

Court No. - 52

Case :- WRIT - C No. - 39604 of 2022

Petitioner :- Mohd. Haroon And Another

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

Counsel for Petitioner :- Sheetla Sahai Srivastava

Counsel for Respondent :- C.S.C.,Azad Rai,Islam Ahmad,Raj Kumar Prajapati

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Sheetla Sahai Srivastava, learned counsel for the petitioners and Shri Raj Kumar Singh, learned standing counsel appearing on behalf of respondent nos. 1 to 3 and Shri Pankaj Gupta holding brief of Shri Azad Rai, appearing for respondent no.4.

2. The case of the petitioners is that name of petitioners' mother Smt. Nazma was recorded in the record of rights pertains to 1356F against plot nos.737, 354 and 378/1 which have been carved out from old plot no. 1718/3, 523 and 378 situated at Village Arayan Sadat, Tehsil Khaga, District Fatehpur.

3. In the year 2011 the fact came into the knowledge of original tenure holder that her name has been scored out from the revenue records and for restoration of the legal rights available to the original tenure holder she preferred declaratory suit under Section 229 B of U.P. Zamindari Abolition & Land Reforms Act before respondent no.3 and the same was registered as Case No.37/2011-12 (Smt. Nazma vs. State of U.P. and others). During pendency of the above mentioned proceedings concerned Lekhpal had been cross-examined and recorded his statement before respondent no.3 and the same has been appended alongwith petition as Annexure-3 wherein it has been crystal clearly mentioned that new Plot No.737, 354B and 378 has been carved out from old plot nos. 1718 and 523 and the same was recorded against the name of the mother of the petitioner i.e, Nazma and there is hardly any order available in the records for expunging the name of the mother of the petitioner.

This statement has been recorded on 12.12.2014 but, unfortunately the matter was dismissed in default on 18.2.2016. For seeking restoration of the proceedings initiated by the mother of the petitioners specific application has been preferred by the petitioner and the same was culminated into order dated 29.1.2020 through which the entire matter whatsoever has been initiated under Section 229B has been dismissed without considering the vital fact which has been recorded during pendency of the above mentioned declaratory suit.

4. Being aggrieved with the order dated 29.1.2020 same has been challenged by the mother of the petitioners on several other grounds *inter alia* precisely on the ground that while entertaining the restoration application the entire grounds taken up for seeking declaration with regard to the title of the mother of the petitioners preferred under Section 229B has been adjudicated by the respondent no.3 which was not permissible in the eye of law, that too without consideration of the material available in the proceedings in shape of statement recorded by the concerned Lekhpal.

5. Although the merit of the matter has been discussed but at no point of time the grounds taken by the petitioners for preferring revision has been dealt with in accordance with law, specially in reference to the vital evidence in shape of statement recorded by concerned Lekhpal, rather the same has been decided against the petitioner for want of requisite evidences casted upon the petitioner which rises cause of action for filing the instant writ petition before this court.

6. Learned counsel for the petitioners raised his arguments for assailing the orders dated 29.1.2020 and 15.9.2021 passed by respondent nos. 3 and 2 respectively on the ground that the same has not been adjudicated on merits at any point of time since there is hardly any discussion with regard to new plot numbers which have been carved out from the old one, which was specifically recorded in the revenue record against the name of the petitioners. It is

necessary to mention here that mother of the petitioner has already expired during pendency of the revision preferred by her and the same was later on persuaded by the petitioners being the legal heirs of the same.

7. Per contra learned standing counsel supported the stand taken by respondent nos. 3 and 2 and submitted that declaration cannot be made by the competent authority with regard to confirming the title against any tenure holder without preferring any specific evidence which enables the competent authority to declare the same in favour of the person who preferred the suit under Section 229-B, in the instant matter responding authority passed the order in a very perfect manner by way of following the strict principle of law, since petitioner failed to lead any proper evidence with regard to seeking title over the plot numbers on the basis of the records available before Consolidation Officer, learned standing counsel also submitted that during operation of the consolidation no action has been initiated by the petitioner for seeking restoration of their rights over plot numbers which were recorded in her name before consolidation.

8. Shri Raj Kumar Singh, learned standing counsel lastly submitted that after publication notified under Section 52 of U.P. Consolidation of Holdings Act, there is hardly any right available to the petitioners for seeking declaration once the petitioners failed to submit any application under Section 9-A of U.P.C.H. Act before the competent authority and now the entire prayer made by the petitioners in shape of filing declaratory suit is barred by limitation.

9. The submission made by learned standing counsel is strictly based upon the counter affidavit preferred by respondent no.3, while examining the same, the vital argument raised by learned counsel for the petitioners which is stated under paragraph-8 of the petition wherein the statement submitted by concerned Lekhkpai is appended as Annexure-3 to the writ petition and the same has been answered under para-5 of the counter affidavit, no specific

denial has been placed or any rebuttal has been mentioned with regard to factual finding elaborated in the statement recorded by concerned Lekhpal who has examined and perused the entire records available with the department of Revenue as well as Consolidation and thereafter it transpired and submitted that the new plot numbers 737, 354B and 378 has been carved out from the old plot nos. 1718 and 523 which were recorded against the name of mother of the petitioner and area of both the old plot numbers are same with the both new plot numbers which has been mentioned in the revenue records after operation of the consolidation.

10. The specific averment made by concerned Lekhpal with regard to non-availability of any specific order through which name of petitioner has been expunged from the revenue records has not been rebutted, informed or apprised in any manner whatsoever by filing the counter affidavit on behalf of respondent no.3. By way of revisiting the order passed by respondent no.3 on 29.1.2020, it is crystal clear that without considering the statement and cross-examination available in the records, the same has been decided against the petitioner only on the basis that the land has already been reserved for forest. The finding and the averment made in the orders which impugned the present petition is also controverted while filing rejoinder affidavit wherein learned counsel for the petitioner submitted under para-5 that the same plot numbers has been extended in shape of residential lease and once the land which has been notified and mentioned in the revenue records as reserved for forest under which circumstances the same has been put to lease for residential purposes.

11. In view of the aforementioned facts and circumstances and after having the rival submissions made by learned counsel for the parties one thing is crystal clear that at no point of time the evidences in shape of statement recorded by concerned Lekhpal has never been considered by respondent no.3 while passing order dated 29.1.2020 and the same is illegally upheld at the level of revision by the

revisional authority who passed the order dated 22.11.2022 specifically by respondent no.2, are highly illegal and as such both the orders dated 29.1.2020 and 22.11.2022 passed by respondent nos. 3 and 2 respectively are set aside. Matter is remitted back to respondent no.3 for deciding afresh, after due consideration extended to the statement recorded by the concerned Lekhpal and after examining the records available before consolidation alongwith the specific order if available through which the name of the petitioners has been expunged from the revenue records.

12. Writ petition stands **allowed** accordingly.

13. Above mentioned exercise shall be completed and finalised within six months from the date of production of certified copy of this order but at the same time it is made clear that proper opportunity of hearing shall be ensured before finalising the proceedings.

14. During pendency of the above mentioned proceedings preferred by the petitioners under Section 229B of U.P.Z.A.&L.R. Act, parties are hereby directed to maintain status quo over the property in dispute.

Order Date :- 24.11.2023
Rakesh