

Court No. - 18

Case :- WRIT - C No. - 3595 of 2024

Petitioner :- Satya Sharan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Revenue Civil Sectt. Lko And 4 Others

Counsel for Petitioner :- Ram Kumar,Rajendra Prasad

Counsel for Respondent :- C.S.C.,Dilip Kumar Pandey

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel and Shri Dilip Kumar Pandey, learned counsel for the Gaon Sabha concerned.

2. Present petition has been preferred for quashing of the impugned order dated 28.03.2023 passed by the Additional Commissioner (Administration)-respondent no.2 in case No. 682 of 2016 (Computerized Case No. C2016100000682) filed under Section 210 of U.P. Revenue Code, 2006 (hereinafter referred to as, the Code, 2006); the impugned order dated 25.04.2016 passed by the respondent no. 2 in Revision No. C2016100000682 under Section 333 of U.P. Z.A. & L.R. Act, 1950 (hereinafter referred to as, the Act, 1950) and the impugned order dated 26.11.2015 passed by the Additional Collector (Administration), Lucknow in Case No. D20131046002034 filed Under Section 198 (4) of the Act, 1950.

3. Learned counsel for the petitioner has submitted that the lands Khasra Gata No. 194 measuring an area 0.038 hectare and Khasra Gata No. 210 measuring an area 0.038 hectare situated at Village Bahir, Pargana and Tehsil Malihabad, District Lucknow were allotted to the petitioner by the Land Management Committee for agricultural purpose, which was approved by the Up-Ziladhikari, Malihabad by its order dated

26.06.1997, since then, petitioner being a landless labour was in possession of the said land.

4. The respondent no. 4 and his brothers had preferred a case before Additional Commissioner (Administration) Lucknow on 06.08.2016 under Section 198 (4) of the Act, 1950 which was registered as 178/395/13/14. An another case bearing No. 191/13/14 (State vs. Satya Saran) was filed by the Gram Sabha for the same cause and on the application of the petitioner both the suits were clubbed and decided by judgment and order dated 26.11.2015 by the Additional Collector with a specific finding that the land which was allotted to the petitioner for agricultural purpose falls under Section 132 of the Act, 1950 which bars the allotment of such lands for agriculture purpose.

5. Against the judgment dated 26.11.2015 passed by the Additional Collector (Administration), Lucknow, the petitioner had preferred a revision before the Additional Commissioner (Administration), Lucknow Mandal, Lucknow under Section 333 of the Act, 1950. The said revision was decided by order dated 25.04.2016 after the case was called for several time but when the counsel on behalf of the petitioner did not appear, the revision was decided on merits upholding the order passed by the Additional Collector (Administration), Lucknow with a specific finding that the land allotted to the petitioner for agricultural purpose is entered as Harijan Abadi/Abadi in the C.H. Form Nos. 41 & 45.

6. It is further submitted that against the ex-parte order dated 25.04.2016, the petitioner had moved a recall application which was rejected by the revisional court by its order dated 28.03.2023, stating therein that the revision was decided on merits and it is not within its jurisdiction to entertain the recall application preferred by the petitioner.

7. It is further submitted that against the rejection of the recall

application, the petitioner has only remedy to file a writ petition under Article 226 of the Constitution of India challenging the impugned order dated 28.03.2023, the impugned revisional order dated 25.04.2016 and the impugned order dated 26.11.2015 passed in the proceedings under Section 198(4) of the Act, 1950.

9. On the other hand, learned Standing Counsel has submitted that there is no illegality in the impugned order dated 26.11.2015 passed by the Additional Collector (Administration), Lucknow by which the proceedings under Section 198(4) of the Act, 1950 has been allowed after hearing learned counsel for the petitioner with a specific finding as to why the allotment of the land of abovementioned Gata numbers in favour of petitioner is bad in the eyes of law which has rightly been affirmed by the revisional court by its order dated 25.04.2016 which are impugned in the present writ petition and perhaps that was the reason the petitioner was avoiding the proceedings before the revisional authority.

10. It is further submitted that the matter was decided on merits against which the recall is not maintainable and it is not within the jurisdiction of the revisional court/authority to entertain recall once the matter is decided on merits.

11. On being asked specific queries from learned counsel for the petitioner by this Court, firstly, whether the land which was allotted to the petitioner was given for agriculture purposes, he has fairly replied in affirmative that it was given for agriculture purposes after following due procedure of law, secondly, on being asked whether the land which was allotted to the petitioner in two Gatas mentioned above, are the lands entered as Harijan Abadi/General Abadi in C.H. form Nos. 41 & 45, the learned counsel for the petitioner again fairly replied that this finding has correctly been recorded in the orders which are

under challenge in the present writ petition, thirdly, on being asked whether the land which is entered as Harijan Abadi/General Abadi under C.H. form Nos. 41 & 45 could be given for agriculture purposes, it has again been replied that it cannot be given for agriculture purposes but for the residential purposes and fourthly, on being asked, whether the petitioner belongs to Harijan category, learned counsel for the petitioner has very fairly replied that the petitioner does not belong to reserved category.

12. From the above mentioned submissions made by learned counsel for the petitioner and learned Standing Counsel, it is relevant to quote Section 132(vi) for the proper adjudication of the present writ petition, which is quoted hereinbelow:-.

"132. Land in which (bhumidhari) rights shall not accrue-
Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, (bhumidhari) rights shall not accrue in-

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954)"

13. A perusal of Section 132 of the Act, 1950, it makes clear that the *Bhumidhari* rights shall not accrue to any land which set apart for public purposes or reserved for the public purposes under the U.P. Consolidation of Holdings Act, 1953.

14. Once it is an admitted case of the petitioner that the finding given by the Additional Collector (Administration), Lucknow i.e. respondent no. 3 in its impugned judgment and order dated 26.11.2015 in the case filed under Section 198(4) of the Act, 1950 was affirmed by the revisional court in its judgment dated 25.04.2016 then there is nothing left to be adjudicated by the revisional court.

15. After perusal of Section 132(vi) of the Act, 1950 and as per admitted case on behalf of the petitioner, as discussed above

that the *patta*/land allotted in favour of the petitioner has rightly been rejected by order dated 26.11.2015 and so the revision has rightly been decided by the revisional court.

16. In view of the facts, circumstances and the discussion made hereinabove, the present writ petition is devoid of merits hence, dismissed.

Order Date :- 22.4.2024

Ashish