

Court No. - 51

Case :- WRIT - C No. - 37404 of 2023

Petitioner :- Amit Chaubey And 5 Others

Respondent :- State Of U.P. And 17 Others

Counsel for Petitioner :- Awadh Behari Singh, Jai Prakash Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Awadh Behari Singh, learned counsel for the petitioners and Sri Abhinav Ojha, learned standing counsel for the state-respondents.

2. The instant writ petition has been filed for the following reliefs:-

"1. set aside the proceedings initiated on an application under Section 38 of the U.P. Revenue Code, 2006 by respondent no.3 which has been registered as Case No.202115060100503.

2. direct the respondent no.2 to decide the preliminary objection about maintainability of the proceeding under Section 38 of the U.P. Revenue Code, 2006 before proceeding on merit.

3. direct the respondents to conclude the proceeding within a fix period after considering the question of maintainability."

3. Counsel for the petitioners states that the petitioner is the recorded tenure holder of the plot in dispute on the basis of the registered sale deed executed in the year 1988. He submitted that private respondents have initiated the proceeding under Section 38 of the U.P. Revenue Code, 2006, challenging the revenue entry of the petitioner which is beyond the scope of Section 38 of the U.P. Revenue Code, 2006. He further submitted that Section itself provides that question relating to title, cannot be adjudicated in the summary proceedings under Section 38 of the U.P. Revenue Code, 2006. He further submitted that preliminary objection about the maintainability of the proceeding has been raised by the petitioner before respondent no.2 which has been annexed as Annexure No.2 to the writ petition. He further placed C.H. Form Nos. 41 & 45 prepared during consolidation in respect to the plot in dispute in order to demonstrate that petitioner is recorded tenure holder of the plot in dispute, as such, proceeding under Section 38 of the U.P. Revenue Code, 2006 cannot be initiated.

4. On the other hand, Sri Abhishek Shukla, learned Addl. C.S.C. submitted that proceeding under Section 38 of the U.P. Revenue Code, 2006 is pending and the petitioner's preliminary objection is also pending, as such,

writ petition should not be entertained and petitioner should press the pending proceeding before the authority concerned which will be decided in accordance with law.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that the proceeding under Section 38 of the U.P. Revenue Code, 2006 is pending in respect to the plot in dispute and the petitioner's preliminary objection dated 28.11.2021 filed on behalf of petitioner in Case No.00503/2021 (Computerized Case No.T202115060100503) is also pending before respondent no.2.

7. A perusal of of Section 38 of the U.P. Revenue Code, 2006 will be relevant which is as follows:-

"38. Correction of error and omission—(1) An application for correction of any error or omission in the map, field-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 to 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. "

8. Considering the provisions contained under Section 38 of the U.P. Revenue Code, 2006 and the revenue entry placed by the counsel for the

petitioner as well as the preliminary objection dated 29.11.2021 filed on behalf of the petitioner, which has been annexed along with the writ petition, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.2/Sub Divisional Magistrate, Tahsil Sadar, Azamgarh to decide the preliminary objection dated 29.11.2021 of the petitioner first in the aforementioned case, under Section 38(1) of the U.P. Revenue Code, 2006, expeditiously, preferably within a period of 2 months, from the date of production of a certified copy of this order before the authority concerned, after affording opportunity of hearing to both the parties, in accordance with law.

Order Date :- 31.10.2023

C.Prakash