

Court No. - 6

Case :- WRIT - C No. - 1004317 of 2013

Petitioner :- Talukdar And Others

Respondent :- Additional Commissioner Judicial Devi Patan Mandal And Other

Counsel for Petitioner :- Anand Pal Singh Vishen

Counsel for Respondent :- C.S.C.,Mohan Singh,Pankaj Gupta

Hon'ble Rajnish Kumar,J.

1. Heard Sri Anand Pal Singh Vishen learned counsel for the petitioners, learned Standing counsel for the respondent nos.1 and 2, Sri Mohan Singh learned counsel for the respondent no.4 and Sri Pankaj Gupta learned counsel for the respondent no.5.

2. None has put in appearance on behalf of the respondent no.3, despite sufficient service.

3. The petitioners are claiming to have been granted lease of certain lands to their father, certificate to this effect was issued on 27.05.1978 and filed a suit under Section 229-B which was allowed by the Additional Sub Divisional Officer Ist, Gonda by means of the order dated 08.09.2011 only on the ground that more than 10 years have passed since grant of lease and as per the Government Order, there is provision of becoming Sankramandiy Bhumidhar after 10 years and declared the father of the petitioners as Sankramandiy Bhumidhar of Gata no.413M/0.036 and Gata no.441M/0730A. The said order was challenged by the respondent nos.3 and 4 in Revision no.759 under Section 333 of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, which was allowed by means of the judgment and order dated 18.04.2013 by the Additional Commissioner (Judicial) Devi Patan Mandal, Gonda. The revision has been allowed on the ground that it is not clear as to whether any notice under Section 80 CPC was issued prior to filing of the suit because no such certificate and the prove of service of any such notice on the Collector has been given, no proof of notice under Rule 106 of Panchayat Raj Act has also been filed. The main legal ground taken by the Revisional Authority is that in the year, 1978 the approval of lease by the Sub Divisional Officer was mandatory but it is not clear as to under what circumstances the approval was not sought. It has also been observed that the village Pradhan of Dulampur has also denied to give statement, whereas his statement has been made basis of the order by the lower court and since the land of

the Gaon Sabha has been affected, therefore, the order does not sustain and quashed the order dated 08.09.2011.

4. The petitioner has challenged the order passed by the Additional Commissioner (Judicial) Devi Patan Mandal, Gonda dated 18.04.2013 in this petition. The specific findings recorded by the Revisional Court have not been challenged. The petitioners have also not taken any plea that the approval on grant of lease to the father of the petitioners was ever granted.

5. Learned counsel for the petitioner on the basis of instructions, also submits that the petitioners do not know anything about the approval of the Sub-Divisional Officer on the lease granted to their father and they have also failed to produce the same. It is not disputed that prior approval of the Assistant Collector Incharge Sub Division was made mandatory prior to issuance of the certificate claiming to be lease in favour of the petitioner whereas no such certificate could have been issued in view of Rules 175, 176, 176(a) of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, without approval of Assistant Collector.

6. In view of the above, since the petitioner has failed to show that prior approval was granted by the Assistant Collector, Incharge of Sub Division, merely issuance of certificate on Form-58 cannot be said to be a valid certificate of lease because the said certificate could have been provided to the petitioner only after approval on Form-57B with the order of the Assistant Collector, Incharge of Sub Division under Rule 176(A) of the Act, 1950. The denial of the Gram Pradhan to give any evidence in this regard shows that the said certificate was either given to the father of the petitioners by the concerned Gram Pradhan without any approval or he got it somehow.

7. A counter affidavit has been filed by the State respondents before this Court by the Tehsildar, Sadar Gonda, taking specific plea in paragraph-5 that the approval of the Sub Divisional Officer was mandatory in the year, 1978 but the lease was not got proved, therefore, the lease is not admissible and no benefit of the certificate can be given to the petitioner and the alleged lease is not valid.

8. A specific plea has been taken in paragraph-'7' of the counter affidavit by the State that neither the father of the petitioner nos.2 to 5 had possession on the land in dispute in his lifetime nor his sons as on date, which includes the petitioner no.1. This counter affidavit was filed in the year, 2014 and despite last opportunity granted in the year 2016, no rejoinder affidavit to this has been filed, therefore, the contents of the counter

affidavit are taken to be true.

9. In view of the above and considering the over all facts and circumstances of the case, this Court is of the view that impugned order passed by the revisional authority dated 18.04.2013 is in accordance with law. There is no illegality or error in the impugned order, which may call for any interference by this Court.

10. The writ petition is, accordingly, **dismissed**.

11. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 11.10.2023

Harshita