

Neutral Citation No. - 2023:AHC:232369

Court No. - 51

Case :- WRIT - C No. - 40348 of 2023

Petitioner :- Manoj

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vineet Kumar Singh

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

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Vineet Kumar Singh, Counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sunil Kumar Singh, Counsel for respondent no.4, Land Management Committee.

2. Brief facts of the case are that plot No.682/745 area 0.0890 Hectare (old plot No.576/6) situated at Village - Haldauni, Teshil - Dadri, District Gautam Buddh Nagar is recorded as abadi - class 6-2 and plot No.684/746 area 0.2530 Hectare situated in the aforementioned village is recorded in the name of primary school, class 6-3. Copy of the khatauni has been annexed as Annexure No.1 to the writ petition. Petitioner's father initiated proceeding under Section 9A(2) of the U.P.C.H. Act in respect to disputed plot No. 684/746 with the prayer that the same may be recorded as abadi in the place of banjar, however, dispute has been decided against the petitioner's father but review application filed on behalf of the petitioner is pending before this Court against the judgment of Writ Court. Another proceeding u/s 28 of the U.P. Land Revenue Act 1901 initiated the instance of the petitioner's father for correction of map is pending before the Revisional Court u/s 210 of the U.P. Revenue Code, 2006. One Public Interest Litigation No. 3515 of 2018 filed by Tahir Ali for removal of encroachment in respect to plot No.684/746 area 0.2530 Hectare is pending before this Court. Proceeding u/s 67(1) of the U.P. Revenue Code, 2006 was initiated against the petitioner and his brothers in respect to plot No. 684/746

area 0.450 hectare and order for ejectment and damages has been passed on 7.7.2021 alleging to be ex parte against the petitioner and his brothers. Petitioner and his brothers challenged the order dated 7.7.2021 by way of restoration application which was rejected vide order dated 7.4.2022. Petitioner along with his brothers challenged the orders in appeal before the Collector which was allowed vide order dated 28.5.2022 on cost of Rs. 15000/- setting aside the order dated 7.7.2021 as well as 7.4.2021 and the matter was remanded back before the Tehsildar to decide the proceeding u/s 67(1) of the U.P. Revenue Code, 2006 afresh after giving opportunity of hearing to the parties. Petitioner and his brothers filed an application dated 19/20.8.2022 before Tehsildar regarding maintainability of the proceeding u/s 67(1) of the U.P. Revenue Code, 2006 as disputed plot is not Gram Panchayat property. Tehsildar, vide order dated 19.9.2022, rejected the application dated 19/20.8.2022 and fixed the case for evidence and hearing. Petitioner challenged the order dated 19.9.2022 in appeal u/s 67(5) of the U.P. Revenue Code, 2006 which has been dismissed by Additional District Magistrate, vide order dated 10.10.2023. Hence, this writ petition for following relief :-

"issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 10.10.2023 passed by the Additional District Magistrate (Finance and Revenue), Gautam Buddha Nagar in Appeal No.1212 of 2022 (Manoj Vs. Land Management Committee) (Computerized Case No.D202211270001212) under Section 67(5) of the U.P. Revenue Code, 2006 and the impugned order dated 19.09.2022 passed by the Tehsildar (Judicial), Tehsil Dadri, Gautam Buddha Nagar in Case No. RST/25478/2021 (Computerized Case No. T202111270205478) (Land Management Committee Vs. Gajendra and Others) under Section 67 of the U.P. Revenue Code, 2006 (Annexure Nos.18 and 16 to the writ petition)."

3. It is also material fact that peititoner has also instituted a Civil Suit No.2225 of 2019 impleading State of U.P., UpZila Adhikari, Tehsildar, Land Management Committee as well as Basic Shiksha Adhikari as defendants in respect to plot No. 682/745 area 0.0890 hectare for declaration that plaintiffs be declared

owner of abadi situated in plot No.682/745 area 0.0890 hectare as well as for permanent injunction restraining the defendant from interfering with the peaceful possession of the petitioner in respect to plot No.682/745 in the garb of primary school situated in plot No.684/746. Civil Judge, vide order dated 24.12.2020, granted interim injunction with regard to suit property to maintain status quo which is still in operation.

4. Counsel for the petitioner submitted that proceedings u/s 67 of the U.P. Revenue Code, 2006 has been initiated against the petitioner in respect to plot No.684/746 area 0.253 Hectare situated at Village - Haldauni, Tehsil Dadri, District - Gautam Buddh Nagar which is pending before Tehsildar after remand by Appellate Court. He further submitted that an application dated 19/20.8.2022 was filed on behalf of the petitioner regarding maintainability of proceeding u/s 67(1) of the U.P. Revenue Code, 2006 which has been annexed as Annexure No.13 to the writ petition. He further submitted that civil suit for declaration and injunction in respect to the disputed property being Suit No.2225 of 2019 impleading State, Sub-Divisional Officer, Tehsildar, Bhumi Prabandhak Samittee and Basic Shiksha Adhikari as defendants was filed in which interim injunction has been granted. He further placed the copy of the plaint as well as the copy of interim injunction granted in Suit No.2225 of 2019 which have been annexed as Annexure No.19 to the writ petition. He further submitted that in view of provisions contained u/s 59 and 60 of the U.P. Revenue Code, 2006, the proceeding u/s 67(1) of the U.P. Revenue Code, 2006 is not maintainable in respect to plot in question but Tehsildar has rejected the application dated 19/20-8-2022 and order has been maintained in appeal in arbitrary manner. He further submitted that impugned orders are wholly illegal. He submitted that impugned

order be set aside and petitioner's application regarding maintainability be decided afresh in accordance with law.

5. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sunil Kumar Singh, Counsel for respondent no.4, Land Management Committee submitted that writ petition against the order impugned is not maintainable. He further submitted that application for maintainability filed by the petitioner has been rejected in accordance with law. He submitted that earlier the appeal filed by the petitioner was allowed and the matter was remanded back to decide the matter afresh, as such, the Tehsildar is proceeding with the matter but petitioner in order to linger on the proceeding is not permitting the Court to decide the matter in accordance with law.

6. I have considered the arguments advanced by learned counsel for the parties and perused the record.

7. There is no dispute about the fact that plot No.684/746 area 0.2530 Hectare is recorded in the name of primary school. There is also no dispute about the fact that proceeding u/s 67 of the U.P. Revenue Code, 2006 has been initiated in respect to plot No.684/746 in which the application for maintainability filed by the petitioner has been rejected and the appeal has also been dismissed. There is also no dispute about the fact that civil suit for declaration and injunction being Suit No.2225 of 2019 in respect to plot No.682/745 area 0.0890 Hectare is pending before the Civil Court in which interim injunction is operating. There is also no dispute about the fact that plot No.684/746 and 682/745 are adjoining plots.

8. In order to appreciate the controversy in the matter, the relief clause of the civil suit No. 2225 of 2019 which has been annexed

as Annexure No.19 to the writ petition will be relevant for perusal which is as under :-

"मूलवाद संख्या 2225 सन् 2019

1. गजेन्द्र
2. योगेन्द्र
3. मनोज

पुत्रगण स्व. श्री मंगतू

4. उमेश

5. श्रीमती सब्जों देवी पत्नी स्व. श्री मंगतू

समस्त निवासीगण ग्राम हलद्धौनी, परगना व तहसील दादरी जनपद गौतमबुद्धनगर।

वादीगण।

बनाम

1. उत्तर प्रदेश सरकार द्वारा जिलाधिकारी, जनपद गौतमबुद्धनगर।
2. उप जिलाधिकारी, परगना व तहसील दादरी, जनपद गौतमबुद्धनगर।
3. तहसीलदार, परगना व तहसील दादरी, जनपद गौतमबुद्धनगर।
4. भूमि प्रबन्धक समिति, ग्राम हलद्धौनी द्वारा सचिव/लेखपाल, ग्राम हलद्धौनी परगना व तहसील दादरी, जनपद गौतमबुद्धनगर।
5. बेसिक शिक्षा अधिकारी, जनपद गौतमबुद्धनगर।

प्रतिवादीगण।

श्रीमानजी,

वादीगण निम्नप्रकार निवेदन करते हैं:-

13. यह कि वादीगण निम्न अनुतोष की प्रार्थना करते हैं:-

(अ) यह कि वादीगण के पक्ष में तथा प्रतिवादीगण के विरुद्ध घोषणात्मक डिक्री इस आशय की सादर फरमाते हुए वादीगण को विवादित सम्पत्ति खसरा संख्या 682/745 रकबा 0.0890 हेक्ट, स्थित ग्राम हलद्धौनी परगना व तहसील दादरी में बनी आबादी का मालिक काबिज घोषित किया जावें।

(ब) यह कि वादीगण के पक्ष में प्रतिवादीगण के विरुद्ध स्थायी निषेधाज्ञा इस आशय की सादर फरमायी जायें कि प्रतिवादीगण खसरा संख्या 684/746 में बनी प्राईमरी पाठशाला की आड़ में किसी भी प्रकार से वादीगण की आबादी खसरा संख्या 682/745 रकबा 0.0890 हेक्ट. ग्राम हलद्धौनी परगना व तहसील दादरी जनपद गौतमबुद्धनगर में किसी प्रकार तोड़फोड़ आदि करने व वादीगण के शान्तिपूर्ण कब्जे व प्रयोग में किसी प्रकार से दखल देने से सदैव के बाज रहें।

(स) अन्य अनुतोष जो हितकर वादीगण हो, प्रतिवादीगण से दिलाया जायें।

सत्यापन:-

वादीगण

हम वादीगण सत्यापित करते हैं कि वाद पत्र का उपरोक्त कथन हमारे निजी ज्ञान व कानूनी सलाह के आधार पर सब सच व सही है। कोई भी तथ्य छिपाया नहीं गया है। ईश्वर हमारा साक्षी है।

गजेन्द्र, योगेन्द्र, मनोज, उमेश पुत्रगण स्व. श्री मंगतू, श्रीमती सब्जों समस्त निवासीगण हलद्धौनी पर० व तहसील दादरी जनपद गौतमबुद्धनगर।

द्वारा अधिवक्ता- देवीशरण शर्मा, एडवोकेट"

9. The interim injunction granted by the Civil Court will also be relevant for perusal :-

"न्यायालय सिविल जज(सी० डि०), गौतमबुद्ध नगर।

मूलवाद संख्या- 2225/2019

गजेन्द्र आदि बनाम उ०प्रद० सरकार आदि

24.12.2020

प्रा०पत्र 54 ग 2 मय शपथ पत्र 55 ग 2 मय व०नामा 56 ग 2 मय पत्रावली पेश हुआ।

सुना। अवलोकन किया। आदेश हुआ कि- उक्त पक्षों को सुना। शीतकानीन अवकाश के दृष्टिगत एंव प्रा०पत्र में वर्णित तथ्य एंव परिस्थितियों में मौके पर नियत तिथि तक यथा स्थिति में मौके पर नियत तिथि तक यथास्थिति रखी जाए। पत्रावली नियत तिथि को 6 ग नि० हेतु पेश हो।

ह०अप०"

10. Perusal of Sections 59 and 60 of the U.P. Revenue Code, 2006 will be also necessary which are as under :-

"Section 59 - Entrustment of land etc. to Gram Panchayats and other local authorities.- (1) *The State Government may, by general or special order to be published in the manner prescribed, entrust all or any of the things specified in subsection*

(2), which vest in the State Government, to a Gram Panchayat or other local authority for the purposes of superintendence, preservation, management and control in accordance with the provisions of this Code. (2) The following things may be entrusted to a Gram Panchayat or other local authority under subsection (1), namely-

(i) lands, whether cultivable or otherwise, except land for the time being comprised in any holding or grove;

(ii) grove standing on the Gram Panchayat land, pasture land, graveyard, cremation ground, manure pits, Khaliyans, Chakroads, link roads, sector roads, land in river bed, road, Sadak Khanti, Sullage farm;

(iii) forests and fisheries;

(iv) trees, other than trees in a holding or on the boundary of a holding or in a grove or abadi, or any trees on unoccupied land; 27

(v) hats, bazaars, melas, tanks, ponds, water-channels, private ferries, pathways and abadi sites;

(vi) subject to the provisions of the Treasure Trove Act, 1878, any properties specified in section 55 and belonging to the State Government.

(3) Every land and other thing-

(a) vested in a Gram Panchayat or any other local authority under the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, or the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960;

(b) placed under the charge of a Gram Panchayat or any other local authority under any of the enactments repealed by this Code;

(c) otherwise coming into possession of a Gram Panchayat or other local authority, either before or after the commencement of this Code;

shall be deemed to be entrusted to such Gram Panchayat or other local authority, as the case may be, with effect from the date of commencement of this Code or from the date of such coming into its possession, for the purpose of superintendence, preservation, management and control, in accordance with the provisions of this Code.

(4) The State Government may, by a subsequent order to be published in the manner prescribed,-

(a) add to, amend, vary or rescind any earlier order issued under sub-section (1);

(b) transfer to any other Gram Panchayat or other local authority, any land or other thing entrusted or deemed to be entrusted under sub-section (1) or subsection (3) for superintendence, preservation, management and control;

(c) resume any land or other thing so entrusted or deemed to be entrusted, or transferred to any Gram Panchayat or local authority on such terms and conditions as prescribed;

(d) impose conditions and restrictions subject to which the powers of superintendence, preservation, management and control under this section shall 28 be exercised.

(5) Where any of the things specified in sub-section (2) has been entrusted or deemed to have been entrusted to a Gram Panchayat, and the village or any part thereof in which such things are situated lies outside the circle of the Gram Panchayat, such Gram Panchayat or its Bhumi Prabandhak Samiti shall, subject to any general or special order issued by the State Government in this behalf, perform, discharge and exercise the functions, duties and powers assigned, imposed or conferred by or under this Code or the U.P. Panchayat Raj Act, 1947 on a Gram Panchayat or a Bhumi Prabandhak Samiti as if that village or part also lay within that circle.

(6) Where any of the things specified under sub-section (2) has been entrusted or deemed to be entrusted to a local authority other than the Gram Panchayat, the provisions of this Chapter shall mutatis mutandis apply to such local authority.

Section 60 :- *Superintendence, management and control by Bhumi Prabandhak Samiti. -*

(1) Subject to the provisions of this Code, every Bhumi Prabandhak Samiti shall be charged, for and on behalf of the Gram Panchayat, with the superintendence, preservation, management and control of all land and other things entrusted or deemed to be entrusted to that Gram Panchayat under section 59 or over which

such Gram Panchayat is entitled to take possession under this Code or any other law for the time being in force.

(2) Without prejudice to the generality of the foregoing provisions, the functions and duties of the Bhumi Prabandhak Samiti shall include:-

(a) the settlement and management of land;

(b) the preservation, maintenance and development of forests and trees;

(c) the maintenance and development of abadi sites and village communications;

(d) the management of hats, bazaars and melas;

(e) the maintenance and development of fisheries and tanks;

(f) the development of cottage industries; 29

(g) the development and improvement of agriculture;

(h) the conduct and prosecution of suits and proceedings by or against the Gram Panchayat; and

(i) such other matters as may be prescribed.”

11. In view of the entry of plot in dispute as well as the adjoining plot No. 682/745, provisions contained u/s 59 and 60 of the U.P. Revenue Code, 2006 and pendency of the civil suit for declaration as well as injunction and grant of interim order in the civil suit, as quoted above, the rejection of the application regarding maintainability of the proceeding is not in accordance with law. There is no proper consideration of the petitioner's application regarding maintainability of the proceeding, as such, the impugned orders passed by the Tehsildar dated 19.9.2022 and order dated 10.10.2023 passed by Additional District Magistrate in appeal are liable to be set aside and the same are hereby set aside.

12. This writ petition stands **allowed** and the matter is remitted back to respondent No.3 - Tehsildar, Tehsil Dadri, District - Gautam Buddh Nagar to decide the petitioner's application dated 19/20-8-2022 afresh taking into consideration the pendency of Civil Suit No.2225 of 2019 as well as the grant of interim injunction in the aforementioned suit as well as provisions contained under Sections 59 and 60 of the U.P. Revenue Code, 2006 shall also taken into consideration. The Tehsildar shall afford proper

opportunity of hearing to the parties concerned and decide the maintainability of application within a period of two months from the date of production of a certified copy of this order before respondent No.3.

Order Date :- 7.12.2023
Vandana Y.