

Court No. - 18

Case :- WRIT - C No. - 10115 of 2023

Petitioner :- Ashok Kumar Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Revenue Deptt.,
Lko. And Others

Counsel for Petitioner :- Hom Narayan Awasthi

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

Hon'ble Shree Prakash Singh, J.

Photo-Copy of the report of the Lekhpal dated 09.12.2023, placed by the petitioner is taken on record by this Court.

Heard Hom Narayan Awasthi, learned counsel for the petitioner, Shri Hemant Pandey, learned Standing Counsel for the State and perused the material on record.

The instant petition has been filed with the following main reliefs:-

"1. Issue a writ order or direction in the nature of Certiorari thereby quashing the impugned orders dated 26.10.2023 and 26.07.2021 passed by the opposite party Nos.2 and 3 as contained in Annexure No.1 and 2 to this writ petition.

2. Issue a writ order or direction in the nature of Mandamus commanding the opposite parties not to evict the petitioner from his own land/house in pursuance of impugned orders contained in annexure No.1 and 2 to this writ petition"

Learned counsel for the petitioner submits that the petitioner never encroached any property of the Gaon Sabha, deliberately. He added that once the fact was brought into the knowledge of the petitioner, after demarcation of the land in question, the petitioner has removed the alleged unlawful possession over the land, i.e., Gata No.184 bearing area 0.002 hectare; on 9th December, 2023. In support of his contention, he has placed a report of Revenue Lekhpal dated 9th December, 2023 and pointed out that report itself is evident to show that the petitioner has removed the possession over the land in dispute. He added that the petitioner is a poor farmer and he never intended to have unlawful possession over the land in question of the Gaon Sabha and as soon as this fact was brought in the knowledge of the petitioner, he has removed the possession over the land. He further added that while passing the order dated 26th July, 2021, an amount of Rs.36,000/- has been imposed over the petitioner as compensation, though, the said possession was never deliberate and thus the aforesaid

fine/compensation may be waived off. He further added that interest of justice would be sub-served if this Hon'ble Court may be pleased to set aside the part of the order dated 26.08.2021 which imposes compensation.

On the other hand, learned counsel appearing for the State has opposed the contentions aforesaid and submits that the order dated 26th July, 2021 has rightly been passed.

Considering the submissions of learned counsel for the parties and after perusal of the material place on record, it transpires that from the report of Revenue Lekhpal dated 9th December, 2023 that the petitioner has removed the unlawful possession over the land in question and has complied with the order dated 26th July, 2021, which was thereafter affirmed vide order dated 26th October, 2023.

This Court has noticed the fact that the petitioner has substantiated that the possession over the land in question was not deliberate and that was inadvertent and therefore, the order dated 26th July, 2021 as well as order dated 26th October, 2023 is hereby set aside to the extent of the payment of compensation, i.e., Rs.36,000/- and the rest of the order shall remain as it is.

With the aforesaid observations, the instant petition is hereby **partly allowed**.

Consigned to the records.

Order Date :- 11.12.2023
Ashutosh Pandey