

Court No. - 18

Case :- WRIT - C No. - 11083 of 2023

Petitioner :- Mazar Sharif Baba Saheede Millat Abdul Kudoos Shah Rahmat Ullah Aliah Thru. Muttawali And Another

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

Counsel for Petitioner :- Dharm Raj Mishra,Ratnesh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

1. Heard Shri Dharm Raj Mishra, learned counsel for the petitioners, Shri Hemant Pandey, learned Standing Counsel for the State and perused the material placed on record.

2. By means of the instant petition, the petitioners have assailed the order dated 03.11.2023 and the order dated 19.05.2018 passed by the respondent nos.1 and 2 respectively.

3. Contention of the learned counsel for the petitioners is that initially an order was passed on an application under Section 33/39 of U.P. Land Revenue Act, 1901 (hereinafter referred to as "Act, 1901") thereafter, the recall application was moved by the SHO, Sadullah Nagar and that was heard and the order was passed on 19.05.2018, whereas the learned court below recalled the order dated 27.06.2013 and consigned the record, though, it was not heard on merit. He added that against the order dated 19.05.2018, he preferred a revision bearing No.00924 of 2018 under Section 219 of the Act, 1901, which was decided by the revisional court vide order dated 03.11.2023, which is under challenge. He added that in fact, vide order dated 03.11.2023, the court below was directed to hear the parties on merits, though, the order impugned dated 19.05.2018 is not set aside. He submits that unless the order dated 19.05.2018 remain in

existence, no order could have been passed, therefore, submission is that the order dated 19.05.2018 and 03.11.2023 may be set aside as the same are erroneous.

4. On the other hand, the counsel appearing for the State has vehemently opposed the contentions aforesaid and submitted that the entries of the land in question is in the name of the respondent no.4 as the consolidation proceeding was completed and the *parchas* uptill 25 has been prepared, wherein the name of the respondent no.4 is very well there and once all the proceedings are completed then the revenue authorities has no jurisdiction to pass any order under Section 33/39, which is a summary proceeding, while intervening into the dispute of title and so far as the order dated 27.06.2013 is concerned, the revenue authority i.e. Sub Divisional Officer entered into the merit of the case and has decided the title on the certain piece of land, which is impermissible under the law. Adding his arguments he submits that even the respondent no.4 is the affected party and even the State is not been arrayed as a party and without hearing the State, the order on application under Section 27.06.2013 is passed. He also added that the order dated 27.06.2013 is unlawful and erroneous and the same cannot stand in the eyes of law and so as to the interest of the State as well as respondent no.4 is concerned, the same may be protected.

5. In support of his contention, he has placed reliance on a judgment rendered in ***Durga Devi Rural and Educational Development Society Vs. State of U.P. and Others*** and referred paragraphs 16 to 22, which are quoted hereinunder:-

"16. Now coming to the main aspect of the matter, it would be relevant to refer to Section 49 of the Act which provides for a bar to the jurisdiction of the civil or revenue courts. It reads as under:

"49. Bar to civil Courts jurisdiction. - Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding would or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act:

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

17. It provides that after a notification under Section 4 of the Act is issued or, in other words, the village is brought under Consolidation, all rights of the parties with regard to the holdings therein would be determined or adjudicated in accordance with the provisions of the Act and that no civil or revenue court shall entertain any suit or proceedings with respect to the rights in such land or with respect to any other matter with regard to which proceedings could or ought to have been taken under this Act.

18. The disputes with regard to rights of the parties or any other matter in respect of any land under consolidation is barred before a civil or revenue court to avoid multiplicity of proceedings and conflicting decisions and to bring all disputes in that regard before one single court.

19. The Supreme Court in the case of Zafar Khan and others Vs. Board of Revenue, U.P. and others 1984 (supp) SCC 505 while dealing with Sections 49 and 52 of the Act in a matter where allotment of the chak was questioned in civil/revenue court held that once the village has been de-notified under Section 52 of the Act all allotments of chaks become final and the suit questioning such allotment would be barred by Section 49 of the Act. The same principle applies with great rigor to proceedings under Sections 33/39 of the Act, 1901 in view of a plain reading of Section 49 of the Act inasmuch as the proceedings under Section 33/39 of the U.P. Land Revenue Act are of summary nature and in a way does not even result in adjudication of any substantive rights of the parties.

20. The provisions of Section 33/39 of the U.P. Land Revenue Act do not empower the Collector to decide a dispute involving any question of title over the land. It is limited to make changes due to succession & transfers and for making corrections on account of errors. The Up Zila Adhikari acting as a delegate of the Collector has not ordered for the above change in favour of Gaon Sabha on account of any succession or transfer of land or for making any correction. The exemption to the name of the petitioner was directed as the Gaon Sabha land could not have been included in the chak of the petitioner in consolidation proceedings and that some fraud was played. It is not the ground covered by either Section 33 or 39 of the U.P. Land Revenue Act and, as such, the impugned order has been passed without any authority of law.

21. The Gaon Sabha or the State could have objected to the proposed

allotment of chak to the petitioner during consolidation and could have filed an appeal or revision as provided under the Act, if it was not satisfied by the said order of allotment but admittedly nothing was done in this regard either by the Gaon Sabha or the State of U.P. and the proceedings of allotment of chak in favour of the petitioner was allowed to become final. Therefore, the finality attached to the consolidation proceedings vide Section 49 of the Act could not have been disturbed under Section 33/39 of the Act after the village was de-notified.

22. In view of the aforesaid facts and circumstances, the impugned orders dated 23.3.2011 passed by the Up-Ziladhikari, Manjhanpur, Kaushambi and dated 17.10.2011 passed by the Additional Commissioner (I), Allahabad are certainly without jurisdiction and have been passed in proceedings which were not maintainable and stood barred by Section 49 of the Act. Accordingly, the impugned orders dated 23.3.2011 and 17.10.2011 are quashed and the writ petition is allowed."

6. Referring the aforesaid, learned counsel for the State submits that the Hon'ble Court has held that once the proceeding of the consolidation is completed and the allotment of Chak is done and that attains finality, the proceeding under Section 33/39 cannot be invoked. Concluding his arguments, he submits that in view of the aforesaid, no interference is warranted.

7. Considering the submission of learned counsel for the parties and after perusal of the material placed on record, it transpires that dispute arose when the order dated 27.06.2013 was passed by the Sub Divisional Officer, wherein the certain portion of land of the opposite party no.4 was decided to be in the area of the petitioner and thereafter, an application for recall of the order dated 27.06.2013 was moved by the opposite party no.4, which was decided on 19.05.2018 by the Sub Divisional Officer, Utraula, District- Balrampur and the order dated 27.06.2013 was recalled, though the matter was consigned to record. Thereafter, being aggrieved, the petitioner moved the revision, which was allowed without setting aside the order dated 27.06.2013.

8. While examining the aforesaid matter on facts of law, it, prima facie, born out that the order dated 27.06.2013 is passed

on application under Section 33/39 of the Act, 1901 and therein, the Sub Divisional Officer entered into the merit of the case and decided the title which is not permissible under the law. Though, thereafter, an application was filed and that was recalled but due to certain technicalities, the same seems to be erroneous and further the revisional order also is prima facie erroneous as the order dated 19.05.2018 was not set aside by the revisional court, though, the direction was given to proceed further in the matter.

9. Considering all the facts and circumstances of the matter, the order dated 03.11.2023 and 19.05.2018 are hereby set aside, matter is remitted back to the court of Sub Divisional Officer, Utraula, Balrampur to decide the matter afresh.

10. Considering the provision of Section 33/39 as well as the law laid down in *Durga Devi Rural and Educational Development Society Vs. State of U.P. and Others* (emphasis drawn at para no.21), the Sub Divisional Officer is directed to conclude the proceeding within period of three months from the date of this order.

11. Further, after affording opportunity of hearing to all the parties concerned in accordance with law, in view of the aforesaid observation, the instant petition is hereby **allowed**.

12. It is clarified that this Court has not decided anything on merits.

Order Date :- 18.12.2023
Mohd. Sharif