

Court No. - 7**Case :-** WRIT - C No. - 511 of 2024**Petitioner :-** Smt. Shashi Devi Sachan And Others**Respondent :-** State Of U.P. Thru. Prin. Secy., Revenue Deptt., Lucknow And Others**Counsel for Petitioner :-** Sanjay Kumar Srivastava, Akshat Kumar**Counsel for Respondent :-** C.S.C., Ashok Kumar Verma**Hon'ble Saurabh Lavania, J.**

Heard Sri Sanjay Kumar Srivastava, Advocate alongwith Sri Akshat Kumar, learned counsel for the petitioners, Sri Hemant Kumar Pandey, learned State counsel and Sri Ashok Kumar Verma, learned counsel for the contesting respondent No. 5. Other private opposite parties, as stated by Sri Verma, are formal parties.

By means of this petition, the petitioners have assailed the order dated 23.10.2021 passed by the respondent No. 4/Sub-Divisional Magistrate, Sarojni Nagar, Lucknow on an application instituted under Section 24 of U.P. Revenue Code, 2006 (in short "Code of 2006") registered as Case No. 13504/2021, Computerized Case No. T202110460513504 (Bhola vs. Smt. Shashi Devi and others) and the order dated 06.10.2022 passed by respondent No. 3/Commissioner, Lucknow Division, Lucknow in Appeal No. 1757/2021, Computerized Case No. C202110000001757 (Smt. Shashi Devi and others vs. Bhola and others) instituted under Section 24(4) of the Code of 2006 as also the order dated 20.12.2023 passed by the respondent No. 2/Board of Revenue, Uttar Pradesh, Lucknow in Revision No. REV/2563/2022/Lucknow, Computerized Case No. R20221046002563 (Smt. Shashi Devi Sachan and others vs. Bhola) instituted under Section 210 of the Code of 2006.

By the order dated 23.10.2021, the respondent No. 4 had confirmed the demarcation report dated 24.08.2021. The order dated 23.10.2021 on reproduction reads as under:-

"प्रस्तुत वाद की कार्यवाही भोला पुत्र स्व० दुर्गादीन निवासी ग्राम औरंगाबाद जागीर परगना लखनऊ तहसील सरोजनीनगर जिला लखनऊ द्वारा उ०प्र०राजस्व संहिता 2006 की धारा 24 के अन्तर्गत प्रस्तुत प्रार्थना पत्र दिनांक 26.07.2021 के सम्बन्ध में दिनांक 24.08.2021 को प्राप्त तहसील

आख्या के आधार पर संरक्षित की गई। वादीगण द्वारा प्रार्थना में उल्लेख किया गया है कि वादी / प्रार्थी की सम्पत्ति खसरा संख्या 444 रकबा 0.0810 हे० व खसरा संख्या 447 कुल रकबा 0.0940 हे० स्थित ग्राम औरंगाबाद जागीर तहसील सरोजनीनगर लखनऊ का एक मात्र तनहा मालिक काबिज दखील है। वादीय सम्पत्ति का कुछ हिस्सा विपक्षी संख्या 6 लगायत 8 तक को द्वारा बैनामा विकीत किया गया। विपक्षीगण द्वारा वादीय सम्पत्ति का काफी भाग अवैधाधिक गुडई के बल पर गरीब व्यक्ति की जमीन पर बल पूर्वक कब्जा कर लिये है। खाली करने को कहने पर लड़ाई झगडा पर उतारू हो जाते है। वाद दर्ज रजिस्टर कर विपक्षीगण को नोटिस जारी की गयी।

तहसील आख्या दिनांक 24.08.2021 में अंकित किया कि ग्राम औरंगाबाद जागीर परगना लखनऊ स्थित गाटा संख्या 444/0.081 हे० व 447 रकबा 0.094 हे० भूमि वादीय के नाम राजस्व अभिलेखों में संक्रमणीय भूमिधर दर्ज है। उक्त गाटों की पैमाइश हेतु आस-पास के चकमार्ग, रास्तो व मौके पर बने नालों का स्थल का मिलान किया गया, जिसमें चकमार्ग संख्या 435 स्थल पर पाया गया जिसको गाटा संख्या 434 की पश्चिमी मेडे से मिलान किया गया जो भूचित्र में 32 मीटर व स्थल पर 32 मी० पाया गया जो सही है। इस प्रकार चकमार्ग 435 के मध्य से 3 मीटर डोडने के बाद स्थाई बिन्दु ए बनाया गया व बिन्दु ए से दक्षिण दिशा में गाटा संख्या 434 की पश्चिमी मेडे पर 32 मी० पर बिन्दु बी बनाया गया। इसी दिशामें दक्षिण की ओर गाटा संख्या 432 की पश्चिमी मेडे पर बिन्दु सी 52 मीटर पर स्थाई किया गया। पैमाइश गाटा संख्या 444 के दक्षिणी पश्चिमी कोने के मिलान हेतु बिन्दु सी से 10 मीटर दक्षिण पर बिन्दु डी बनाया पुनः शहीद पथ की ओर मौके पर बने चकमार्ग संख्या 424 व 423 का पुर्न निरीक्षण किया गया जो भू-चित्र के अनुसार स्थल पर भी सही बने है। चकमार्ग 423 व गाटा संख्या 422 के उत्तर पूर्व कोने को बिन्दु ई बनाया व गाटा संख्या 444 के दक्षिणी पश्चिमी कोने को बिन्दु एफ माना गया जिसे स्थाई करने के लिए बिन्दु डी से 84 मीटर व बिन्दु ई से 184 मीटर नाप लेकर बिन्दु एफ से मिला दिया। गाटा संख्या 444 की पश्चिमी मेड का उत्तरी कोना को बिन्दु जी मानते हुए एफ.जी= 48 मीटर व बिन्दु सी से बी की ओर 32 मीटर पर बिन्दु एच बनाकर वहां से 100 मीटर पर बिन्दु जी को स्थायी किया गया। अब बिन्दु जी से पूर्व की ओर 16 मी० पर बिन्दु जे व एफ से पूर्व की ओर 14 मीटर पर बिन्दु आई बनाया गया, पुनः आई,जे= 48 मीटर की नाप लेकर स्थायी किया गया। इस प्रकार गाटा संख्या 444 की पैमाइश नक्शानुसार, सम्पादित की गयी जिसके उत्तर पूर्व भूभाग पर 13×12.4 वर्ग मीटर सच्चिदानंद पुत्र रण विजय व श्रवण सचान नि० ग्राम का मकान पक्का निर्मित है। शेष भूमि मौके पर रिक्त है। पुनः गाटा संख्या 447 के उत्तर दक्षिण पूर्व पश्चिम कोनो को कमशः एन.के.एम.एल. नाम दिया गया जिसे बिन्दु जे० से के= 22 मीटर व बिन्दु एन जो मौके पर बने नाले को छोड़कर स्थायी किया गया जहाँ से 56 मी० पर मिला दिया गया अर्थात एन. के= 56 मीटर है भूचित्र के अनुसार के.एल= 20 मीटर, एम.एल.= 58 मीटर व

एन.के.= 56 मीटर है गाटा संख्या 447 में 37×14.5 वर्ग मीटर भूमि अर्थात् 0.0536 हे० भूमि मौके पर रिक्त है। शेष भूमि पर 7.2×14 वर्ग मीटर पर हरिशंकर पुत्र धुन्नी निवासी ग्राम व 7.4.14 वर्ग मीटर पर प्रेमशंकर पुत्र शिवलाल का पक्का मकान निर्मित है। एवं इसी गाटे के पूर्वी भाग पर 37×5.5 वर्ग मीटर कुसुम वर्मा पत्नी नन्दलाल वर्मा निवासी ग्राम 447 में मकान व बाऊण्डी वाल बना रखी है। इस प्रकार गाटा संख्या 447 में मकान व बाऊण्डीवाल मिलाकर 0.0407 हे० भूमि पर निर्माण कार्य पूर्व में हो चुका है। आख्या सेवा में सादर प्रेषित।

मेरे द्वारा पत्रावली का अवलोकन किया तथा वादी के अधिवक्ता के तर्कों को सुना। परीक्षण से स्पष्ट है कि हदबराती आख्या पर विपक्षीगण द्वारा लिखित बहस दाखिल की गई। प्रतिवादी की अनुपस्थिति के मद्देनजर न्यायहित में बहस प्रस्तुत करने हेतु समय दिया गया समय बावजूद लिखित बहस दाखिल नहीं की गयी। तहसीलदार सरोजनी नगर द्वारा प्रस्तुत आख्या दि० 24.08.2021 की पुष्टि/स्वीकार करने में कोई विधिक बाधा प्रतीत नहीं होती।

आदेश

उपर्युक्त विवेचना के आधार पर तहसीलदार सरोजनीनगर लखनऊ के हदबराती आख्या दि० 24.08.2021 की पुष्टि की जाती है। तहसीलदार सरोजनीनगर द्वारा प्रेषित आख्या मय नजरी नक्शा आदेश का अंग रहेगा। आदेश की प्रति तहसीलदार सरोजनी नगर लखनऊ को मेड़बंदी की कार्यवाही हेतु प्रेषित की जाये। वाद आवश्यक कार्यवाही पत्रावली संचित अभिलेखागार हो।"

Being aggrieved by the order dated 23.10.2021, an Appeal No. 1757/2021, Computerized Case No. C202110000001757 (Smt. Shashi Devi and others vs. Bhola and others) was filed under Section 24(4) of the Code of 2006, which was dismissed by the respondent No. 3 vide order dated 06.10.2022 affirming the order dated 23.10.2021 passed by respondent No. 4.

Being aggrieved by the order dated 06.10.2022, a Revision No. REV/2563/2022/Lucknow, Computerized Case No. R20221046002563 (Smt. Shashi Devi Sachan and others vs. Bhola) was filed under Section 210 of the Code of 2006, which was also dismissed by the respondent No. 2 vide order dated 20.12.2023.

On several issues and factual aspects of the case, petitioners' counsel as well as learned counsel for the respondent No. 5 have advanced their submissions. This Court however is not inclined to deal with the same at this

stage, as only one ground is relevant for the purposes of final disposal of this petition at the admission stage more so when there going to be no prejudice caused to the parties to the litigation in view of order proposed to be passed.

The only ground relevant for the purposes of final disposal of this petition is to the effect that the revenue court of first instance i.e. respondent No. 4 while dealing with the application under Section 24 has not passed the reasoned and speaking order and this aspect has also not been taken note of by appellate authority and revisional authority. The reasons are required to be recorded.

It is a settled principle of law that an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a 'speaking order' and it must not be like the 'inscrutable face of a sphinx'.

In judgment passed in the case of ***Union of India Vs. Mohan Lal Capoor and Others*** reported in ***(1973) 2 SCC 836***, the Apex Court observed as follows:

"28.... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rationale nexus between the facts considered and conclusions reached. Only in this way can opinion or decisions recorded to be shown to be manifestly just and reasonable."

Lord Denning M.R., in the case of ***Breen v. Amalgamated Engineering Union*** reported in ***(1971) 2 QB 175, 191 : (1971) 1 All ER 1148***, observed as under:

"the giving of reasons is one of the fundamentals of good administration."

Sir Donaldson, in the case of ***Alexander Machinery (Dudley) Ltd. Vs. Crabtree*** reported in ***1974 ICR 120***, has observed that "failure to give reasons amounts to a denial of justice".

Observation in the case of ***Regina Vs. Immigration Appeal Tribunal Ex parte Khan (Mahmud)*** reported in ***1983 QB 790 : (1983) 2 All ER 420***, is as under:

"A party appearing before a tribunal is entitled to know, either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind."

In the case of *Travancore Rayon Ltd. v. Union of India* reported in (1969) 3 SCC 868, the Apex Court observed:

"The court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

In the case of *Mahabir Prasad Santosh Kumar v. State of U.P.* reported in (1970) 1 SCC 764, the Apex Court observed as follows:

"The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law.

"Recording of reasons in support of a decision on a disputed claim by a quasi judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

In the case of *Siemens Engineering & Manufacturing Co. of India Limited v. Union of India* reported in (1976) 2 SCC 981 while dealing with the exercise of an appellate power by the Central Government under the Sea Customs Act, 1878, it was stated thus:

"It is now settled law that where an authority makes an order in exercise of a quasi judicial function, it must record its reasons in support of the order it makes. Every quasi judicial order must be supported by reasons..."

Summarizing the legal position with regard to the necessity to give reasons and pass a speaking order while exercising quasi-judicial functions in the case of *Kranti Associates Private Limited And Another v. Masood Ahmed Khan And Others* reported in (2010) 9 SCC 496, it was held as follows:

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber stamp reasons" is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anyia vs. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

From the order dated 23.10.2021, quoted above, it is apparent that while passing the same, the respondent No. 4 has not recorded any finding after considering the objection dated 08.09.2021, a copy of which is annexed at page No. 124 of this petition, filed by the petitioners in the proceedings instituted under Section 24 of the Code of 2006.

It would be apt to indicate here that the fact that the objection dated 08.09.2021 was filed before the respondent No.2 has not been disputed by the learned counsel for the contesting respondent No. 5.

Thus, the order dated 23.10.2021 is a non-speaking order. The order of appellate authority and that of revisional authority indicate that they have also failed to take note of reasons opposing the application under Section 24 of the Code of 2006 preferred by the predecessor-in-interest of the respondent No. 5.

For the reasons aforesaid, the matter requires interference. Accordingly, without going into the merits and demerits of the factual aspects of the case and without recording any findings thereon, the orders dated 23.10.2021, 06.10.2022 and 20.12.2023 are hereby *set-aside*. The matter is remanded back to the respondent No.4 to decide the matter afresh by means of a reasoned and speaking order after affording full opportunity of hearing to the parties concerned, expeditiously, say within a period of three months from the date of production of certified copy of this order in accordance with law.

The petition is *allowed* in above terms.

Order Date :- 19.1.2024

Arun/-