

Court No. - 3

Case :- WRIT - C No. - 17553 of 2019

Petitioner :- Ram Araj Shukla

Respondent :- State Of

U.P.Thru.Prin.Secy.Revenue Lucknow And Ors.

Counsel for Petitioner :- Raghaw Ram

Upadhyay, Rama Niwas Pathak

Counsel for Respondent :- C.S.C., Azad

Khan, Prabhakar Tiwari, Vijay Bahadur Verma

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Raghaw Ram Upadhyay, learned counsel for the petitioner, learned Standing Counsel for the State Respondents, Sri Prabhakar Tiwari, learned counsel for the opposite party no. 7 and Sri M. E. Khan, Advocate who has very graciously assisted this Court on our request to resolve the issue.

2. This writ petition has been filed with the following prayers:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the Opposite Party No. 3 i.e. Sub Divisional Magistrate, Alapur to re-fix dismantled boundary pillars adopting recourse of section 23 of U.P. Revenue Code in compliance of order dated 17.10.2018 passed by him in case no. 03406/2018 under section 24 of U.P. Revenue Code, 2006 for settlement of Disputes regarding boundaries of Gata No. 189 situated at Village- Bangalpur, Pargana- Bidhar, Tehsil Alapur, District- Ambedkar Nagar.

(ii) Issue a writ order or direction in the nature of Mandamus commanding the opposite parties to direct the parties to maintain status-quo regarding the land in dispute till re-fixation of boundary pillars as per law in the light of orders dated 12.04.2019 & 17.10.2018 passed by the opposite party no.3."

3. It is the case of the petitioner that the opposite party no. 7 has unnecessarily interfered in the peaceful possession of the petitioner over Gata No. 189 situated at Village- Bangalpur, Pargana- Bidhar, Tehsil Alapur, District- Ambedkar Nagar.

4. It has been submitted by learned counsel for the petitioner that the petitioner is the recorded tenure holder of Gata No. 189 as aforesaid and has been in possession of the same since long. Since the map of Gata No. 189 is not accurate and as per area as shown in the khatauni certain portion of it was missing, the petitioner filed an application under Section 30 of the U.P. Revenue Code before the Collector, Ambedkar Nagar. The Collector, Ambedkar Nagar after obtaining necessary reports was pleased to pass an order on 29.06.2016 with regard to correction of map of Gata No. 189. The order dated 29.06.2016 for correction of map of Gata No. 189 has not been challenged by any person and has attained finality. The petitioner moved an application under Section 24 of the U.P. Revenue Code to demarcate the land on the spot. The respondent no. 7 was also heard and being satisfied with the report submitted by the Revenue Officials and an order was passed on 17.10.2018 by the Sub-Divisional Magistrate, Alapur directing erection of boundary pillars. The order dated 17.10.2018 also was allowed to become final as no person challenged such order. However, it was not implemented and the petitioner again submitted an application on 27.10.2018 before the Sub-Divisional Magistrate, Alapur, only thereafter, demarcation was done on 09.12.2018. The boundary pillars were erected but they had been dismantled by Virendra @ Jhankan S/o Ram Awadh/opposite party no. 7 on the very next day. Aggrieved by the removing of the boundary pillars, the petitioner moved an application on 11.12.2018 before the Sub-Divisional Magistrate, Alapur. Upon the application the Sub-Divisional Magistrate, Alapur directed the Revenue Inspector, Ram Nagar to conduct an inquiry and submit a report. In pursuance of the same a report dated 01.01.2019 was submitted by the Revenue Inspector, Ram Nagar before the Sub-Divisional Magistrate, Alapur. The Sub-Divisional Magistrate, Alapur by means of letter dated 16.02.2019 directed the Station House

Officer, Police Station- Jahangirganj to make an inquiry on the spot and apprise him regarding the current position. A direction was also issued that in case the opposite party no. 7, Virendra @ Jhankan S/o Ram Awadh has indeed destroyed the boundary marks, an F.I.R. be also lodged against him. As a consequence thereof, the petitioner preferred an application on 16.02.2019 before the SHO, Jahangirganj praying for registering of F.I.R. against the opposite party no. 7. An F.I.R. was thereafter, registered under Sections 434, 504, 506 of the I.P.C. against the opposite party no. 7 and others. However, no action was taken against the opposite party no. 7 by the Police.

5. The petitioner has made certain allegations against the Tehsildar Alapur, who in alleged collusion with the respondent no.7 allowed the respondent no.7 to raise certain construction over the land in dispute. The petitioner moved an application to the Sub Divisional Magistrate Alapur, on which an order was passed on 12.04.2019, restraining all parties from changing the nature of the land in dispute till re-fixation of the boundary pillars. However, even after such order, boundary pillars have not been re-fixed. The order dated 17.10.2018 passed by the Sub Divisional Magistrate Alapur and the order dated 12.04.2019 passed by the Sub Divisional Magistrate Alapur are still unchallenged and have attained finality. Although several requests have been made to the Lekhpal and Revenue Inspector, they have not however been implemented. The petitioner is 75 year old retired Air Force personnel living with his 73 years old wife in his native village. The respondent no.7 starts digging portion of the land in dispute every now and then, and the petitioner has made application to various authorities and only then has approached this court with the aforesaid prayers.

6. When the matter was initially taken up by this Court, the Court directed the Tehsildar, Alapur, Ambedkar Nagar to remain present before this court along with complete record. On 25.06.2019, the Tehsildar Alapur appeared in Court and submitted that he had already done demarcation in respect of Gata No. 189 in presence of all the

parties. The petitioner, however, submitted that after demarcation the boundary pillars having been fixed, but they were dismantled by the respondent no.7 with the connivance of the Tehsildar. The Court recorded the denial of the Tehsildar of any collusion with the respondent no.7 and directed him to file a report before the Court by way of an affidavit by the next date of listing and to again appear in person along with relevant record on 08.07.2019. On 08.07.2019, when the matter was taken up, this Court passed a detailed order, wherein while hearing the counsel appearing for the respondent no.6, the Tehsildar Alapur, who was arrayed in person, the Court also considered the report and made certain observations. The order dated 08.07.2019 is being quoted hereinbelow:-

"Pursuant to the order dated 25.06.2019, Sri Awdhesh Kumar, Tehsildar Alapur, District Ambedkar Nagar is present.

Learned Additional Chief Standing Counsel has filed an affidavit on behalf of respondent no.6, which is taken on record.

Sri Vijay Bahadur Verma, Advocate has put in appearance on behalf of respondent no.6 by way of filing Vakalatnama, which is also taken on record.

In the affidavit filed by respondent no.6, it has been stated that on 31.03.2019 certain measurements were taken by the Revenue Officers in presence of the police of police station Jahangirganj, District Ambedkar Nagar and also in presence of certain villagers including the petitioner and the respondent no.7. On the basis of said measurement taken on 31.03.2019, a report dated 15.04.2019 has been submitted by the Revenue Inspector, Lekhpal and the Tehsildar to the Sub-Divisional Officer concerned, which has been annexed at pages 11 to 14 of the said affidavit. The said report contains a comparative chart of gata nos.185, 186, 187, 188, 189, 196, 197, 198, 199 and 184 which lie in the same sector as prepared by the consolidation authorities. The said comparative chart contains an area as against each gata as shown in the map, the area as finds mentioned in khatauni and the area measured on the spot. According to the said chart, almost in respect of all gata numbers, the area on the spot is less then the area recorded in khatauni. Similar is the position in respect of all plots in relation to area of each plots shown in the map.

Sri Vijay Bahadur Verma, learned counsel for respondent no.6

has stated that in fact, in the entire sector there appears to be some discrepancy in respect of area recorded in khatauni, shown in the map and the area which is available on the spot. It has further been submitted by Sri Verma and the learned Standing Counsel that on account of aforesaid discrepancy while giving effect to the order of demarcation dated 17.10.2018, it appears that field book was not prepared appropriately and while doing so some area of plot no.188 which belongs to the respondent no.7 was included in plot no.189 and accordingly, the matter requires reconsideration.

Learned counsel for the petitioner, however, states that once demarcation proceedings drawn under Section 24 of U.P. Revenue Code, 2006 were completed and final order was passed on 17.10.2018 by the Sub-Divisional Officer, unless and until the said order is varied or rescinded or set-aside by any other higher forum or court, the proceedings of demarcation in respect of plot no.188 ought to have been treated final in all respects and hence further proceedings said to have been instituted by the Sub-Divisional Officer/Tehsildar which led to taking of measurement allegedly on 31.03.2019 and submission of report on 15.04.2019, is legally unwarranted.

Be that as it may, since the report dated 15.04.2019 suggests discrepancy in the area of the plots belonging to not only the petitioner and the respondent no.7 but to many other tenure holders whose land holdings are situated in the same sector, the Court proposes to get a fresh report prepared on the basis of inquiry to be conducted by the Revenue Officers pertaining to some other sub-division i.e. a sub-division other than Alapur.

For the said purpose, the Court requires the Sub-Divisional Officer, Sadar, District Ambedkar Nagar to prepare the report giving therein the details of khasra plot numbers situated in the sector as aforesaid, the area of such khasra plot numbers recorded in the current revenue map, the area recorded in the current khatauni as also in the final khatauni prepared by the consolidation authorities and the area of each khasra plot numbers as it exists on the spot.

For the said purpose, the Sub-Divisional Officer, Alapur, District Ambedkar Nagar is directed to handover all the related revenue documents to the Sub-Divisional Officer, Sadar, District Ambedkar Nagar. While taking measurements, the Sub-Divisional Officer, Sadar shall be personally present on the spot and it will be open to him to seek assistance only and only from the officers belonging to his own sub-division and no other sub-division.

Necessary assistance while taking measurement shall be provided by the Superintendent of Police, District Ambedkar Nagar to the team to be led by the Sub-Divisional Officer, Sadar, District Ambedkar Nagar. The inquiry under this order shall be completed within four weeks from today, the report whereof shall also be submitted by the Sub-Divisional Officer, Sadar through the office of learned Chief Standing Counsel before this Court by the next date of listing.

It is directed that the petitioner, respondent no.7 and the other tenure holders whose gatas are found in the sector concerned shall be present either personally or through their representatives at the time of measurement to be undertaken under this order. It is further directed that in case either the petitioner or the respondent no.7 or any other tenure holder is found avoiding his participation in the proceedings for measurement, it will be open to the Sub-Divisional Officer, Sadar to proceed accordingly after recording the reasons therefor.

List this case on 13.08.2019 as fresh, on which date the Sub-Divisional Officer, Sadar, District Ambedkar Nagar shall be present before this Court for its assistance along with record.

This order shall be communicated by learned Standing Counsel to the District Collector, Superintendent of Police, Ambedkar Nagar, Sub-Divisional Officer, Sadar and Alapur, District Ambedkar Nagar, forthwith.

It is further directed that in the meantime, parties to these proceedings shall not change the nature of land in question.

When the case is next listed, name of Sri Vijay Bahadur Verma shall be shown in the cause list as counsel for the respondent."

7. In pursuance of the order dated 08.07.2019, Sub Divisional Magistrate, Sadar Ambedkar Nagar, appeared before the Court and the Court passed an order directing him to file a demarcation report on 13.08.2019. The matter was directed to be listed on 28.08.2019. The report was thereafter filed by the Sub Divisional Magistrate, Akbarpur.

8. Learned Standing Counsel has informed this court that in pursuance of the orders passed by this Court, a personal affidavit of compliance was filed by the Sub Divisional Magistrate, Akbarpur, wherein it was stated that a Revenue Team was constituted on 25.07.2019, and a date was fixed of

30.07.2019 for demarcation. The Revenue Team submitted a report of the demarcation conducted on 30.07.2019. A copy of the report dated 30.07.2019 was filed as annexure to such compliance affidavit.

9. It is this report which created a lot of unnecessary confusion and counsel for the petitioner on the basis of said report says that 131 sq. mtrs. has been admitted by the Revenue Authorities to be found less on the ground from Gata No.188.

10. We had asked for assistance from Sri M.E. Khan, who has taken us through all the orders passed from time to time on the application made by the petitioner under Section 30 initially, and thereafter, under Section 24. It has been argued by Sri M.E. Khan that Gata No.189 was initially shown in the khataunito be ad-measuring 7 Biswa 1 Biswansi and in the revenue map Gata No. 189 was shown to be 4 Biswa and 19 Biswansi. However, the petitioner was in actual possession of 6 Biswa 15 Biswansi. After map was corrected on 29.06.2016, the area and the possession of the petitioner as per corrected map was 5 Biswa 14 Biswansi. This order was not challenged by anyone and it attained finality. Thereafter, when actual demarcation took place, it was found that certain area towards the North of Gata No. 189 was in excess, which has been marked in the report, annexure no.4, showing that certain area in the North marked as 'E' 'G','F' and 'D' of 2.5 Kadi was in excess and it had to be deducted, whereas certain area on the West of 13 Kadi was less and although it was in possession of the petitioner all along, the respondent no.7 was claiming ownership over it. When Section 24 application was decided, such area marked as 'K', 'C', 'D' and 'J' was proposed to be added and boundary pillars were erected upon it and the total area of the petitioner marked as 'J', 'D', 'E', 'B', 'C' and 'K', came out to be 6 Biswa and 19 Biswansi.

11. Such order was also not challenged by anyone and became final. It was only because the respondent no.7 claimed ownership of this particular strip of land and removed the boundary

pillars that the petitioner felt aggrieved and approached this Court. Now, after the compliance affidavit has been filed, the Revenue Team has somehow confused the entire matter. If the area as mentioned in the report filed as annexure-4 to the writ petition is allowed to be given to the petitioner and boundary marks erected accordingly, his grievance would be satisfied and the orders that have been passed on time to time by the Revenue Authorities/Sub Divisional Magistrate shall also be complied with.

12. This petition is ***disposed of*** with a direction to the Sub Divisional Magistrate, Alapur to constitute a Revenue Team again and clearly demarcate 13 Kadi of land to the West of the plot of the petitioner and erect boundary pillars accordingly within a period of three weeks from the date a certified copy of this order is produced before him.

Order Date :- 17.9.2024
Darpan Sharma