

Court No. - 6

Case :- WRIT - B No. - 955 of 2023

Petitioner :- Nankau And Others

Respondent :- Board Of Revenue U.P. Lko. Thru. Secy./Chairman And Others

Counsel for Petitioner :- Lalta Prasad Misra,Rajeiu Kumar Tripathi

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

Hon'ble Rajnish Kumar,J.

1. Heard Dr. L.P. Mishra,Advocate assisted by Sri Rajeiu Kumar Tripathi, learned counsel for the petitioners, Sri Ajay Kumar Singh Tomar, learned Additional Chief Standing Counsel and Sri Pankaj Gupta,learned counsel for the opposite party no.4/ Land Management Committee.

2. This petition has been filed challenging the order dated 10.10.2023 passed by opposite party no.1 in Case No.REV/2469/2023/Bahraich (Computerized Case No.R20230815002469), order dated 25.08.2023 passed by opposite party no.2 in Case No.50/80/12-13 (Computerized Case No.D2013081500150) and order dated 05.10.2023 passed by Tehsildar, Mahsi alongwith spot memo dated 08.10.2023 prepared by the Team of Revenue officials(after summoning the same in original from opposite party no.3) as contained in Annexure Nos.1,2 and 3 respectively to the writ petition. Further prayer has been made for a direction to the opposite parties, their officials, employees, agents and members not to disturb or interfere in the peaceful cultivatory possession of the land in dispute as detailed in plaint as contained in Annexure No.9 to the writ petition.

3. Learned counsel for the petitioners assailing the aforesaid orders submits that the order dated 25.08.2023 has been passed by the opposite party no.2 in an arbitrary and illegal manner without application of mind rejecting the application for interim injunction filed by the petitioners without considering the grounds raised by the petitioners and recording any finding thereon and also against the directions issued by this Court by means of the judgment and order dated 30.05.2023 passed in Writ C No.581 of 2010(Nankau and others versus State of U.P. and others), by means of which this Court had provided that if an application is preferred by the petitioners seeking interim protection, the Court concerned shall consider and dispose of the same strictly as per law, after providing proper opportunity of hearing to the parties. Therefore once an application was

moved in compliance of the order passed by this Court, the same should have been considered and disposed of in accordance with law after providing opportunity to the parties and also considering the grounds raised by them but the impugned order has been passed without considering the contentions of the petitioners and only relying on the contentions of the respondents. Thus the same is not sustainable in the eyes of law and liable to be quashed on this ground alone.

4. He further submits that the opposite party no.1, on a revision preferred by the petitioners, not only dismissed the revision without considering the grounds raised by the petitioners but also dared to modify the directions issued by this Court by means of the order dated 30.05.2023 passed in Writ C No.581 of 2010 to conclude the proceedings within a period of one year from the date of production of certified copy of the order, by means of the impugned order dated 10.10.2023 for a period of six months, which could not have been done by the Board of Revenue, therefore it is also liable to be quashed.

5. He further submits that even before passing of the order by the Board of Revenue on revision filed by the petitioners on admission and application for stay on 10.10.2023, the opposite party no.3 proceeded to take a decision in pursuance of the dismissal of Writ C No.581 of 2010 by means of the judgment and order dated 30.05.2023 and the impugned order dated 25.08.2023 by means of the order dated 05.10.2023, which could not have been done. Therefore it is also liable to be quashed.

6. Learned Additional Chief Standing Counsel as well as learned counsel for the Gaon Sabha could not dispute the contentions of learned counsel for the petitioners after perusing the impugned orders contained in Annexure Nos.1,2 and 3 and submit that the impugned orders may be quashed and the matter may be remanded to the opposite party no.2 to pass fresh order, after affording opportunity to the parties, in accordance with law within some stipulated period.

7. In view of above and the consent given by learned counsel for the respondents, the impugned orders dated 10.10.2023 passed by opposite party no.1 in Case No.REV/2469/2023/Bahraich (Computerized Case No.R20230815002469), order dated 25.08.2023 passed by opposite party no.2 in Case No.50/80/12-13 (Computerized Case No.D2013081500150) and order dated 05.10.2023 passed by Tehsildar, Mahsi alongwith consequential action, if any, as contained in Annexure Nos.1,2 and 3 are hereby quashed. The matter is remitted back to the opposite party no.2 to consider

the application for interim injunction moved by the petitioners afresh in accordance with the directions issued by this Court by the judgement and order dated 30.05.2023 in Writ C No.581 of 2010 within a period of two months from the date of production of certified copy of this order.

8. Since this Court had already granted interim protection to the petitioners by means of the judgment and order dated 20.03.2023 passed in Writ C No.581 of 2010 and admittedly the application filed by the petitioners in compliance thereof and revisional order and annexure no.3 are being set aside by this order, the protection granted by this Court by means of the judgment and order dated 20.03.2023 passed in Writ C No.581 of 2010; Nankau and others versus State of U.P. and others shall remain available to the petitioners for a further period of two months.

9. With the aforesaid, the petition is **allowed** to the aforesaid extent. No order as to costs.

10. Learned Additional Chief Standing Counsel as well learned Counsel for the Gaon Sabha shall inform this order to the authorities concerned forthwith without waiting for copy of this order.

Order Date :- 19.10.2023

Akanksha