

Court No. - 18

Case :- WRIT - C No. - 1001953 of 2006

Petitioner :- Ramesh U.P.Z.A.

Respondent :- Additional Commissioner Lucknow And 2 Ors.

Counsel for Petitioner :- Birendra Kumar Yadav

Counsel for Respondent :- C S C,R.K.Dixit

Hon'ble Manish Kumar,J.

1. Heard Shri Birendra Kumar Yadav, learned counsel for the petitioner, Shri R.K. Dixit, learned counsel for the private opposite parties and Shri Hemant Kumar Pandey, learned Standing Counsel.

2. Present petition has been preferred for quashing of the impugned order dated 31.08.2005 passed by the Additional Collector in the proceedings under Section 198 of the U.P.Z.A. and L.R. Act, 1950 (hereinafter referred as "Act, 1950") and the revisional order dated 10.01.2006 passed under Section 333 of the Act, 1950.

3. Learned counsel for the petitioner has submitted that the land i.e. plot No.60/6 area 0.341 hectare was allotted for agricultural purposes to the petitioner with the approval of the *Pargana Adhikari* on 23.03.1987 but the patta has been cancelled by passing the impugned order dated 31.08.2005, ignoring completely the fact that the land was entered as '*Phus-patwar*' in the revenue records not as forest of timber trees.

4. It is further submitted that though the patta was also cancelled for Gata Nos. 136 and 673 by the present impugned order but the same has been challenged by filing a separate writ petition by the petitioner which is pending. In the present case, the only issue which has to be determined is with regard to land No.60/6 area 0.341 hectare.

5. It has been further submitted by the learned counsel for the petitioner that the land was entered as *Phuspatwar* in the revenue records prior to the Consolidation proceedings and at the time of grant of patta in favour of the petitioner in the year 1987.

6. On the other hand, learned State Counsel has submitted that the land entered as forest of timber trees, no patta can be granted as the land falls under Section 132 of the Act, 1950. It

is further submitted that the agricultural patta cannot be granted in favour of anyone of the land which falls under Section 132 of the Act, 1950, hence, there is no illegality in the revisional order passed under Section 333 of the Act, 1950 and the impugned order dated 31.08.2005 passed by Additional Collector, cancelling the patta in the proceedings under Section 198, Act, 1950.

7. After hearing the learned counsel for the parties and going through the record of the case, this Court has put a specific query to the learned counsel for the petitioner that on which basis or document the petitioner has come with a case that the patta of land allotted to the petitioner i.e. Plot No.60/6 area 0.341 hectare, is land which was entered as *Phuspatwar* in the revenue records, in reply he has submitted that neither is their any document in support of the said submission is available nor the same has been filed.

8. It has specifically been asked whether the land which falls under Section 132 of the Act, 1950 could be allotted for agricultural purposes under the law, learned counsel for the petitioner has submitted no rights can be given on the land which falls under Section 132 of the Act, 1950.

9. He is also unable to inform as to when the consolidation proceedings started in the village to support his contention relating to patta having been granted prior to consolidation proceedings. The petitioner has also not denied and disputed the finding given for land in issue in the present case i.e. plot No.60/6 which has been entered as forest of timber trees in *Akar Patra* and also failed to produce any document to show that the land was entered as *Phuspatwar* in the revenue records.

10. If for the sake of the argument the submission of the learned counsel for the petitioner that land was entered as *Phuspatwar* in the revenue records prior to the Consolidation proceedings and at the time of grant of patta in favour of the petitioner is accepted, then at the time of consolidation in the village, the petitioner would have filed the objection under Section 9A (2) of the Act, 1953 but it is nowhere the case of the petitioner that he had ever filed the objection. The petitioner has failed to show any document regarding entry of the land i.e. Plot No.60/6 area 0.341 hectare as *Phuspatwar* in the revenue records and nor he had come with a case that he had filed an objection under Section 9A (2) of the Act, 1953 during the consolidation proceedings in the village.

11. The para A-124 (5) (iii) (a) of Land Records Manual provides forest of Timber trees and the note to the above

provision, clearly provides for purposes of classification under sub-clause (iii) above "timber trees" means tree the value of which mainly lies in its timber for building purposes and its fruit or like produce which includes *dhak* forest also. The relevant extract of para A-124 (5) (iii) (a) of Land Records Manual alongwith note of this provision is quoted hereinbelow:-

"A-124. Arrangement of holdings-The arrangement of land within each village in the khatauni shall be as follows:

(5) Culturable land-

(iii) culturable waste-

(a) Forests of timber trees-

(1) under the management of the Forests Department (including erstwhile private forests made over to Forests Department).

2) vested in the Gaon Samajs.

(b) Forests of other trees, shrubs, bushes, etc.

(1) under the management of Forest Department (including erstwhile private forest made over to Forests Department).

(2) vested in the Gaon Samajs.

(c) permanent pasture and other grazing lands;

(d) thatching grass and bomboo bushes;

(e) other culturable waste.

Note.-(1) For purposes of classification under sub-class (iii) above "timber trees" means tree the value of which mainly lies in its timber for building purposes and in its fruit or like produce. Examples of timber trees are sakhu, sagaun, hasna, deodar, haldua, country mango (not qalmi), neem, sheesham, jamun, asna, mahua, tun mulberry kadam bamboo, imili, chir, cyprees, babool, aonla, bel, kaitha, dhak, kikar arma, seeding mango and kanji (pongamiagalbra), etc. Such trees as bargad, pakar, peepal, gular etc. are not timber trees."

12. This Court in the case of **Gyanendra Singh vs. Additional Commissioner, Agra Division, Agra, 2003 (95) RD 286** has held that the land recorded as '*Jangal Dhak*' is a forest and public utility land and the same cannot be transferred by way of lease, sale etc. and no *bhumdhari* rights shall accrue in respect of the said land. These lands are saved under Section 132 of the U.P.ZA. & L.R. Act, 1950 and the said judgment has been followed by this Court in its judgment dated 05.07.2022 in

Public Interest Litigation No. 7472 of 2021 and in the case of **Sharad Kumar Dwivedi vs. State of U.P. through Principal Secretary, Lucknow and others.** The relevant extract of judgment passed in the case of **Gyanendra Singh (supra)** is quoted hereinbelow:-

"3. The Additional Collector, Etah vide his order dated 23rd March, 1998 cancelled the lease granted to the Petitioners exercising jurisdiction under Section 198 (4) of U.P. Zamindari Abolition and Land Reforms Act. A revision was filed by the Petitioners, which has been rejected by the Additional Commissioner. The Petitioners were granted lease of plots No. 108, 113 and 115 after approval of the Sub-Divisional Officer dated 25th March, 1992. The Petitioners claim that Petitioners became bhumidhar with non-transferable right of the aforesaid plots by virtue of the aforesaid lease. Respondent No. 5 filed an application under Section 198 (4) of the U.P. Zamindari Abolition and Land Reforms Act praying for cancellation of the lease granted to the Petitioners. The grounds taken in the application was that aforesaid plots are recorded as "Jangal Dhaka" which is land of public utility and grant of lease of the said land was illegal. The Petitioners filed objection to the said application and challenged the entitlement of Respondent No. 5 to file the application. The Additional Collector vide his order dated 23rd March, 1998 cancelled the lease. The Additional Collector held that plots No. 108, 113 and 115 are recorded as "Jangal Dhaka", the land being land of public utility leases were illegally granted and are cancelled. The revisional court also affirmed the said finding that land is recorded as "Jangal Dhaka" which is land of public utility and could not have been leased out.

6. Both the courts below have recorded finding that all the three plots were recorded as "Jangal Dhaka". The word "Jangal Dhaka" means Dhaka Forest, Dhaka is a kind of small tree having large leaves. The entry of the aforesaid plot clearly indicates that the said plots are a kind of forest recorded as Dhaka Forest. The use and utility of forest cannot be denied. Existence of forest are beneficial for human life and environment. There cannot be any denial that forest land is a land of public utility. Section 132 of U.P. Zamindari Abolition and Land Reforms Act mentions about the land in which bhumidhari rights shall not accrue. Section 132 of U.P. Zamindari Abolition and Land Reforms Act is extracted below:

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:

(a) pasture lands or lands covered by water and used for the purposes of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a (Gaon Sabha) or a local authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause:

- (i) land set apart for military encamping grounds;
- (ii) lands included within railway or canal boundaries;
- (iii) lands situate within the limits of any cantonment;
- (iv) lands included in sullage farms or trenching grounds belonging as such to a local authority;
- (v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919), or by a municipality for purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and
- (vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954).

7. The Sub-clause (3) of Section 132 includes land held for a public purpose on which bhumidhari rights shall not accrue. The aforesaid three plots being recorded as "Dhaka Jangal" were covered by land as enumerated in Section 132 and lease of bhumidhari rights with non-transferable right cannot be granted on the said plots. No error has been committed by the courts below in cancelling the lease granted in favour of the Petitioners. The submission of Petitioners is that other persons have also been granted lease of "Dhaka Jangal", hence Petitioners have been discriminated in so far as the lease of other persons have not been cancelled and the Petitioners have only been singled out for cancellation. The counsel for the Petitioners has raised the submission based on discrimination. As noted above, lease of "Dhaka Jangal" is not permissible in accordance with Section 132 of U.P. Zamindari Abolition and Land Reforms Act and the fact that leases were granted to certain other persons cannot validate the lease of the Petitioners which was in violation of Section 132 of U.P. Zamindari Abolition and Land Reforms Act. The plea of discrimination is not available in a case where the benefit which was taken by other persons cannot be said to be in accordance with law. Apex Court in Chandigarh Administration and Anr. Jagjit Singh and another, MANU/SC/0136/1995 (1995) 1 SCC 745, held that mere fact that the Respondent has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination in case the order in favour of other persons is found to be contrary to law or not warranted in the facts of this case. Following was laid down in paragraph 8:

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length.

Generally speaking, the mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the

order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/ unwarranted action must be correct, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent authority to repeat the illegality; the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law...

8. Thus the submission of counsel for the Petitioners that other persons have been granted leases of plots recorded as "Jangal Dhaka" is not relevant nor can validate the lease of Petitioners. No error has been committed by the Respondents in cancelling the lease of the Petitioners."

13. The relevant paras of the judgment passed in the case of **Sharad Kumar Dwivedi (supra)** wherein the judgment of **Gyanendra Singh (supra)** was considered are quoted hereinbelow:-

"42. This Court in *Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra, 2003 (95) RD 286* has held that the land recorded as 'Jangal Dhak' is a forest land and is a public utility land and same cannot be transferred by way of lease, sale etc and no *bhumidhari* rights shall accrue in respect of the said land. These lands are saved under Section 132 of the U.P.Z.A. & L.R. Act, 1950. This Court considering the provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 held that lands recorded as 'Jangal Dhak' are covered by the lands enumerated under Section 132 U.P.Z.A. & L.R. Act, 1950 and the same cannot be transferred in favour of anyone."

14. In note to the provision mentioned above the forest of timber tree and jungle *dhak* both are included. The forest of timber trees is also a forest and a public utility land and the same cannot be transferred by way of lease, sale etc and no *bhumidhari* rights shall accrue in it. Once it is not disputed by the writ petitioner regarding entry made in the revenue records as forest of timber trees on the land which is under dispute and failed to show any document that it was entered as *Phuspatwar*, the land is protected under Section 132 of the Act, 1950.

15. A perusal of the Section 132 of the Act, 1950, it makes it clear that *Bhumidhari* rights shall not accrue to any land which is set apart for public purposes or reserve for public purposes

under the Act, 1953. Once it is an admitted case of the petitioner that the finding given by the Additional Collector, Lucknow in the proceedings under Section 198(4) of Act, 1950 and affirmed by the revisional court, then, there is nothing left to be adjudicated.

16. After considering the relevant provisions as mentioned above and the judgment passed by this Court in the case of **Gyanendra Singh (supra)** and **Sharad Kumar Dwivedi (supra)** and as per the admitted case of the petitioner as discussed above that the patta/ land allotted in favour of the petitioner has rightly been cancelled by the order dated 31.08.2005 and, therefore, the revision has rightly been rejected by the revisional court.

17. Thus, in view of the facts and circumstances and submissions made by the parties hereinabove, there is no illegality in the orders passed by the Additional Collector and the revisional authority.

18. The writ petition is devoid of merits and it is accordingly **dismissed**.

Order Date :- 24.4.2024

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