

Court No. - 6

Case :- WRIT - C No. - 10421 of 2023

Petitioner :- Avadhesh And Others

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

Counsel for Petitioner :- Shishir Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Rajnish Kumar,J.

1. Heard Sri Manik Sinha learned senior counsel assisted by Sri Shishir Yadav learned counsel for the petitioners and Sri Ajay Kumar Singh Tomar learned Additional Chief Standing counsel.

2. Learned counsel for the petitioners while challenging the notice dated 11.04.2023 and the order of the same date pursuant thereto, notices under Section 49 of the Revenue Code, 2006 have been issued to the petitioners submits that the notice has been issued without authority of law because the land in question is situated in urban area of the Faizabad now Ayodhya, on which, the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 was applicable and under the Act for abolition of the zamindari, the order was required to be passed for vesting of the agricultural areas of the municipalities in the State under Section 8 after notice. A notification was issued for vesting the land on 26.06.1963 of certain areas of the State of U.P. The said notification was challenged by Shri Hari Narayan Srivastava the proprietor of the land in dispute and the predecessor-in-interest of the petitioners in Civil Misc. Writ Petition No.2307 of 1963 (Shri Hari Narayan Srivastava Vs. State of Uttar Pradesh and others) before this Court at Allahabad. The notification was quashed by means of the order dated 12.04.1968. Pursuant thereto the proceedings under the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 for vesting of agricultural areas of the municipalities of the State of Uttar Pradesh has not been finalized including the area in question. Inviting the attention of this Court towards an order passed by the District Magistrate/Collector, Faizabad dated 12.09.1989, learned counsel for the petitioners submits that though the survey was going on but the proceedings have still not been finalized, therefore, the land in dispute has still not vested in the State under the Act. Therefore, it cannot be treated a land of ZA and the State its owner. Therefore, the notice could not have been issued to the petitioners. He further submits that it has also been saved by the U.P. Revenue Code, 2006 by Section 2.

3. He further submits that in an identical matter, the ex-parte order dated 18.08.2021 was passed under Section 49 of U.P. Revenue Code, 2006 in Case no.2089 of 2021 (State of UP vs Rakesh Kumar Srivastava) and the land in question was recorded according to 1359 fasli. An application for recall of the said order was filed by the respondents therein, which was rejected by means of the order dated 02.03.2022. The said order has been challenged before this Court in Writ C no.2410 of 2022 (Rakesh Kumar Srivastava and four others vs State of U.P.) alleging therein that the manner in which the proceedings have been initiated by the State respondents is not tenable in law; in as much as the land in question is not affected by the U.P. Z.A and L.R Act and is a non Z.A. land and the State respondents had initiated proceedings suo moto upon which neither any notice was served nor issued to the petitioners and in an exparte manner long standing entries in favour of the petitioners has been expugned. This Court, considering the submissions of learned counsel for the petitioner therein, found that the same have not been considered while taken in the application for recall and none of the contention of the petitioners had been considered and passed an interim order by means of the interim order dated 19.05.2022. Therefore, the submission is that in case, the petitioner submits the reply the same will also not be considered.

4. Per contra, learned Additional Chief Standing counsel submits that in case the petitioner submits the reply to the show cause notice issued to him, the same shall be considered by the concerned authority and a reasoned and speaking order shall be passed after considering the grounds taken by the petitioner.

5. Having considered the submissions of learned counsel for the parties, I have perused the records.

6. Admittedly the proceedings under Section 49 of the U.P. Revenue Code, 2006 has been instituted for revision of map and records, according to 1359 fasli of Gram Maanjha Mirapur Tehsil Sadar District Ayodhya and according to the present Z.A khatauni of 1387 and 1392 fasli, whereas the plea of the learned counsel for the petitioners is that the land in question cannot be treated as Z.A because in view of the aforesaid submissions and the aforesaid order passed by this Court, the proceedings have still not been concluded, therefore, it cannot be treated a land of Z.A. and the State its owner but this plea has not been considered by any authority till date because learned counsel for the petitioner could not produce any such order before this Court.

7. This Court also, in Writ C no.2410 of 2022 has granted

interim order on the ground that though the aforesaid plea of non Z.A land was taken but not considered by the authority concerned. Any such plea is to be considered on the first instance by the authority concerned, who has issued notice and before whom the proceedings are pending. In case, the reply to the notice is filed taking any such plea, it cannot be accepted that the same shall not be considered by the authority, only because it has not been considered earlier in other case.

8. In view of the above and considering the overall facts and circumstances of the case, this petition is **disposed of** with liberty to the petitioners to file reply to the show cause notice issued to the petitioners taking all the pleas as may be available under law to them. In case, any such reply is filed before the authority concerned within a period of one week from today and the proceedings are still pending which is said to be pending, the authority concerned shall consider the same and after affording opportunity of hearing and considering the pleas taken by the petitioner dispose of the same by passing a reasoned and speaking order.

9. It is made clear that the pleas taken by the petitioner have not been considered by this Court and the same are required to be considered by the authority concerned, if taken before it, in accordance with law.

(Rajnish Kumar,J.)

Order Date :- 29.11.2023

Harshita