

Court No. - 18

Case :- WRIT - C No. - 8722 of 2023

Petitioner :- Dharmpal Singh

Respondent :- Addl. Commissioner, Judicial First, Lucknow Division,
Lucknow And 2 Others

Counsel for Petitioner :- Dilip Kumar Pandey

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioners, Shri Hemant Kumar Pandey, learned Standing Counsel for State-respondent and Shri Dilip Kumar Pandey, learned counsel for Gram Sabha.

2. Present petition has been filed with the following main relief:

"i. Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 05.07.2023 by means of which the Revision No 839/2016, Computerized Case No C-2016100000839 arises from order dated 03.12.2008 passed by the opposite parties no 2 by means of which cancel the name of petitioner from revenue record and order to record the said land in Goan Sabha in respect of Gata No 123/1m, area 0.0380 hector of village Basugarhi, Pargana Khero, Tehsil Lalganj, District Raibarelli. as contain in Annexure no 1, & 2 to this writ petition.

ii. Issue a writ, order or direction in the nature of MANDAMUS commanding the opposite parties not to disturb the peaceful possession of the petitioner in respect of land Gata no. 123/1m, area 0.0380 hectare of village Basugarhi, Pargana Khero, Tehsil Lalganj, District Raibarelli."

3. From the record, it appears that in the year 1985, a case was instituted against the petitioner under Rule 115C of U.P. Zamindari Abolition and Land Reforms Rules, 1952 (in short "Rules, 1952) framed under the U.P. Zamindari Abolition and Land Reform Act, 1950 (in short "Act, 1950"). For some reason, the proceedings instituted were dropped..

4. From the impugned orders, it further reflects that name of the petitioner was shown in the revenue records of the Gata no. 123/1m,

area 0.0380 hectare, situated at Village - Basugarhi, Pargana - Khero, Tehsil Lalganj, District Raibareli.

5. Undisputedly, the land belongs to Shreni-IV. Taking note of the fact that land in issue i.e. Gata No. 123 is a State/Gaon Sabha land (Shreni/Varg-4 land), a report dated 28.11.2018 was submitted for correcting the revenue record as in the record the name of the petitioner was shown. Based upon this report, the respondent no.2/Sub Divisional Magistrate, Tehsil Lalganj, District - Raebareli passed the 03.12.2008 affirmed vide order dated 05.07.2023 passed by respondent no.1/Additional Commissioner, Judicial First, Lucknow Division, Lucknow.

6. The fact that land, in issue, i.e. Gata No. 123 is a State/Gaon Sabha Land (Shreni/Varg-4 land) is not in dispute. The case of the petitioner over the land, in issue, is broadly based on the period of possession.

7. In view of observation made by this Court in the judgment passed in the case of **Rizwan and Ors. Vs. Deputy Director of Consolidation and Ors. reported in MANU/UP/1825/2003**, the claim of the petitioner on the basis of possession is not sustainable. The relevant para in this regard are as under:

"6. In the above fact-situation, the questions that boil down for consideration are (1) whether a person in unauthorised possession of Gaon Sabha property could acquire any bhumidhari right on grounds of adverse possession, and (2) whether an order passed by the authorities in a proceeding under Section 122B of the U.P. Z. A. and L.R. Act which culminated in dropping of proceedings could amount to a declaration of bhumidhari rights?"

7. As regards the first question, reference may be made to amendment in Section 210 of the U.P. Z. A. and L.R. Act made by the U.P. Land Laws (Amendment) Act, 1976. The amendment having a bearing on the answer of the first question, may be excerpted below:

For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

"210. If a suit for eviction from any land under Section

209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall:

(i) where the land forms part of the holding of a bhumidhari or sirdari become a sirdar of such land, and the rights, title and interest of an asami, if any, in such land shall be extinguished ;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, became an asami thereof holding from year to year."

*8. The amendment aforesaid leaves no manner of doubt that it has been given retrospective effect the necessary implication of which is that a person having been in unauthorised possession even from the date of enforcement of the U.P. Z. A. and L.R. Act, i.e., since, 1st July, 1952, would not acquire any bhumidhari right on Gaon Sabha property. The necessary consequence that flows from this amendment in essence is that even if a person had been in actual possession for 12 years or more and even if suit under Section 209 of the U.P. Z. A. and L.R. Act had not come to be filed, any person in occupation thereof cannot acquire bhumidhari rights on the land belonging to Gaon Sabha. In the perspective of the amendment aforesaid made in Section 210 of the U.P. Z. A. and L.R. Act, the forceful contention pressed on behalf of the Petitioners who have not adduced any documentary evidence to bolster up their rights or possession prior to the date of vesting otherwise in accordance with law and have merely relied upon varg 4 entry besides oral evidence in vindication of their bhumidhari rights, will not have any cutting edge and falls to the ground. The view I am taking respecting question No. 1 is fortified by a Division Bench of this Court in *Likhi Ram Moola v. State of U.P.* 2000 (1) AWC 521; MANU/UP/0009/2002MANU/UP/0009/2002 : 2002 (93) RD 126, in which the question raised before the Division Bench resembled the question involved in the instant petition.*

9. Coming to the second question whether the rights of Petitioners could be determined in proceedings emerging from Section 122B of the U.P. Z. A. and L.R. Act and order passed therein thereby proceedings were ordered to be dropped, it is worth noticing that proceedings stemming from Section 122B of the U.P. Z. A. and L.R. Act are summary in nature and the question of fact cannot be appraised in these proceedings. The necessary consequence is that any order passed under Section 122B of the U.P. Z. A. and L.R. Act or Rule 115 C and D of the U.P. Z. A. and L.R. Rules is not capable of conferring any right on a person or a party to whom notices were issued and proceedings were initiated. The view, which I am inclined

to take in this case, receives fortification from a decision in U.P. State Sugar Corporation v. Deputy Director of Consolidation 2000 (2) AWC 933 : 2000 (91) RD 165.

10. In the above conspectus, I would sum up that the Petitioners' mainstay for claiming bhumidhari rights is founded on ground on adverse possession and it has not been pleaded or proved that the Petitioners or their predecessors were recorded in the revenue record on or prior to enforcement of Z. A. and L.R. Act and by this reckoning, it necessarily follows that the Petitioners were in unauthorised occupation of the property vested in Gaon Sabha. In view of the amendment aforestated, the plea of possession otherwise in accordance with law cannot be invoked for claiming bhumidhari rights and in the circumstances, the objections preferred by the Petitioners rightly wrecked on disapproval of the appellate authority who justly allowed appeals and directed to record the property in dispute as Gaon Sabha property."

8. Considering the aforesaid undisputed facts of the case regarding the nature of land as also the law referred above, this Court is not inclined to entertain the present petition. Accordingly, the petition is **dismissed** leaving it open to the petitioner to seek benefit of Section 67A of U.P. Revenue Code, 2006, if he is entitled to the same.

Order Date :- 12.10.2023/Mohit Singh/-