, 1398-1404, 1412-1417, 1418-1423, 1424-1429 fasli demonstrates that one Jaipal Singh S/o Tikam Singh, was allotted plot Nos.390, 392, 399, 451, 469 total area 3 bighas, 13 Biswa which was declared surplus under the U.P. Imposition Of Ceiling on Land Holdings Act, 1960. They further submitted that Jaipal Singh son of Tikam Singh has rightly exchanged his plot number 469 area 19 biswa from plot number 452-kha area 0.8860 hectare which was recorded as Banjar. They further submitted that plot 452 is recorded in three parts 452-ka, area 0.4680 hectare is recorded dahar, plot No. 452-kjha area 0.8860 hectare is recorded as banzar and plot Not. 452-ga area 0.7080 hectare is recorded as pond, as such there is no illegality in the exchange proceeding as exchange has not been made in respect to pond land rather exchange has been made from the bhumidhari plot of the private respondent and from plot recorded as banjar. They further submitted that complete facts have not been mentioned in the instant public interest litigation as there is no mention of plot number 452-kha in the instant public interest litigation nor revenue entry of plot No.452-kha has been annexed rather revenue entry of plot No. 452-ka and 452-ga are mentioned and annexed. They further submitted that on the basis of the order passed in the exchange proceeding, the proceeding under section 67 of UP Revenue Code 2006 has been

dropped against private respondents as such no interference is required in the matter and instant public interest litigation is liable to be dismissed.

8. I have heard arguments advanced by learned counsel for the parties and perused the record.

9. There is no dispute about the fact that plot No.452-kha is recorded as the dahar, plot No. 452-kha is recorded as banjar land and plot No.452-ga is recorded as pond in the revenue record. There is also no dispute about the fact that private respondent is recorded owner of plot No.469, which was allotted to them as surplus land declared under the U.P. Imposition Of Ceiling On Land Holdings Act, 1960. There is also no dispute about the fact that exchange proceeding under section 101 of U.P. Revenue Code 2006 has been decided in favour of private respondent on 05.10.2018 and the proceeding under section 67 of U.P. Revenue Code, 2006 initiated against the private respondents has been dropped vide order dated 22.10.2018 in view of the order passed in the exchange proceeding.

10. Since the exchange proceeding under section 101 of U.P. Revenue Code 2006 has been decided by the Court concerned and remedy has been provided against the order of exchange as such proper remedy is to be availed by proper party in accordance with the provisions contained under U.P. Revenue Code 2006 and rules framed there under rather Public Interest Litigation to quash the orders passed in the judicial proceeding

11. So far as the order passed under section 67 (1) of U.P. Revenue Code 2006 is concerned, the same was passed in view of the order passed in exchange proceeding, as such there is no illegality in the

order passed in the proceeding under section 67 (1) of the U.P. Revenue Code 2006.

12. It is also material that District Magistrate Gautam Buddh Nagar has filed detailed personal affidavit as well as counter affidavit annexing the details of the revenue entry of the plots, which was exchanged by the parties as such order of exchange as well as order dropping the proceeding under section 67 (1) of U.P. Revenue Code 2006 require no interference under Article 226 of the Constitution of India on the basis of the public interest litigation filed on behalf of the petitioner.

13. So far as the case law cited by learned counsel for the petitioner is concerned, the same will not be applicable in the instant matter as in the instant matter exchange proceeding has taken place in accordance with the law.

14. Considering the entire facts and circumstances of the case, no interference is required in the matter and **the Public Interest Litigation is dismissed.**

Order Date :- 14.12.2023

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