

Neutral Citation No. - 2024:AHC-LKO:21450

Court No. - 7

Case :- WRIT - C No. - 2358 of 2024

Petitioner :- Govardhan Singh

Respondent :- Addl. Commissioner Iiird, Devipatan Division, Gonda And Others

Counsel for Petitioner :- Sulabh Kr. Srivastava

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

Hon'ble Saurabh Lavania, J.

Heard learned counsel for the petitioner, Sri Hemant Kumar Pandey, learned State counsel and Sri Pankaj Gupta, learned counsel for the Gaon Sabha concerned.

By means of this petition, the petitioner has prayed for the following main reliefs:-

"i. Issue a writ order or direction in the nature of certiorari to quashing the impugned judgment and order dated 20.09.2023 passed by Additional Commissioner IIIrd Devipatan Division Gonda i.e. opposite party no.1, in revision/case no. 00025/2014 Computerize case no. C201408000000025 (Govardhan Singh vs Gram Sabha) under section 219 of Land Revenue Act 1901, as contained in Annexure no.1. to this petition.

ii. Issue a writ order or direction in the nature of certiorari to quashing the impugned order dated 23.06.2011 passed by Sub Divisional Officer Tahsil Mahasi District Bahraich i.e. opposite party no.2 in case no. 22 (Govardhan Singh vs Gram Sabha and others) under section 33/39 of U.P. Land Revenue Act 1901 as contain in Annexure no.2 to this petition."

At the very outset, learned State counsel says that the issues involved in this petition has already been dealt with by this Court in the judgment dated 06.02.2024 passed in a bunch of petitions leading of which is Writ-C No. 1119 of 2024 (Sanwali vs. State of U.P. and others). The relevant portion of judgment dated 06.02.2024 is extracted hereinunder:-

"(1) Heard the learned counsel for the petitioner Shri Arvind Kumar Shukla, in Writ-C No.1119 of 2024 and Writ-C No.1057 of

2024 and connected matters which have come up before this Court in an Additional List by the order of the Court dated 05.02.2024.

(2) All these writ petitions relate to the same issue and therefore, this Court had directed them to be connected and to be heard together; all the writ petitions praying for quashing of the order passed by the Additional Commissioner-III, Devi Patan Mandal, Gonda, in writ petitions filed by the writ petitioners challenging the order passed by the Sub Divisional Officer, Mahsi, District Bahraich, on 23.06.2011 under Section 33/39 of Land Revenue Act, 1901.

(3) The principal facts of the case as argued by the counsel for the petitioners is that the Authorities had allotted Patta of land of Khata No.221, Gata No.2/8/25 situated at Village Pure Prasad Singh, Pargana Fakharpur, Tehsil Mahsi, District Bahraich, in 1995 and then names of the petitioners were recorded in the Revenue Records accordingly as Bhumidhars with non-transferable rights on the basis of said Patta. On 07.12.2010 a complaint was submitted at Tehsil Diwas regarding allotment of Gata No.2/8 having been wrongly done as it was recorded in the Category 6 (4) which is Balu Reta. Considering the complaint the Tehsildar has passed an order on 07.12.2010 itself seeking a report indicating whether the possession of the petitioners over the land allotted to them is illegal and whether it needed to be removed immediately and also to inquire in the Entries in the Revenue Records were forged and if the same were forged they should be cancelled.

(4) In pursuance of such direction of the Tehsildar, the Revenue Inspector conducted an inquiry and submitted his report indicating that the land of Gata No.2/8 was proposed for allotment wrongly. However, such proposal was rejected as the land of Gata No.2/8 fell in the Category of 6 (4) which is Balu Reta. Inadvertently, the land of Gata No.2/8 was recorded alongwith the other Gata numbers. Such report dated 04.05.2011 has been filed as Annexure No.4 to the petition. The Sub-Divisional Officer, Mahsi, Bahraich, passed the order impugned on 23.06.2011 directing the deletion of names of the petitioners from the Revenue Records and the name of the Gaon Sabha and entry in the name of Gaon Sabha to be recorded without giving opportunity of hearing to the petitioners by a non-speaking order.

(5) Being aggrieved by the said order, the petitioners filed Revisions which Revisions have been rejected by the Additional Commissioner by orders of various dates which have been

impugned in this Bunch of writ petitions individually by all the writ petitioners.

(6) It has been submitted by the learned counsel for the petitioners that one similarly situated person Paikarma filed a Revision bearing Revision No.1357 under Section 219 of U.P. Revenue Code before the Additional Commissioner (Administration), Devi Patan Mandal, Gonda, challenging the order dated 23.06.2011 passed by the Sub-Divisional Officer, Mahsi, District Bahraich, with respect to the same controversy regarding Gata No.2/8 recorded in Category 6 (4) Balu Reta. Such Revision has been allowed on 20.01.2014 and the matter has been remanded back to the Sub-Divisional Officer, Mahsi, District Bahraich, for proceeding afresh after affording opportunity of hearing to the concerned parties. Similar orders were passed in several other writ petitions, a reference of which has been given in Paragraph-12 of the writ petition, the petitioners are being similarly situated should have been similarly treated. However, in their case the Additional Commissioner while noting the earlier orders passed by the predecessor, rejected the Revision. The petitioners are still in possession of the land in question and they may be dispossessed in pursuance of the impugned orders dated 23.06.2011 and 20.09.2023 and therefore, this writ petition has been filed.

(7) The counsel for the petitioners has placed reliance upon the orders passed by the Co-ordinate Benches in two writ petitions namely Saroj Singh and Another Vs. Board of Revenue, Lucknow and others reported in 2008 (26) LCD 1610, and Smt. Om Wati and others Vs. State of U.P. and others reported in 2013 (118) R.D. 651, wherein it has been held that the orders under Section 33 read with Section 39 relating to corrections of entries made in the Revenue Records, should be passed after giving opportunity of hearing to the aggrieved persons. Expansion of name cannot be done without giving proper notice and opportunity of hearing, and ex-parte orders are not sustainable in the eye of law. The Court had directed the matter to be remanded back to the Sub-Divisional Officer, concerned for deciding afresh after giving notice and affording opportunity of hearing to all concerned and till the decision was taken to maintain status-quo as it existed on the date of passing of the order passed by the High Court.

(8) The counsel appearing on behalf of the State-respondents has produced before this Court the original record maintained in the Tehsil Office with regard to the proposal for allotment made by the Land Management Committee in respect of 39 eligible persons of 1.267 Hectares of land of Gata No.2/8/25, the total land to be allotted being 45.875 Hectares. The proposal was

made on 20.09.1995 by the Land Management Committee of the Gaon Sabha concerned, it was forwarded to the Revenue Inspector who in turn made a report on 21.09.1995 and placed the matter before the Tehsildar Mahsi. The Tehsildar, Mahsi, District Bahraich, made an identical report which was placed before the Sub-Divisional Officer, Mahsi, District Bahraich, on 22.08.1995 sic 22.09.1995. The Sub-Divisional Officer, Mahsi, District Bahraich, has made a note that the proposal with regard to the Sl.nos.1 to 39 is approved except for Gata No.2/8 for which the allotment is rejected.

(9) Counsel for the State-respondents has also pointed out the internal Page no.5 of the Record produced wherein there is a specific noting has been made on 22.09.1995 by the Sub-Divisional Officer, Mahsi, District Bahraich, which is as follows:-

"उक्त प्रस्तावित भूखण्डों से बालूरेता श्रेणी 6(4) का भूमि आबंटन प्रस्ताव अस्वीकृत है। न ही श्रेणी परिवर्तन का प्रस्ताव है और न ही आवश्यकता"

(10) It has been argued that once the land was recorded in the Category of 6 (4) a proposal should have been made first for change of Category to make it available for allotment. No such proposal was made for changing of Category of the aforesaid Gata no.2/8 and therefore, there was no question of approving allotment as proposed in favour of 39 persons including the petitioners.

(11) Learned counsel appearing for the State-respondents has also pointed out that the green crosses against Sl. Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 made in the list of proposed allottees by the same Pen in the same Ink by the Sub-Divisional Officer, Mahsi, District Bahraich, and he has pointed out that the same Pen and the same Ink has been used by the Sub-Divisional Officer, Mahsi, District Bahraich, in disapproving the allotment proposed to be made on Gata No.2/8.

(12) With regard to the arguments raised by the learned counsel for the petitioners that no opportunity of hearing was given and correction was made in the Revenue Records, on the basis of the aforesaid two judgments rendered by the Co-ordinate Benches of this Court, it has been submitted that no allotment was actually made as no approval was granted by the Competent Authority. The proposal of the Land Management Committee was forwarded by the Revenue Inspector in the Tehsil to Sub-Divisional Officer, Mahsi, District Bahraich, who has approved the proposal for allotment with respect to other allottees but with

respect to proposed allottees in Gata No.2/8 recorded under Category 6 (4) a specific disapproval has been noted in the file.

(13) It has been submitted that the principles of natural justice admit of two exceptions; one of the such exceptions is that even if opportunity is given no useful purpose may be served as it would be a futile exercise as apparently there were incorrect entries made in favour of the petitioners despite specific disapproval by the Sub-Divisional Officer, Mahsi, District Bahraich, of the proposal of the Gaon Sabha by his noting on the File on 22.09.1995.

(14) Counsel for the Gaon Sabha Shri Pankaj Gupta, has argued that no Bhumidhari rights can be given in lands covered under Section 132 of the U.P.Z.A. & L.R. Act. The petitioners were initially given non-transferable Bhumidhari rights but after 10 years such rights have matured and the petitioners have now claimed to be Bhumidhars with transferable rights. He has further stated that the Gaon Sabha's land in the category of Balu Reta was never changed into Navinparti. It has also been submitted that the change of Category having not been proposed the S.D.O. Mahsi, had rightly refused the allotment and rejected the proposal of the Land Management Committee made in favour of the petitioners. Since no allotment was approved, it cannot be said that the petitioners have derived any rights. He has argued that an Administrative mistake in entering names of the petitioners in the Revenue Records would not create any right in their favour and an Administrative mistake can be rectified at any time upon its discovery.

(15) This Court having seen the Original record finds that although allotment was proposed by the Land Management Committee and the proposal was forwarded by the Revenue Inspector, the SDO did not approve such proposal with respect to Gata No.2/8 recorded as under Category 6 (4) as Balu Reta.

(16) This Court is also aware of the law settled by the Hon'ble Supreme Court that there may be a situation wherein for some reasons and perhaps because the evidence against the individual is thought to be utterly compelling it is felt by the decision making Authority that a fair hearing would make no difference, meaning that a hearing would not change the ultimate conclusion reached by the decision maker. In such cases, there is no legal duty to afford opportunity of hearing. In such a situation, following the principles of natural justice and fair procedure appears to serve no purpose since the 'right' decision can be secured even without affording such opportunity to the

individual. In such cases, it may not be necessary to strike down the Action/ Order only because of denial of opportunity of hearing and refer the matter back to the Authorities to take a fresh decision after compliance with the procedural requirements. Therefore, every violation of principles of natural justice may not lead to the conclusion that the order passed is always null and void.

(17) This Court finds no good ground to show interference in the order impugned. In this petition and all connected writ petitions which have been filed on the same facts and have placed reliance upon the same grounds.

(18) The writ petitions are dismissed."

From the judgment, quoted above, it is apparent that order(s) dated 23.06.2011 and 20.09.2023 passed by opposite party no.2/Sub Divisional Officer Tehsil Mahasi, District Bahraich and opposite party no.1/Additional Commissioner IIIrd Devipatan Division, Gonda, respectively, were in issue before the co-ordinate Bench of this Court and by means of the present petition also the order(s) dated 23.06.2011 and 20.09.2023 passed by the same authorities have been challenged and it is also apparent from the judgment, quoted above, that the land in issue was Gata No. 2/8 recorded in the category of [6(4)] situated at Village Pure Prasad Singh, Tehsil Mahasi, District Bahraich and same gata is in issue in the present petition. It is also apparent from the judgment quoted above, that this Court after considering the plea of opportunity of hearing, declined to interfere in the impugned orders and dismissed the bunch of petitions.

Thus, this Court finds that the subject matter of the present petition is squarely covered by the judgment of co-ordinate Bench of this Court dated 06.02.2024, quoted above.

In view of the aforesaid, the present petition is also liable to be dismissed and it accordingly ***dismissed.***

Order Date :- 12.03.2024

Jyoti/-