

Court No. - 48

Case :- WRIT - B No. - 3978 of 2023

Petitioner :- Mahendra Nath Singh And 2 Others

Respondent :- Deputy Director Of Consolidation And 17 Others

Counsel for Petitioner :- Arun Kumar,Ramesh Chandra Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Arun Kumar, learned counsel for the petitioners.
2. This is the second round of litigation.
3. Petitioner has approached this Court earlier by way of filing Writ Petition No.845 of 1976 for quashing the revisional order dated 21.2.1976 passed by Deputy Director of Consolidation, Azamgarh in Revision Nos.56 and 57.
4. This Court vide order dated 11.10.1995 allowed the aforesaid writ petition and order 21.2.1976 was set-aside and the matter was remitted back to decide afresh in accordance with law.
5. Learned counsel for the petitioner has drawn the attention of this Court towards paragraph nos.6 to 9 of the order passed by this Court. For reference same is mentioned hereinafter:

"6. I have gone through very carefully all the three orders passed by the consolidation authorities. Unfortunately the Revisional Authority has recorded his finding by presuming that if the then landlords had transferred the lands to the extent of 1/3rd share in 1916 and thereafter surrendered their Sri lands in that event the respondents herein will derive 1/3d interest on the basis of decree passed with consent.
7. *Even assuming that the plots in question with references to their corresponding old plot numbers did not find any mention in the sale deed yet it was open for the revisional authority to record its finding on the basis of the compromise petition and other collateral evidence if it was shown by the respondents that these lands were parted away by the predecessor-in-interest of the writ-*

petitioners in favour of the predecessor-in-interest of respondent nos.4 to 7.

8. In my view the Revisional authority ought to have perused the sale deed and other documentary and oral evidence and then recorded positive findings which not having been done I am left with no option but to set aside the impugned order and remit back revision nos 56 and 57 for fresh consideration in accordance with law.

9. In the result this writ petition succeeds and is allowed. The impugned order dated 21.2.1976 is set aside and revision nos.56 and 57 are remitted back for fresh consideration in accordance with law."

6. Learned counsel for the petitioner further submits that on remand, Revisional Authority has quoted the findings returned by the Consolidation Officer on the issue framed and thereafter without appreciating and considering the observations made by this Court has allowed the revision petition with the following observation and reasoning which is mentioned hereinafter:

"उपरोक्त निर्णय के अवलोकन से स्पष्ट है कि चकबन्दी अधिकारी ने समस्त उपलब्ध साक्ष्यों का सम्यक विश्लेषण करने के बाद तथ्यों एवं विधि व्यवस्था के आलोक में न्यायिक मस्तिष्क का प्रयोग करके आदेश पारित किया , किन्तु सहायक बन्दोबस्त अधिकारी चकबन्दी द्वारा उक्त प्रकार का विश्लेषण नहीं किया गया है। तथ्यों एवं विधि व्यवस्था के विपरीत आदेश पारित किया गया है। सहायक बन्दोबस्त अधिकारी चकबन्दी का आदेश स्वेच्छाचारी है। इस प्रकार सहायक बन्दोबस्त अधिकारी चकबन्दी का आदेश दिनांक -24.08.1974 स्थिर रहने योग्य नहीं है। उप संचालक चकबन्दी द्वारा आदेश दिनांक 21.02.1976 सही पारित किया गया है।"

7. Learned counsel for the petitioner further submitted that aforesaid order is bereft of reasoning in consideration of factors mentioned in Section 48 of Uttar Pradesh Consolidation of Holdings Act, 1953. He further submitted that observations made by this Court in aforesaid order were required to be considered by the Revisional Authority, but the same has not been done.

8. In the aforesaid circumstances considering that above referred

reasons given by Revisional Authority being illegal on face of it, therefore, while exercising powers under Article 226 of the Constitution of India, without issuing notice to the private respondents, since this Court is of a considered opinion that there could not be any argument contrary to above submissions and since this Court is proposing to remit case to the Revisional Authority to decide afresh, no prejudice would be caused to the respondents.

9. In the aforesaid circumstances, impugned order dated 3.3.2022 passed by Deputy Director of Consolidation is set-aside and matter is remitted to Revisional Authority to decide afresh with specific observation that order shall be passed in terms of factors given in Section 48 of the Act of 1953 and taking note of the observations made by this Court in the earlier order.

10. Aforesaid exercise shall be concluded within a period of six months from today.

11. Deputy Director of Consolidation, Azamgarh is cautioned that the order passed by High Court and the observations made therein are required to be considered in accordance with law.

12. With the aforesaid direction, this writ petition is **disposed of**.

Order Date :- 1.12.2023

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