Court No. - 17
Case :- WRIT - C No. - 3000002 of 2004
Petitioner :- Pradeep Kumar And 9 Ors.
Respondent :- Addl. Commissioner Admin. Lucknow And 2 Ors.
Counsel for Petitioner :- S.K. Mehrotra,Kshemendra Shukla,Shobhit Mohan Shukla
Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Heard Shri Shobhit Mohan Shukla, learned counsel for the petitioner as well as learned Standing Counsel appearing on behalf of respondents.

By means of the present writ petition the petitioner has challenged the order dated 22.9.2003, passed by the Additional Commissioner (Admin) Lucknow in exercise of powers under Section – 27(4) of U.P. Imposition of Ceiling on Land Holdings Act, 1960.

The brief facts of the case as stated by the petitioners are that the petitioners were granted lease of land which was declared surplus in the proceedings related to ceiling on land holdings under the provisions contained under Section 27 of U.P. Imposition of Ceiling on Land Holdings Act, 1960.

The petitioners no.1 to 3 have been granted respective lease in respect of the land situated in village Barua 20 to 25 years ago prior to initiation of the proceedings by the respondents. Petitioners no. 4 to 10 had been granted 'pattas' with respect to the land situated in the village 'Matehia' in the year 1991.

It has further been stated that due to the length of possession of the said lands they had been granted non- transferable bhumidhari rights with respect to the said land holdings.

It has further been submitted that the amendment was made in the U.P. Zamindari Abolition of Land Reforms Act in 1995 with effect from 14.01.1995

where bhumidhar with non transferable rights became bhumidhar with transferable rights and Section 131 B was incorporated. It has further been submitted that pattas were granted to the petitioners strictly in accordance with the provision contained in Section 27 of the Act of 1960.

The grievance of the petitioners had commenced when a report was submitted by the District Magistrate, Kheri to the Divisional Commissioner, Lucknow on 09.11.2000 stating that the pattas have wrongly been granted to the petitioners and requested that proceedings under Section 27 (4) of the Act of 1960 be commenced against the petitioners.

The Commissioner in turn initiated proceedings against the petitioners and issued notices on 23.12.2000 asking the petitioners to show cause as to why the pattas granted to them be not cancelled on the ground that they were not resident of the village in which the pattas were granted to them.

The petitioners responded to the said notice and filed their objections before the Commissioner, Lucknow Division. Apart from filing documents with regard to the place of residence it was also pleaded that according to Section 27 (6) (b) of the Act of 1960 the proceedings for cancellation of the pattas could be initiated before expiry of the period of seven years from the date of grant of lease in case the said lease has been granted before 10.11.1980 and in case any lease is granted on or after 10.11.1980 then before expiry of a period of five years from the date of such lease or up to 10.11.1987 whichever is later and in the present case five years had expired some times in the year 1996 and, consequently, the proceedings having been initiated in the year 2000 were hopelessly barred by time and, accordingly, the Commissioner did not have any jurisdiction to initiate proceedings for cancellation of the pattas.

The Commissioner by means of the impugned order duly considered the objections raised by the petitioner. He has made a categorical finding that the petitioners have demonstrated their rights to

be validly granted the pattas while on the other hand the District Magistrate in his recommendation for cancellation of the patta has not provided any evidence or material on the basis of which same could be cancelled.

With regard to the aspect of limitation he has not found any infirmity in the plea taken by the petitioners that as per the period of limitation provided in sub Clause 6 (b) of Section 27 of the Act of 1960, the period of limitation is five years and the present proceedings have been initiated beyond the said period.

It is in the aforesaid circumstances, he has rejected the proposal sent by the District Magistrate.

The petitioner is aggrieved by the order of the Commissioner where despite returning a finding in favour of the petitioner has still proceeded to remand the matter back to the Collector for conducting a further inquiry into the said matter but has provided that no action shall be taken by him without giving an opportunity of hearing to the petitioners.

Learned counsel for the petitioner has submitted that the authority who has jurisdiction to cancel the pattas is the Commissioner as per provisions contained in Section 27 (4) of the Act of 1960 where either Commissioner on his own motion or on an application of an aggrieved person enquire into the aspect where the patta has been granted contrary to the statutory provisions or there is any illegality in the same.

In the present case the proceedings were initiated on the basis of the report submitted by the District Magistrate, Kheri. The District Magistrate, Kheri was an aggrieved person as per the provision of sub -section 4 of Section 27 of the Act of 1960 and, consequently, proceedings were initiated on the basis of his complaint. The complaint was found to be without substance and, consequently, he has rejected the said complaint. It is stated that once the complaint has been rejected the Commissioner becomes functious officio as per

provision of Section 27 (4) of the Act of 1960 and there is no provision in the Act of 1960 to commence any other proceedings the District Magistrate and, consequently, no such direction could be issued by the Commissioner for conducting a fresh inquiry once his proposal/ complaint had been found to be without merits.

It is on the aforesaid grounds it has been vehemently submitted that firstly the District Magistrate does not have any power to conduct the inquiry under the Act of 1960 and even if an inquiry is conducted, the same would be futile in light of provisions of Section 27 (6)(b) of the Act of 1960 as no such cancellation of 'pattas' can take place after the period of limitation prescribed therein.

Learned Standing counsel on the other hand has opposed the writ petition.

He has submitted that the pattas were granted dehors the provisions of law and, consequently, the District Magistrate has made a complaint to the Commissioner to initiate the proceedings under Section 27 (4) of the Act of 1960 for cancellation of the pattas. He submits that whenever the authorities find that the pattas have been granted dehors the provision contained in law, it is always open for them recommence the proceedings for cancellation and, consequently, submits that findings returned by the Commissioner with regard to the fact that the matter has been remanded to the District Magistrate, cannot be doubted and there is no infirmity in the same.

I have heard learned counsel for the parties and perused the record.

Without any further discussion it is noticed that the Commissioner in the impugned order dated 22.9.2003 has rejected the proposal of the District Magistrate for cancellation of the pattas in favour of the petitioner. He has categorically dealt with the issue pertaining to the aspect of the limitation that any such cancellation can take place within five years from the date of settlement of the

pattas in favour of the patta holders.

In the present case admittedly the last person to be allotted patta was in 1991 and after more than nine years notice was issued to the petitioners, and hence the proceedings were hopelessly barred by time.

It is in the aforesaid facts that he had to drop the proceedings as he did not find any merit in the proposal sent by the District Magistrate. Once he has dropped the proceedings this Court is of the considered view that there is no power vested in him as per the Act of 1960 to direct the District Magistrate to further conduct an inquiry. Such a direction is clearly dehors the provision of the Act and also arbitrary.

Once the complaint has been forwarded by the District Magistrate and notice issued to the patta holders and they have duly responded to the notice and no merit has been found in the said notices there was no occasion for the Commissioner to direct the District Magistrate to conduct the inquiry. Even while remanding the matter he has not indicated the issue on what aspect the inquiry has to be conducted and such a catablanche cannot be granted by the Commissioner as we have already observed is dehors the provision of the Act of 1960 and, consequently, illegal and arbitrary and consequently para 5 of the said order is accordingly quashed.

In light of the aforesaid discussion, the petition is allowed.

Order Date :- 1.11.2023
mks

(Alok Mathur, J.)

Digitally signed by :-
MANISH SAXENA
High Court of Judicature at Allahabad,
Lucknow Bench