

Court No. - 52

Case :- WRIT - C No. - 40877 of 2023

Petitioner :- Kamlesh

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

Counsel for Petitioner :- Siya Ram Sahu

Counsel for Respondent :- C.S.C.,Achal Singh

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Siya Ram Sahu, learned counsel for petitioner and Sri Ambuj Srivastava holding brief of Sri Achal Singh, learned counsel for respondent no. 4 and Sri Prabhakar Tripathi, learned counsel for respondent no. 1 to 3.

2. Present petition has been filed seeking following reliefs:

"I) To issue a writ order or direction in the nature of certiorari to quash the impugned order dated 18.10.2023 passed by District Magistrate/Collector Banda in Appeal no. 800 of 2023 (Computerized Case no. D-202307110000800 (Kamlesh Vs. U.P. State and others) under Section 67(5), of the U.P. Revenue Code 2006 and order dated 21-06-2023 passed by respondent no. 3 Tehsildar Judicial Magistrate, Tehsil and District Banda in Suit no. 3507 of 2017 (Computerized Case no. T-2017071142013507/45 (17-18)(Gaon Sabha Vs. Kamlesh) under Section 67(3), U.P. Revenue Code 2006."

3. It is the case of the petitioner that proceeding under Section 67 of U.P. Revenue Code, 2006 has already been initiated which culminated into order dated 21.06.2023 passed by respondent no. 3, through which the petitioner has been determined as an illegal possessor over plot no. 974 M, area 0.026 hectare situated at village Triveni, Tehsil Sadar, District Banda.

4. Being aggrieved with the order passed by respondent no. 3, petitioner preferred an appeal under Section 67(5) of U.P. Revenue Code, 2006 before respondent no. 2 on several other grounds *inter alia* specifically over the ground that the plot in dispute has already been recorded in record of possession (khasra) as abadi but due to entry available in the record of rights as banjar, the proceedings was unwarranted against the petitioner and the petitioner is having the only house situated over the same land which is surrounded by the other houses and as such the same has been recorded as abadi in the record of possession (khasra). The

grounds taken up while preferring the appeal has not been considered and the same has been decided against the petitioner by way of upholding the order passed by respondent no. 3 vide order dated 18.10.2023.

5. While assailing both the orders passed by respondent no. 2 and 3, learned counsel for the petitioner submitted that without considering the factual possession which is already submitted through the report by concerned Lekhpal as well as the same has been passed without considering the record of possession wherein abadi has been entered whereupon petitioners having house over the same for past more than 20 years.

6. Per contra, learned counsel appearing 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 by way of relying the record of right and supported the stand taken up in the orders which impugned the present petition.

7. By bare perusal of the objection preferred at the time of proceedings initiated by respondent no. 3, it is crystal clear that the specific stand has been taken up by the petitioner with regard to justifying their possession in pursuance to record of possession which clearly indicated that certain abadi is available over plot no. 974M but the same has not been dealt while passing the order dated 21.06.2023 and no discussion is available in the order dated 18.10.2023 passed by respondent no. 2.

8. In view of the aforementioned facts and circumstances, both the orders dated 18.10.2023 and 21.06.2023 passed by respondent no. 2 and 3 respectively are hereby set aside. Proceedings initiated against petitioner was without considering the record of possession as well as the same was not in consonance with the report submitted by the concerned Lekhpal.

9. Writ petition stands ***allowed*** accordingly.

Order Date :- 4.12.2023

Shaswat