

Court No. - 17

Case :- WRIT - C No. - 3000173 of 1995

Petitioner :- Amar Singh And Others

Respondent :- Addl.Commissioner Lucknow And Others

Counsel for Petitioner :- V.K.Pandey,Ashok Kumar,Chandra Prakash,N.A.Siddiqui,Nazim Ali Siddique,Nishant Srivastava,Uma Shankar Sahai

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri U. S. Sahai, learned counsel for the petitioners as well as Sri L. M. Khare, learned Standing counsel for the respondents.

2. By means of the present petition the petitioners have assailed the order dated 23.6.1989 passed by Prescribed Authority, Ceiling as well as order dated 31.10.1995 passed by opposite party No.1-Additoinal Commissioner, Lucknow Division, Lucknow.

3. It has been submitted by learned counsel for the petitioner that the present proceedings were initiated against the recorded tenure holder under U.P. Imposition of Ceiling on Land Holdings Act, 1960 and concluded in 1963 and certain portion of the land of the recorded tenure holder was declared surplus. The petitioner after a lapse of nearly 25 years moved an application under Section 11 (2) assailing the orders by which the land on which they claimed possession has been declared surplus by the Prescribed Authority stating that they are in possession of the said land for more than thirty years and consequently on the basis of adverse possession they have perfected their rights and become owners of the said land and the same should be excluded from ceiling operations. In support of their submissions oral statements were adduced before the Prescribed Authority who duly considered the objections filed by the petitioner and after due consideration he has rejected the said objections. It was stated by the petitioners that they have obtained a decree from the revenue court under Section 229 B of U.P. Z.A. and L.R. Act and consequently once decree of the competent court has been passed in their favour there should not be any dispute with regard to their possession of the said land in the capacity of being Sirdars.

4. During pendency of the said proceedings the petitioners had

filed revenue records pertaining to fasli years 1362 to 1371 wherein it was stated that their names were recorded in the revenue records which further demonstrates their possession over the said land. Apart from these documents and oral statements no other documents were filed by the petitioners in support of their submissions.

5. Before the Prescribed Authority despite repeated time having been granted to the petitioner they have not been able to file certified copy of the decree passed under Section 229 B of U.P.Z.A. and L.R Act nor any copy of the said order was filed to demonstrate that they have been declared as Sirdars of the disputed land. Even the revenue records which were filed by the petitioners were found to be of doubtful veracity in as much the said documents would have been pertaining to at least more than 10 years but the writings and the papers on which they were prepared did not tally and in this regard the Prescribed Authority relied upon the statement of the Lekhpal who stated that the said documents were of doubtful veracity. It was on the aforesaid facts that the Prescribed Authority did not find merits in the submissions of the petitioner. They were unable to prove that they were in possession of the said land for thirty years. There was no material to show that they were in adverse possession so that they may be declared as owners of the said land and accordingly the Prescribed Authority rejected the objections filed by the petitioners.

6. Before the appellate authority the same pleas were reiterated. The appellate authority also considered the fact that after the said land was declared surplus pattas were issued in favour of the petitioners Amar Singh, Kartar Singh and Suchcha Singh for 6.3 acres each. It has further been recorded that after the expiry of the period of the pattas the said pattas were cancelled and reverted back to the State. He has further verified the said facts from the records. He has further upheld the findings recorded by the Prescribed Authority with regard to land records filed by the petitioner. When the petitioner was confronted as to why the land records were filed after lapse of ten years of filing the objections and in this regard even when oral statement was recorded there was no mention of the said land records in the oral statement no satisfactory explanation was forthcoming. Apart from the above, he also held that the said land records were doubtful and on the basis of the same no right or title devolved upon the petitioner. The appellate authority has also doubted the contentions of the petitioner and found that the documents filed by them were at great variance from the oral statements made by them before the Prescribed Authority and accordingly he dismissed the appeal.

7. Learned counsel for the petitioners has submitted that both the orders passed by the Prescribed Authority as well as the appellate authority are arbitrary and require interference. It has further been reiterated that the petitioner had established their right and title over the said land to be in adverse possession of the said land for last thirty years and accordingly despite the fact that they were not able to produce copy of the decree passed in their favour under Section 229 of U.P.Z.A. and L.R. Act as there was no requirement of seeking any declaration on the title of Sirdar. He submits that mere oral statement that they were in possession over the said land over thirty years was sufficient for the Prescribed Authority to have released the said land from the ceiling proceedings and further vehemently submitted that there was no necessity of seeking any declaration from any court of competent jurisdiction in this regard. Lastly, it was submitted that the petitioners are still in possession of the said land.

8. No other point was urged by learned counsel for the petitioner in support of his submission.

9. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that in case the petitioners wanted to establish their rights on the basis of adverse possession it was mandatory for them to have obtained a decree from the court of competent jurisdiction. He submits that the aspect of adverse possession is a question of fact and it has to be proved that the petitioners were, in fact, in possession of the said land and the said possession was adverse to the recorded tenure holder. He further submits that even if the facts as stated by the petitioners are to be believed then only the aspect of possession has been submitted by him and there is no evidence oral or written submitted by the petitioner to indicate that the said possession was ever adverse of the recorded tenure holder and consequently as per the statement of the petitioner his title on the basis of adverse possession is not borne out from the records. He had contested the fact that the said land is in possession of the petitioner. He further submits that both the authorities have done a detailed analysis of the evidence filed by the petitioner in support of his claim of adverse possession. He submits that when oral statement of the petitioner were recorded sometime in 1984-85. There was no mention with regard to existence of revenue records for the fasli years 1362 to 1371. He submits that these documents were subsequently prepared which were totally fabricated and in this regard no interference is required in the findings of the Prescribed Authority. He submits that evidence in this regard was also led by revenue officials (Naib Tehsildar) who have stated that the said revenue entries are forged and fabricated. The possession

of the petitioners over the said land was only when they were granted pattas subsequent to the declaration of the land as surplus and subsequently the pattas have been cancelled. This fact is not denied by the petitioner and consequently it is noticed that possession of the petitioners over the said land was only during the period when they were granted the said pattas.

10. This Court has gone through the entire records as well as the arguments made by learned counsel for the petitioners and this Court does not find any infirmity in the findings recorded either by the Prescribed Authority or by the appellate authority. The petitioners have not been able to prove that they are in adverse possession of the said land. The decree as claimed by them to have been passed under Section 229 B was never produced by them either before the ceiling authorities or before this Court to indicate that they have been in possession over the said land for a very long time of nearly thirty years. Even from the material and evidence produced before the Prescribed Authority and the appellate authority which could indicate or demonstrate that they are entitled to the said land on the basis of adverse possession. There is no material filed by the petitioner before this Court so as to set aside the findings of both the courts i.e. trial as well as appellate and return a findings in favour of the petitioner with regard to adverse possession.

11. In light of the above, no interference is required under Article 226/227 of the Constitution of India. The writ petition being devoid of merits is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 7.12.2023
RKM.