

Court No. - 18

Case :- WRIT - C No. - 1001492 of 1999

Petitioner :- Lalle Devi

Respondent :- Addl. Commissioner Admn. Lucknow

Counsel for Petitioner :- G.D.Pandey, Ankur Sinha, Avadhesh Kumar, D N Bhardwaj, D.K. Srivastava, Jagdish Prasad Maurya, Mukesh Kumar Sharma, Om Prakash Vishwakarma, R.K.S. Chauhan, Rama Raman Mishra, Roshan Lal, S.N. Bhardwaj, Sumit Kumar Sharma, Suresh Chandra Shukla, Ved Prakash Sharma

Counsel for Respondent :- Chief Standing Counsel, Anoop Srivastava Ii, C.P.S. Bhadauria, D.C. Mukherjee, Dheeraj Srivastava, Jai Krishna Sinha, Mubin Ahmad, Zia Ur Rehman

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Ram Raman Mishra, learned counsel for the petitioner, Sri Dheeraj Shrivastava, learned counsel for opposite party no. 2, Sri Hemant Pandey, learned standing counsel for the State.

2. By means of the instant petition, the petitioner has assailed the order dated 15.04.1999 passed by the Additional Commissioner- Ist, Lucknow Division, District-Lucknow in revision no. 869/97-98, (Dhruv Kumar Singh and another versus Smt Lalle Devi and others.)

3. Learned counsel for the petitioner submits that the petitioner was having possession over the gata no. 1798(kha) bearing an area of 0.03 Dismil at village- Nighasan, thereafter, the said land was allotted to the petitioner while invoking the provisions under section 123(1) of U.P. Jamindari Abolition and Land Reforms Act, 1950 ("hereinafter referred to as 'Act, 1950") vide order dated 24.09.1997. He added that one Dhruv Kumar Singh filed a revision against the order passed by the Sub-Divisional Officer and while entertaining the aforesaid revision, the

revisional court has passed the order dated 15.04.1999, without considering that the revision itself would not maintainable on behest of the respondent no. 2.

4. He further contended that the revisional court has given the perverse finding that the land in question is a public purpose land though, the same was being used as abadi and there is a construction over there. He also added that the petitioner was not given opportunity to be heard before the revisional court and therefore, the abovesaid facts could not be brought before the revisional court.

5. Adding his argument, he submits that since year 1985, the plot no. 1798 is in possession of the petitioner and terming it as public purposes land, the revisional court has set aside the order dated 24.09.1997 passed by the Sub-Divisional Officer. He added that thus, the finding given by the revisional court is perverse and the same is liable to be set aside.

6. Learned counsel appearing for the State has vehemently opposed the contentions aforesaid and submits that learned Sub-Divisional Officer has passed the order dated 24.09.1999, ignoring the provisions envisaged under section 123(1) of the Act, 1950. The provisions of section 123(1) is reproduced herein under:-

"123. Certain house sites to be settled with existing owner thereof.-[(1)] Without prejudice to the provisions of Section 9, where any person referred to in sub-section (3) of Section 122-C has built a house on any land referred to in sub-section (2) of that section, not being land reserved for any public purpose, and such house exists on [May 13, 2007] the site of such house shall be held by the owner of the house on terms and conditions as may be prescribed."

7. Referring the aforesaid, he submits that it has overtly been

mentioned in the aforesaid provision that if there is house build over such land, not being land reserved for any public purposes and such house exist on May, 13 of 2007, and on the such site the house shall be held that by such owner can be termed in such terms and conditions.

8. Referring the aforesaid he also submits that it is evident from the record itself that the land in question is reserved for public purposes and therefore, the same cannot be allotted while invoking the power under section 123(1) of the Act, 1950. He also pointed out that there is no construction of house over the land and this fact was also not considered by the Sub-Divisional Officer while passing the order dated 24.09.1999 and therefore, the order dated 24.09.1999 is erroneous and against the provision prescribed under section 123 of the Act, 1950.

9. In support of his contention, he has placed reliance on the judgment rendered in Consolidation Case no. 6946 of 2019 wherein, the order was passed on 13.03.2019 and has referred paragraphs at page 18, which is quoted hereinunder:-

"The category assigned to a particular kind of land in terms of the provisions contained in Paragraph A-124 of U.P. Land and others by which the opposite party no.3 rejected the appeal of the petitioner ex-parte and on frivolous grounds without application of mind and also without appreciated the record available on record also evidences produced by the petitioner and the impugned order dated 26.3.2008 passed by the opposite party no.4 without appreciating the fact that matter already remanded by Sub Divisional Magistrate, Mohanlalganj, Lucknow by order dated 20.2.2007.

4. That on the first day of hearing i.e. 30.06.2022, this Hon'ble court directed to the petitioner counsel to give affidavit regarding the claim if petitioner in property related to his maternal father namely Buddhu, whether the name of petitioner entered in the property of maternal father before passing impugned orders.

5. That in compliance of order passed by this Hon'ble court it is most respectfully submitted here that petitioner never take any share in the property of maternal father either before passing of impugned order or

after passing the impugned orders even neither till date.

6. That it is also point out that only the claim of the petitioner is in the property of his adopted father i.e Dhani Ram and as per record he is legally entitled in the property of his adopted father i.e Dhani Ram.for evident the Khatauni related to the property is annexed as Annexure no.S.A.1 to the present affidavit.

7. That under the above facts and circumstances it is most respectfully submitted that this Hon'ble Court kindly taken present affidavit on record and may graciously be pleased to stay the impugned orders mentioned hereinabove in the interest of justice.

Record Manual, in my considered opinion, is impermissible to be changed. Learned counsel for the petitioners has not been able to show any provision which confers any power or jurisdiction on any authority including the Sub Divisional Officer to change the category of land. In this regard, he has attempted to argue that in terms of the provisions contained in clause 9 of Paragraph Ka- 155-Ka of U.P. Land Record manual, the Collector is empowered to change the category of land and the Collector since includes Assistant Collector, First Class, as such the Sub Divisional Officer will also have the authority to change the category of land."

10. Referring the aforesaid, he added that it has been categorically held that 'the category assigned to particular kind of land in terms of provisions contained in paragraph A-124 of U.P land record manual, the change of the nature is impermissible.

11. The counsels appearing for the respondent have also supported the version of counsel for the State and submits that the present petitioner is not entitled for any benefit as prescribed under section 123(1) of the Act, 1950. He also added that the learned Sub-Divisional Officer while passing the order dated 24.09.1999, ignored the provisions of the Act, 1950 and further, he also did not consider that there is no construction over the land in question and the land is reserved for public purposes and thus, the revisional court has rightly passed the impugned order.

12. Having heard learned counsel for the parties and after

perusal of material placed on record, it transpires that a land of gata no. 1798(kha), bearing an area of 0.03 acre was allotted in favour of the petitioner, while invoking the power under section 123 of Act, 1950. The Sub-Divisional Officer treating the aforesaid land as not the land reserved for public purpose as well as assuming that there is construction over the said land, allotted the same in favour of the petitioner, vide order dated 24.09.1999. The aforesaid order was challenged before the revisional court and the revisional court while looking into the unlawfulness in the order passed by the Sub-Divisional Officer has categorically held the since the said land is a land reserved for public purpose that is 'Khad Gaddha' (Pit land) of Gaon Sabha, therefore, in term of the provision prescribed under section 123(1) of the Act, 1950, the same cannot be allotted. It is further been recorded by the revisional court that the Sub-Divisional Officer without giving any finding or examining the fact that whether there was any construction over the land in question, allotted the land in favour of the petitioner.

13. When this Court examines the aforesaid finding of the revisional court, it emerges that revisional court has considered two forms, one that the Sub-Divisional Officer has wrongly treated the land in question as not the land reserved for public purposes and secondly, the Sub-Divisional Officer has also wrongly assumed that there is a construction over the land and therefore, the benefit of the provisions prescribed under section 123(1) of the Act, 1950 cannot be given to the petitioner.

14. The petitioner has failed to rebut the fact that the said land is not a land reserved for public purposes. Further this Court also taken the note of the fact that the Sub-Divisional Officer while allotting the aforesaid land in favour of the petitioner has also not recorded any finding that whether there is any

construction over the land in question and the petitioner could not substantiate his contention while producing any document or record that there is construction over the land dispute on the cut of date, prescribed under section 123 of the Act, 1950.

15. Whereas, the revisional court has recorded the categorical finding that there is no construction over the land in question.

16. In view of the aforesaid submission and discussions, this Court is also of considered opinion that the land in question could not be allotted to the present petitioner as the same is reserved for public purposes land and that comes under the barring clause which itself inbuilt in the provisions under section 123 of the Act, 1950.

17. Consequently this Court do not find any merit in this petition, thus, this petition is hereby **dismissed**.

18. No order as to costs.

Order Date :- 28.11.2023

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