

Court No. - 18

Case :- WRIT - C No. - 4585 of 2024

Petitioner :- Gayadeen And Others

Respondent :- The Court Of Learned Addl. Commissioner, Judicial-II, Lucknow And Others

Counsel for Petitioner :- Ayush Kumar Nigam, Vineet Kumar Chaurasia

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

Hon'ble Manish Kumar, J.

Heard.

Learned counsel for the petitioner has submitted that inadvertently petitioner Nos. 2 and 3 have been made petitioner in the instant writ petition and they do not want to press present writ petition, therefore, the present writ petition may be dismissed as not pressed on behalf of the petitioner Nos. 2 and 3.

As prayed, the present writ petition is ***dismissed as not pressed*** as far as it is related to the petitioner Nos. 2 and 3.

The present writ petition has been preferred by the petitioner with the following prayers:-

"(i) to issue writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 01-04- 2024 passed by the Learned Additional Commissioner, Judicial-II, Lucknow Region, Lucknow passed in Case No.00595/2020 under section 333 U.P. Z.A. & L.R. Act. 1950 (Re: Gayadeen & others Vs. Smt. Tarawati & others) .

(ii) to issue writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 05.10.2019 passed by Additional District Magistrate (Finance & Revenue), Hardoi in Computerized Case No.D2012103300394 under section 198 (4) of U.P.Z.A. & L.R. Act, 1950 (Re: Gayadeen & others Vs. Smt. Tarawati & others).

(iii) to issue writ, order or direction in the nature of certiorari quashing the resolution/proposal dated 25.03.2012 passed by the Land Management Committee, Gaon Sabha-Barahi, Pargana-Gondwa, Tehsil-Sandila, District-Hardoi.

(iv) to issue writ, order or direction in the nature of mandamus commanding the opposite party no.4 i.e. Land Management Committee, Gaon Sabha-Barahi, Pargana-Gondwa, Tehsil- Sandila, District-Hardoi to maintain status-quo of the land allotted to the opposite party nos.5 to 22 in terms of resolution dated 25.03.2012.

(v) to issue any other writ, order or direction which this Hon'ble Court deems just and proper under the circumstances of the case."

Learned counsel for the petitioner, learned State Counsel and Shri Dilip Kumar Pandey, learned counsel for the Gram Sabha have consented that the matter may be heard and decided finally at the admission stage.

Learned counsel for the petitioner has submitted that a *patta* of Gata No.163 area 0.051 hectare was allotted in favour of the petitioner under Section 198 of the UP Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as Act, 1950). The said *patta* was cancelled by impugned order dated 5.10.2019 passed under Section 198 (4). Against the impugned order dated 5.10.2019, the petitioner had preferred a revision under Section 333 of the Act, 1950, which was also dismissed by judgment and order dated 1.4.2024.

Learned counsel for the petitioner has further submitted that on Gata No.163, the petitioner was in possession prior to 13.5.2007, as such the petitioner had preferred a case under Section 122 B (4F) of Act, 1950 before the Sub Divisional Magistrate for granting *patta* in favour of the petitioner or to declare the petitioner as *Bhumidhar* of the Gata No.163. The said case was filed prior to the grant of *patta* in favour of the petitioner of the same land i.e. Gata No.163 having same area by order dated 25.3.2012. The case preferred by the petitioner under Section 122 B (4F) was dismissed by the Sub-Divisional Magistrate and the petitioner had not approached any higher Court challenging the same.

It is further submitted that the petitioner is entitled to get the benefit of Section 122 B (4F) of Act, 1950 and this aspect of the matter was not considered by the authority while passing the impugned orders i.e. cancellation of *patta* and the revisional order.

It is further submitted that petitioner belongs to Schedule caste category, as such he is entitled for allotment of *patta* in his favour as *Bhumidhar*.

On the other hand, learned State counsel and counsel for the Gram Sabha has submitted that the petitioner does not fall under the category of a landless labourer as he has 1.3550 hectare of land, two tractors, one motorcycle, double storey house in a village and two daughters-in-law of the petitioner are working as *Karyakatri* in the *Bal Vikas Pariyojna* and the said finding in the impugned cancellation order dated 5.10.2019 has never been denied or disputed by the petitioner.

After hearing learned counsel for the parties and going through the record of the case, the dispute is with regard to Gata No.163 Area 0.051 hectare , on which the petitioner is claiming his *bhumidhari* rights as he has been in possession on the said land prior to 13.5.2007 i.e. the date mentioned in Section 122 B (4F). The petitioner could not rely upon Section 122 B (4F) in the present writ petition as his suit/ case under the said section had already been dismissed by the competent authority, which was not challenged by the petitioner before any higher Court or even before this Court, so as far as the rights of the petitioner in pursuance of Section 122 B (4F) are concerned, that has attained finality after the dismissal of the case preferred by the petitioner and could not be seen in the present writ petition.

The second submission regarding cancellation of allotment by impugned order dated 5.10.2019 under Section 198 (4) of Act, 1950 is concerned for grant of *patta*. The relevant extract of Section 198 is necessary to be quoted hereinbelow and reads as under:-

"198. Order of preference in admitting persons to land under Sections 195 and 197.-(1) In the admission of persons to land as [bhumidhar with non-transferable rights) or asami under Section 195 or Section 197 (hereinafter in this section referred to as allotment of land) the Land Management Committee shall, subject to any order made by a Court under Section 178 observe the following order of preference:

(a) landless widow, sons, unmarried daughters or parents residing in the circle of a person who has lost his life by enemy action while in active service in the Armed Forces of the Union:

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) a landless agricultural labourer residing in the circle and belonging to any one of the following categories in the order of preference:-

(i) persons belonging to the Scheduled Castes or the Scheduled Tribes;

(ii) persons belonging to Other Backward Classes;

(iii) persons belonging to the general category living below poverty line.];

(d) any other landless agricultural labourer residing in the circle:

e) a bhumidhar or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);

.....

4) The [Collector] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any."

The petitioner did not fall under the category of landless agricultural labourer as per Section 198, as the petitioner is having 1.3550 hectare of land, two tractors, one motorcycle, double storey house in the village and his daughters-in-law are working as Karyakatri in Bal Vikas Pariyojna and this finding by the Additional District Magistrate while cancelling the allotment of *patta* in favour of the petitioner by impugned order dated 5.10.2019, which was neither denied nor disputed by the petitioner while filing the revision and the Revisional Court has upheld the order passed by the Additional District Magistrate for cancellation of *patta* of the petitioner by placing reliance on the same findings, which disqualified the petitioner to be eligible for grant of *patta* under Section 198. The petitioner even in the present writ petition has not denied or disputed the

said finding, rather on being asked from the learned counsel for the petitioner, whether he has to say something about the findings given, as mentioned above, he states that the findings are correct and the petitioner is having all these things which are mentioned in the order.

In view of the above, there is no illegality in the orders passed and no interference is called for in the impugned judgment dated 1.4.2024 passed in Revision and the impugned order dated 5.10.2019 passed under Section 198 (4) by the Additional District Magistrate and there is no need to quash the resolution of the Land Management Committee, which is under challenge.

The writ petition is devoid of merits, hence **dismissed**.

Order Date :- 22.5.2024

Gurpreet Singh