

Court No. - 18

Case :- WRIT - C No. - 9386 of 2023

Petitioner :- Shamsul Qamar

Respondent :- State Of U.P. Thru. Prin. Secy., Revenue, Lko. And Others

Counsel for Petitioner :- Anupam Singh, Azam Shafeequi, Viprav Sahu

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

Heard learned counsel for the parties.

By means of the present petition, the order dated 10.04.2023 has been challenged. This order was passed by Opposite Party No.2-Collector-Pratapgarh, Pratapgarh in the case registered as Case No.856/2016, Computerized Case No. D2016025700856 (Shamsul Qamar vs. Gaon Sabha). The orders dated 01.05.2015 and 26.02.2016 passed by the opposite party No.3-Assistant Collector/Tehsildar, Sadar, District-Pratapgarh have also been challenged in this petition.

Pressing the present petition, learned counsel for the petitioner has stated that while passing the impugned ex-parte order dated 01.05.2015, the opposite party No.3/Authority concerned namely Assistant Collector/Tehsildar, Sadar, District-Pratapgarh has not followed the procedure prescribed.

Elaborating, he says that while passing the impugned order dated 01.05.2015, the opposite party No. 3 took note of unproved report of Lekhpal concerned, which is not permissible in law. He further submitted that the report of Lekhpal is also an ex-parte report. As such, the order impugned dated 01.05.2015 is unsustainable in law and liable to be interfered with by this Court.

With regard to plea that the report of Lekhpal concerned should be proved, learned counsel for the petitioner has placed reliance on the judgment of this Court dated 14.02.2023 passed in ***Writ-C No. 9500 of 2022, (Sharda Industries Thru. Partner Mayank vs. The Additional District Collector, District Unnao And 2 Others)***.

He further submitted that on 01.05.2015, the petitioner was present before the opposite party No. 3 and when the case was called out, the petitioner left the Court for the purposes of calling the counsel engaged by him and when he came back to the Court of opposite party No. 3 alongwith counsel engaged by him, the Peskar of the Court informed that the file of his case is with the opposite party No. 3 for orders and thereafter, on 08.05.2015 on coming to know about the ex-parte order dated 01.05.2015, an application for recall of the order dated 01.05.2015 indicating therein the said reasons of absence was preferred. However, while rejecting the application for recall vide order dated 26.02.2016,

the opposite party No. 3 failed to record the reasons on the cause shown for absence on 01.05.2015 in the application for recall of the order dated 01.05.2015. Thus, the order dated 26.02.2016, whereby, the application for recall of the order dated 01.05.2015 was rejected is unsustainable.

He further submitted that being aggrieved by the order dated 26.02.2016, an appeal was preferred under Section 67(5) of U.P. Revenue Code, 2006 (in short "Code of 2006") registered as Case No. 856/2016, Computerized Case No. D2016025700856 (Shamsul Qamar vs. Gaon Sabha) and while dismissing the appeal vide order impugned dated 10.04.2023, the Appellate Authority namely Collector, Pratapgarh (opposite party No. 2) erred in law and fact both in not considering the reasons of absence indicated in the application dated 11.05.2016 for recall of the order dated 01.05.2015. It is apparent from the impugned order dated 10.04.2023 that the Appellate Authority has not recorded any reason thereon. In these circumstances, indulgence of this Court is required in the matter.

Learned counsel for the side opposite opposed the present petition. However, he could not dispute the law settled by this Court in the judgment passed in the case of ***Sharda Industries (Supra)***, as per which, the report of Lekhpal is required to be proved and an unproved report cannot be relied upon.

Considered the submissions made by the counsel for the parties and perused the record.

From the impugned order dated 01.05.2015, it is apparent that an unproved report of Lekhpal has been relied upon and based upon the same, the opposite party No. 3 has passed the impugned order dated 01.05.2015.

Further, it is also apparent from the order dated 26.02.2016 that the opposite party No. 3 has not recorded any reasons on the pleas of non-appearance on 01.05.2015 indicated by the petitioner in the application dated 11.05.2016 for recall of the order dated 01.05.2015 and to restore the case to its original number, which is on record as Annexure No. 6 to this petition. Accordingly, to the view of this Court, the order dated 26.02.2016 is a non-speaking order.

In the order impugned dated 11.04.2023, the opposite party No. 2 has also not recorded the reasons to disbelieve the reasons of absence on the date fixed i.e. 01.05.2015.

In the instant case, the proceedings were instituted under Section 122-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950") and it transpires from Section 122-B of the Act of 1950 read with Rule 115-C, which is relevant, of U.P. Zamindari Abolition & Land Reforms Rules, 1952 (in short "Rules of 1952") that in a case instituted under Section 122-B of the Act of 1950, the report of Lekhpal is required and as per law laid down by this Court in the judgment passed in the case of ***Sharda Industries (Supra)***, an unproved report of Lekhpal cannot be relied upon and in the instant case, while passing the impugned order dated 01.05.2015, an unproved report of Lekhpal was

considered by the opposite party No.3. Further, the report of Lekhpal is also an ex-parte report.

In addition to above, the order dated 26.02.2016 passed by the opposite party No.3 and the order dated 10.04.2023 passed by the opposite party No.2 are unsustainable for the reason that both the Authorities have not considered the cause of petitioner's absence on 01.05.2015 indicated in the application dated 11.05.2015 preferred by the petitioner for recall of order dated 01.05.2015. Thus, for the reasons aforesaid, this Court is of the view that interference is required in the matter.

The order passed under Section 67(1) of the Code of 2006 is an order of eviction and involves serious civil consequences and the case of such nature should be decided strictly in terms of the procedure prescribed under the law.

Accordingly, the orders dated 01.05.2015, 26.02.2016 and 10.04.2023 are hereby set aside. The matter is remanded back to the opposite party No.3 to decide the case afresh after affording proper opportunity of hearing to the petitioner.

The opposite party No.3 shall conclude the proceedings expeditiously say within a period of three months from the date of production of certified copy of this order.

For concluding the proceedings, the opposite party No.3 shall not provide any adjournment to the petitioner and in case, the petitioner fails to appear on the date fixed, then in that event, the Authority concerned is at liberty to proceed ex-parte, however, in the light of the law laid down by this Court and conclude the proceedings within a period of three months.

The opposite party No. 3 is at liberty to call for fresh report for the purposes of proper adjudication of case.

In case, the present petitioner fails to produce the certified copy of this order before the Authority concerned within 15 days from today, the benefit of this order would not be available to him.

With the above observations/directions, the petition is ***allowed***.

Order Date :- 19.10.2023

Arun/-