

Court No. - 52

Case :- WRIT - C No. - 38350 of 2023

Petitioner :- Parmanand

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

Counsel for Petitioner :- Manish Dev Singh

Counsel for Respondent :- C.S.C., Vijay Kumar Mishra

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Manish Dev Singh, learned counsel for petitioner and Sri Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel as well as Sri Vijay Kumar Mishra, learned counsel for respondent no.4.

2. The present petition has been filed for seeking quashing of the order dated 20.09.2023 passed by respondent no.2 i.e. District Magistrate, Jaunpur in Case No.03688 of 2019, Computer Case No.D201914360003688 (Abdul Salam Vs. Ramnand and another), under Section 104/105 of U.P. Revenue Code, 2006 as well as notice dated 12.12.2019 issued by respondent no.2.

3. Brief facts of the present case are that a registered sale deed was executed on dated 26.04.1985 by one Panna Lal in favour of Smt. Phola Devi in respect of plot no.96, situated at Village Sungulpur, Tehsil Sadar, District Jaunpur and thereafter, Smt. Phola Devi executed a registered sale deed dated 01.12.1989 in favour of Smt. Indrawati who was mother of petitioner and mutation was also taken place. Mother of petitioner was died on 08.12.2014. Respondent no.4 moved a complaint on 03.07.2018 under Section 104/105 of U.P. Revenue Code, 2006 (in short 'Code 2006') before respondent no.2 i.e. District Magistrate, Jaunpur, whereupon notice dated 12.12.2019 was issued against petitioner under Section 104/105 of Code 2006 and in pursuance of impugned notice dated 12.12.2019, petitioner submitted his detailed objection on 14.02.2020 and vide impugned order dated 20.09.2023, respondent no.2 declared the sale deed

dated 01.12.1989 void and directed the land in disputed to be vested in the State.

4. Learned counsel for the petitioner challenged the order dated 20.09.2023 under Article 226 of the Constitution of India on several other grounds inter alia that the proceedings initiated under Section 104 and 105 by the respondent no. 2 is without jurisdiction and as such the respondent no. 2 was not competent in pursuance to the statutory provisions contained under Section 104, 105 of U.P. Revenue Code, 2006, read with Rule 103 of U.P.Revenue Code Rules, 2016.

5. While examining the arguments as raised by the learned counsel for the petitioner, it is necessary to quote the Section 104 and 105 of the U.P. Revenue Code, 2006 along with Rule 103 of the U.P. Revenue Code Rules, 2016 as under:

"Section 104. Transfer in contravention of this Code to be void.- Every Lease or transfer of interest in any holding or part thereof made by a bhumidhar or any asami in contravention of the provisions of this Code shall be void.

Section 105. Consequences of transfer by Bhumidhar in contravention of the Code.-(1) Where transfer of interest in any holding or part made by a Bhumidhar is void under Section 104, the following consequences shall, with effect from the date of such transfer, ensue, namely:

(a) the subject-matter of such transfer shall vest in the State Government free from all encumbrances;

(b) the tree, crops, wells and other improvements, existing on such holding or part shall vest in the State Government free from all encumbrances;

(c) the interests of the transferor and the transferee in the properties specified in Clauses (a) and (b) shall stand extinguished;

(d) the extinction of interest of the transferor under Clause (c) shall operate to extinguish the interest of any asami holding under him.

[(e) the provisions of this section shall not apply to any lease made under Section 94.]

(2) Where any land or other property has vested in the State Government under sub-section (1) it shall be lawful for the Collector to take over possession of such land and other property, and to direct that any person occupying such land or property be evicted therefrom, and for that purpose, the Collector may use or cause to be used such force as may be necessary and the provisions of Section 59 mutatis mutandis shall apply to such property.

Rule 103. *Transfer in contravention of the provisions of the Code (Section 105).-*

(1) If a bhumidhar or an asami has transferred his interest in any holding or part thereof which is void under Section 104, the Lekhpal shall promptly submit a report to the Sub-Divisional Officer containing particulars specified in Rule 97(1).

(2) On receipt of the report of the Lekhpal under sub-rule(1), or on information received otherwise, the Sub-Divisional Officer shall call upon the parties to the transfer to show cause, why action under Section 104 read with Section 105 should not be taken in respect of the land in question.

(3) After hearing the parties and making such inquiries as may be considered necessary, if the Sub-Divisional Officer is satisfied that the transfer in question is void under Section 104, he shall declare that:

(a) the subject matter of such transfer shall vest in the State Government;

(b) the trees, crops, well and other improvements existing on the holding or part shall vest in the State Government free from all encumbrances; and

(c) the interests of the transferor as well as of the transferee stood extinguished, from the date of such transfer.

(4) The Sub-Divisional Officer shall direct that the revenue records should be corrected accordingly and where the transfer in contravention of the provisions of the Code relates to a part of the holding, he shall also fix land revenue in respect of the part left with the transferor in accordance with Chapter XI of these Rules.

(5) Every order of the Sub-Divisional Officer under this Rule shall be endorsed to the Samiti for necessary action.

(6) Where any property referred to in Section 105 has vested in the State Government, the Collector may evict any person in unauthorised occupation of such property and deliver possession thereof to the Gram Panchayat concerned."

6. Learned counsel for petitioner sought the attention of the Court over the procedural part of the Section 104 and 105 which is clearly demonstrated under Rule 103 wherein, it is the Sub-Divisional Officer who will receive the report submitted by concerned Lekhpal or on information received otherwise will call upon the parties to the transfer, to show cause why action under Section 104 read with Section 105 of U.P. Revenue Code, 2006, should not be taken in respect of the land in question, meaning thereby, if in any case transfer of any land has to be declared as void, the competent authority for adjudication of the same shall be the Sub-Divisional Officer only. Moreover, for direction to correct the revenue records in accordance with the adjudication made by the Sub-Divisional Officer, the Sub-Divisional Officer will direct that the revenue records should be corrected accordingly.

7. The instant matter which has been pointed out by learned counsel for the petitioner that the entire adjudication initiated over the application submitted by respondent no. 4 has been initiated by the respondent no. 2 who is the Collector/District Magistrate, District Jaunpur, and as such the proceedings initiated by the respondent no. 2 is without jurisdiction and the same is liable to be quashed and set aside.

8. Per contra, Sri Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel and Sri Vijay Kumar Mishra, learned counsel for respondent no.4 vehemently opposed the prayer as made in the petition as well as rebutted the stand taken up by learned counsel for the petitioner on the ground that Section 104 and 105 are the provisions contained in the U.P. Revenue Code, 2006, wherein outcome of the same that there shall be no appeal lies and as such it was always the prerogative of the immediate superior authority to exercise the power so contained and vested with the subordinate authority where no appeal lies. And as such the action in shape of initiation of proceedings under Section 104 and 105 of U.P. Revenue Code, 2006, carried out by respondent no. 2 is well under its own jurisdiction and the same is justified and no writ petition is

maintainable for challenging the order passed by the Collector under Section 104 and 105 of the U.P. Revenue Code, 2006. More so, both the learned counsels for the respondents argued vehemently that the writ petition is not maintainable on the ground of alternative remedy available before the petitioner under Section 210 of the U.P. Revenue Code, 2006.

9. Sri Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel also submitted that by mere reading of the essence of Section 104 and 105 of U.P. Revenue Code, 2006, read with Rule 103 of U.P. Revenue Code Rules of 2016, it is practically not feasible that the report or the case shall be submitted by the Collector and the same shall be adjudicated by the Sub-Divisional Officer who is the subordinate authority to the Collector and thereafter if any adjudication has been made by the Sub-Divisional Officer the execution part of the order/determination drawn by the Sub-Divisional officer, the same has to be executed by the Collector is also not feasible practically. For substantiating his arguments, learned Additional Chief Standing counsel referred the sub-rule (6) of Rule 103 of U.P. Revenue Code Rules, 2016 wherein it is mentioned that any property referred to in Section 105 has vested in the State Government, the Collector may evict any person in unauthorised occupation of such property and deliver possession thereof to the Gram Panchayat concerned.

10. For supporting the stand taken up by learned Standing counsel, Sri Sri Vijay Kumar Mishra, learned counsel for respondent no.4 further referred the definition clause mentioned under sub-section (8) of Section 4 of the U.P. Revenue Code of 2006 wherein Collector means an officer appointed as such by the State Government under sub-section (1) of Section 12 and shall include- (a) an Additional Collector appointed by the State Government under sub-section (2) of the said Section; and (b) an Assistant Collector of the first class empowered by the State Government by notification to discharge all or any of the functions of a Collector under this Code; along with Section 13(3) which deals that the officers referred to in sub-section (1) or sub-section (2) shall exercise all the powers and

discharge all the duties conferred and imposed upon them by or under this Code or any other law for the time being in force, subject to the control of the Collector.

11. Sri Vijay Kumar Mishra, learned counsel for respondent no.4 demonstrated that it is the Collector who is all the time empowered to exercise the powers conferred with the Assistant Collector first class and the same has been exercised in the instant matter by the Collector, District Jaunpur while passing the order which impugned the present petition and as such the entire action carried out by respondent no. 2 is well under the jurisdiction defined by Section 4(8) along with Section 13(3) of the U.P. Revenue Code of 2006.

12. For elaborating the arguments, Sri Vijay Kumar Mishra, learned counsel for respondent no.4 sought the attention of the Court over Section 19 and 215 of the U.P. Revenue Code, 2006 which is quoted herein below:

"Section 19. Other power of Revenue Officers.-(1) When any power is exercisable or any duty is dischargeable by any officer or authority under this Code, such power or duty may be exercised or discharged by any superior officer or authority as well.

(2) The revenue officers appointed under this Code shall, subject to the control of the State Government, exercise such other powers and discharge such other duties as the State Government may, by any general or special order, direct.

Section 215. Orders not to be invalid on account of irregularity in procedure.- No order passed by a revenue officer shall be reversed or altered in appeal or revision on account merely of any error, omission or irregularity in the summons, notice, proclamation, warrant or order or other proceedings before or during any inquiry or other proceedings under this Code, unless such error, omission or irregularity has in fact occasioned a failure of justice."

13. By way of referring the above mentioned sections, Sri Vijay Kumar Mishra, learned counsel for respondent no.4, justified the order passed by Collector while exercising the power vest with the Sub-Divisional Officer

defined under Rule 102 of U.P. Revenue Code, Rules 2016 which is quoted herein below:

"Rule 102. *Grant of permission by Sub-Divisional Officer (Sections 101 and 102).-(1) On receipt of an application under rule 100 or rule 101, the Sub-Divisional Officer shall issue notice to the bhumidhar or the Gram Panchayat concerned to show cause why the permission for exchange should not be granted.*

(2) The Sub-Divisional Officer shall also cause to be calculated the rental value of the land given or received in exchange and may also hear the lessees, mortgagees or other holders of the encumbrances, if any.

(3) If after making necessary inquiries, the Sub Divisional Officer is satisfied that the parties are agreeable to such exchange and the required terms and conditions are fulfilled, he shall grant the requisite permission and shall direct the record of rights to be corrected accordingly.

(4) If the application is in respect of the land referred to in clause (b) of sub-section (1) and if it is reserved for planned use or is land in which bhumidhari rights do not accrue and the Sub-Divisional Officer is satisfied that the permission for exchange is in the interest of the applicant and is also in the public interest, he may refer the matter to the State Government for appropriate order and if the permission is granted by the State Government, the Sub Divisional Officer shall direct the Records of Rights (Khatauni) to be corrected accordingly."

14. It is the argument raised by Sri Vijay Kumar Mishra, learned counsel for respondent no.4 that the sole ground for institution of the present petition is being defeated under Section 19 of the Code of 2006, which enables the superior authority to exercise the power conferred with the subordinate authority and as such, jurisdiction exercised by Collector/ District Magistrate while exercising the power under Rule 102, 103 of Rules of 2016, the same cannot be assailed on the ground of the procedural error which is barred by Section 215 of the Code of 2006.

15. Learned Additional Chief Standing counsel also supported the order dated 20.09.2023 on the issue that respondent no. 2 decided the issue which is related to Section 98 of the U.P. Revenue Code, 2006, wherein it

is only the Collector who is empowered to pass specific order, if any permission has been sought by the person belonging to Scheduled Caste community for seeking permission to transfer the land over which his rights have been incurred as Bhumidhar with transferable rights. In the instant matter there was no such permission was sought by Panna Lal to transfer their land in favour mother of petitioner and as such in absence of any proper permission accorded by the respondent no.2, the transfer made by Smt. Phola Devi has been held as void under Section 104 and 105 of the U.P. Revenue Code of 2006.

16. After noticing the rival submissions extended by learned counsel for the parties, certain questions have been determined for concluding the controversy as raised through the instant petition which is less in fact and more in legal aspects and the same are as under:

(i) whether Collector is empowered to adjudicate the proceedings under Section 104/105 of the U.P. Revenue Code, 2006 specifically when there is attraction of Section 98 of the U.P. Revenue Code of 2006?

(ii) if any order is passed without jurisdiction while declaring the transfer as void under Section 104/105 of U.P. Revenue Code, 2006 whether the same shall be subject to final adjudication under Section 210 of Code of 2006?

(iii) attraction of Section 4(8), Section 13(3) of U.P. Revenue Code of 2006 in reference to Rule 103 of U.P. Revenue Code Rules 2016 and the impact thereof?

17. Considering the argument as raised by learned counsel for the petitioner, the statutory provision as defined under Rule 103 of the U.P. Revenue Code Rules 2016, there is hardly any ambiguity which has been mentioned under Rule 103(3) of the same rules, it is the Sub-Divisional Officer who is empowered to declare the transfer in question as void, if it is, under Section 104 and as such the submission made by learned Standing counsel as well as Sri Vijay Kumar Mishra by way of taking reliance to the Section 4(8) as well as Section 13(3) is not sustainable,

since the essence of the power vested with the Collector can be delegated or transferred or notified to the Assistant Collector, Sub-Divisional Officer by special notification issued by the State, but under the control of the Collector does not statutorily authorized Collector to exercise the power as codified under the Statute specifically for the Sub-Divisional Officer and as such the provisions cannot be read as a reversible theory which was tried to be demonstrated by learned Standing counsel. It is only the Sub-Divisional Officer who has been specifically mentioned under the Rule 103(3) U.P. Revenue Code Rules, 2016 for dealing with the provisions contained under Section 104 and 105 of the U.P. Revenue Code of 2006.

18. The second issue as framed above with regard to maintainability of the outcome of the order from the proceedings of Section 104 and 105 of the U.P. Revenue Code Code of 2006 has expressly attained the finality after the proceedings under Section 210 since the order, if not passed by the authority who is having the jurisdiction the same can be assailed by way of filing revision before the authority as defined under Section 210 of the U.P. Revenue Code Code of 2006. The ground taken up by learned Additional Chief Standing counsel with regard to maintainability of the instant petition on the ground of alternative remedy will now be adversely affecting the legitimate right of the petitioner which has been come up before this Court for specific consideration over the competency of the authority adjudicated upon while dealing with the Section 104 and 105 of the U.P. Revenue Code of 2006, and as such the instant petition has to be adjudicated only on the test of competency as well as on the ground of the legal provisions which enable the authority to act upon while considering the nature of transfer of property under Section 104 and 105 of the U.P. Revenue Code of 2006.

19. The third question framed hereinabove is by and large answered in the first and second question as framed and the same need not to be dealt separately, since it is crystal clear with concurrent demonstration of the

legal issue by learned counsel appearing for the rival parties which precisely made it clear that it is the Sub-Divisional Officer, who is the competent authority to adjudicate any proceedings initiated in respect to Section 104/105 of the U.P. Revenue Code, 2006, however the arguments extended by learned counsel for respondent no.4 for consideration of Section 19 and 215 of Code of 2006 are concerned, it is to clarify that the power vest with the higher authority for exercising the duties as well as power defined under the Code of 2006 conferred with the subordinate authority is in special circumstances and the same cannot be exercised in a normal and usual manner, if that be so, the reasons for exercising the powers attracting Section 19 of Code of 2006 must be with plausible and satisfactory reasons recorded by the superior authority while exercising the powers of the subordinate authority. The pious intention of the legislature at the time of framing the Section 19 in U.P. Revenue Code, 2006 which is by and large a special and extraordinary powers conferred with the superior authority was not available in the U.P.Z.A. & L.R. Act, 1950, was only to ensure the dispensation of justice not for using the same in a normal and usual manner and as such while exercising the power under Section 19 of the U.P. Revenue Code, 2006, it is the the essential ingredient of the order passed by superior authority by way of recording the reasoning that under which circumstances, the power of Section 19 has been exercised by the superior authority, once the same vest with the subordinate authority.

20. In respect to the submission made by learned Additional Chief Standing counsel that with regard to feasibility of the practicality involved in the manner where the adjudication will be made by the Sub-Divisional Officer and the same shall be executed by the Collector, it is to clarify that Sub-Divisional Officer is the adjudicating authority in pursuance to Section 104, 105 of the U.P. Revenue Code of 2006 wherein the procedure has been defined under Rule 103 of the U.P. Revenue Code Rules of 2016. It is not the Collector who will execute the orders or the

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adjudication made by Sub-Divisional Officer rather the transfer of property which has been declared as void by the Sub-Divisional Officer shall be vest with the State. There is hardly any doubt that it is the Collector who is the designated officer in the District as State and all the performance commenced under the category and nomenclature of the State empowered the District Magistrate/Collector to act accordingly and as such, if the power or any embodied adjudication carry the word State that directly demonstrate in the individual manner is the Collector inside the District. Once the property which has been declared by the Sub-Divisional Officer as void shall be vested with the State, it is only the Collector who will take the possession of the same as under the capacity of the State itself and the same shall be further handed over in favour of the Gaon Sabha by the State that is by the Collector himself and as such the ground taken up by learned Standing counsel is hereby clarified that it is not the execution it is only the vesting the power of State into the Collector for receiving the property which has been declared during transfer as void and the same has been provided under Rule 103(6) of the U.P. Revenue Code Rules of 2016.

21. In view of the aforementioned facts and circumstances, order dated 20.09.2023 is hereby set aside being passed and adjudicated contrary to the proceedings initiated under Section 104/105 of U.P. Revenue Code 2006 by the respondent no. 2 being not competent under the provisions mentioned under the Code of 2006 and the impact and effect of the adjudication drawn by respondent no. 2 shall also have no bearing for any purpose whatsoever.

22. Writ petition stands **allowed** accordingly.

Order Date :- 23.11.2023

Vivek Kr.

(Saurabh Srivastava, J.)