

Court No. - 6

Case :- WRIT - C No. - 1002116 of 1997

Petitioner :- Raj Narain And Others

Respondent :- Addl. Commissioner J Lucknow And Others

Counsel for Petitioner :- A.R.Masoodi,Ashutosh Kumar
Srivastava,Ritesh Kalia

Counsel for Respondent :- C.S.C.,Umajeet Gupta,Vijay
Kumar Pandey

Hon'ble Alok Mathur,J.

1. Heard Sri Ashutosh Kumar Srivastava, learned counsel for petitioner as well as learned Standing Counsel for respondent No. 1.

2. Though notices were issued to the private respondents but in the meanwhile the controversy in the present case has already been decided by the coordinate bench of this Court in Writ C No. 3000100 of 1997 by order dated 29.03.2022 and consequently the dispute in the present case would also be covered by the aforesaid judgment and the present writ petition may also be disposed of in light of the judgment of the coordinate bench of this Court dated 29.03.2023.

3. The brief facts of the present case are that petitioners were initially granted lease of land of Gata No. 181/1.056 hec., 179/2.73 hec., 180/2.7 hec., 62/0.93 hec. situated at Gaonsabha Nibhuabojh, District Kheri. Certain complaints were made with regard to liability of the petitioner for being granted said lease and consequently proceedings were initiated for cancellation of the lease and the case was registered as Case No. 810 to 813 and show cause notices were issued to the petitioners.

4. The said proceedings culminated with the cancellation of the lease issued in favour of the petitioners by order dated 02.03.1994. Subsequent to the cancellation in favour of the petitioner, the land was allotted to the respondents by order dated 29.03.1995. The petitioners on coming to know of the orders of cancellation, moved an application for recall of the order dated 02.03.1994 and subsequently the application for recall of order of cancellation dated 02.03.1994 was allowed by means of order dated 24.04.1995.

5. After the appeal of the petitioners were allowed on 24.04.1995, their lease were further confirmed by order dated

02.07.1997 passed by Additional Commissioner, Lucknow Mandal, Lucknow and it was ordered that the lease issued in favour of the respondents be cancelled.

6. The order dated 02.07.1997 was assailed by the respondents in Writ C No. 3000100 of 1997 and this Court has dismissed the writ petition by means of order dated 29.03.2022 and consequently the matter has attained finality by this Court on dismissal of the writ petition. Once the order dated 02.07.1997 has been upheld by this Court then on the same issue no other view is possible except to confirm the findings of the coordinate Bench.

7. For the sake of convenience, the order dated 29.03.2022 passed in Writ C No. 3000100 of 1997 is quoted hereinbelow:-

"Heard learned counsel for the petitioners as well as learned Additional Chief Standing Counsel and perused the record.

The present petition has been filed with the prayer to quash the impugned order dated 02.07.1997 passed by Additional Commissioner, Lucknow Zone, Lucknow (opposite party No.1) along with the prayer to stay the operation of the aforesaid impugned order dated 02.07.1997 during the pendency of the present petition.

Learned counsel for the petitioners has submitted that initially the lease of the property in question was allotted to the private respondents, as they were not the resident of Gaon Sabha, Nibuabagh in which the land in question is situated, therefore, on the basis of complaint, the proceeding of cancellation of lease deed was started against the private respondents and the cases were registered against the opposite party Nos.3 to 6 as Case Nos.810 to 813 and show cause notice was issued to the respondent Nos. 3 to 6 as they are not eligible persons to grant the lease of the land in question. They did not contest the case, as a result, vide order dated 02.03.1994, the lease granted to the private respondents was cancelled and the land was restored in the name of State. Thereafter, as the petitioners belong to the scheduled caste community and they are landless agricultural labours, therefore, the lease of the land in question was allotted to the petitioner vide order dated 29.03.1995 by Sub-Divisional Officer, Nighasan, District Kheri.

Learned counsel for the petitioners has further submitted that the private respondents moved a restoration application dated 18.04.1995 before the opposite party No.1 in Case Nos.810 to 813 for recall of the order dated 02.03.1994 which was passed ex-party after hearing. He further submitted that as the lease

deed was already been granted in favour of the petitioners on 29.03.1995 but in the application dated 18.04.1995 for recall of the order dated 02.03.1994, the petitioners were not arrayed as a party. He further submitted that the aforesaid application of private respondents was allowed vide order dated 24.04.1995 and the order dated 02.03.1994 was recalled. Thereafter, cases lodged by the State against the private respondents for cancellation of lease deed was decided vide order dated 02.07.1997 and the case of State was dismissed and the lease deed of private respondents was upheld. The order was also passed for cancelling the lease deed of the petitioners. He further submitted that the petitioners are the permanent resident of the village in question in which property is situated and they were the aggrieved persons, but without giving opportunity of hearing, their lease deed was cancelled by restoring the lease deed of the private respondents. Therefore, kind indulgence of this Court is necessary.

Learned Additional Chief Standing Counsel has submitted that the petitioners have no locus as it is admitted case of the petitioners that initially, lease was granted to the private respondents but on some complaint, the proceeding for cancellation of lease deed was initiated under Section 27(4) of U.P. Ceiling Act against the private respondents which was registered as Case Nos.810 to 813 and it was allowed in favour of the State with the direction of cancellation of lease deed granted in favour of the private respondents and also ordered for restoring the lease in the name of State. Later on, lease was allotted to the petitioners and in the meantime, application for recall of the order dated 02.03.1994 was moved by the private respondents and it was considered and allowed on 24.04.1995, the matter was restored on its original number by recalling the order dated 02.03.1994, thereafter, the cases of the State for cancelling the lease deed of private respondent was dismissed by Additional Commissioner, Lucknow Division, Lucknow vide order dated 02.07.1997 considering all the aspects of the case. He further submitted that the petitioners have no right as their claims started after cancellation of the lease deed of the private respondents and when the lease of private respondents were restored then the petitioners have no right, therefore, the petition is misconceived and is liable to be dismissed.

Considering the arguments of learned counsel for the petitioners as well as learned Additional Chief Standing Counsel and going through the petition as well as impugned orders, it is evident that lease was granted in favour of the private respondents by the State and thereafter, on some complaint, proceeding was initiated for cancellation of their lease deed and by way of ex-parte order dated 02.03.1994, the

lease deed of private respondents was cancelled, thereafter, an application was moved by the private respondent for recalling of the order dated 02.03.1994 which was allowed on 24.04.1995 and the order dated 02.03.1994 was set aside; as in the meantime, lease of the private respondents was granted in favour of the petitioners but later on, the cancellation proceeding of lease pending against the private respondents was dismissed by Additional Commissioner, Lucknow Zone, Lucknow vide order dated 02.07.1997 and also ordered for cancellation of the lease deed of the petitioners, and it is well settled by the Hon'ble Supreme Court in the case of State of Punjab vs. Davinder Pal Singh Bhullar and Others (2011) 14 SCC 770, Devendra Kumar vs. State of Uttaranchal and Others (2013) 9 SCC 366 which relied on the Maxim Sublato Fundamento cadit opus (a foundation being removed, the superstructure falls), therefore, the petitioners have no locus. Accordingly, the petition is misconceived and is hereby dismissed."

8. In light of the above as well as considering the fact that order dated 02.07.1997 has already been upheld by this Court then the respondents are restrained from taking any further proceedings for cancellation of the lease of the petitioners.

9. With the above observations / directions, the writ petition stands **allowed**.

(Alok Mathur, J.)

Order Date :- 13.3.2024

Ravi/