

Court No. - 51

Case :- WRIT - C No. - 41651 of 2023

Petitioner :- Ram Awadh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajesh Kumar Dubey

Counsel for Respondent :- C.S.C., Suresh C. Dwivedi

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Rajesh Kumar Dubey, learned counsel for the petitioner, Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Suresh Chandra Dwivedi, learned counsel for respondent no.2 and Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents.

2. The instant writ petition has been filed for the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.9.2023 and 27.11.2023 passed by respondent no.3.

(ii) Issue a writ, order or direction in the nature of mandamus, directing the respondents not to dispossess the petitioner from araji no.17, area 0.065 hect., arazi no.22, area 0.040 hect, situated in mouza Harrendad Bujurg, Tappa Parsi, Pargana Dhuriapar, Tehsil Khajni, District Gorakhpur in pursuance of the impugned order dated 28.9.2023."

3. Counsel for the petitioner submitted that the plantation lease granted in favour of the petitioner, has been cancelled in arbitrary manner by the respondents. It is further submitted that after grant of plantation lease in favour of the petitioner, petitioner has planted the trees in accordance with the provisions of the terms mentioned in the lease deed but the authorities are interfering with the right of the petitioner, accordingly, civil suit has been filed on behalf of the petitioner being Civil Suit No.184/2023 which is pending before the Civil Judge (S.D.), Gorakhpur. He further submitted that an application under Order 7 Rule 11 C.P.C. filed on behalf of the defendants has been rejected. He also submitted that without affording proper opportunity of hearing to the petitioner, the plantation lease has been cancelled under the impugned order. He also submitted that the alternative remedy will not come in the way of the petitioner as the order impugned cancelling the petitioner's lease has been passed in violation of principle of natural justice.

4. Mr. M.C. Chaturvedi, learned Senior Counsel for respondent no.2 submitted that against the order impugned, remedy of appeal is available to the petitioner before the Collector in view of Clause 18 of the Government

Order dated 30.12.1985. He further submitted that petitioner has not followed the terms of the lease deed, accordingly, the lease has been cancelled after issuing notices to the parties but petitioner has refused to accept the notice. He also submitted that the suit filed by the petitioner is pending before the civil court wherein no injunction has been granted, as such, no interference is required in the matter and the instant writ petition is liable to be dismissed on the ground of alternative remedy.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that the plantation lease was granted in favour of the petitioner in the year 1995 which has been cancelled under the impugned order.

7. In order to appreciate the controversy involved in the matter, perusal of Clause 18 of the Government Order dated 30.12.1985 will be relevant, which are quoted hereunder:-

"यदि निर्धारित अवधि में वृक्षारोपण नहीं किया जाता है अथवा वृक्षों की उचित प्रकार से देखभाल नहीं की जाती है या अनुज्ञप्ति /पट्टे की किसी शर्त का उल्लंघन किया जाता है तो अनुज्ञप्ति /पट्टे को परगनाधिकारी द्वारा संक्षिप्त जाँच के बाद निरस्त किया जा सकता है तथा उसके परिणाम स्वरूप अनुज्ञापी/पट्टेदार को उसके द्वारा लगाये गये वृक्षों या किये गये किसी अन्य कार्य के लिये कोई प्रतिकर देय नहीं होगा तथा उसकी सरसरी रूप से बेदखली कर दी जायेगी और वर्तमान वृक्षों का स्वामित्व राज्य सरकार में निहित हो जायेगा।

अनुज्ञापी/पट्टेदार इस प्रकार के आदेश के विरुद्ध अपर कलेक्टर /कलेक्टर को अपील कर सकता है जिनका आदेश अन्तिम होगा।"

8. From the perusal of Clause 18 of the G.O. dated 30.12.1985, it reflects that against the impugned order, remedy of appeal is available to the petitioner.

9. In view of the provisions contained under Clause 18 of the G.O. dated 30.12.1985, the writ petition is dismissed on the ground of alternative remedy.

10. However, petitioner can file appeal against the impugned order within a period of three weeks from today which shall be decided by the Collector in

accordance with law, expeditiously, preferably within a period of three months, from the date of filing of the appeal.

Order Date :- 11.12.2023

C.Prakash