

Court No. - 8

Case :- WRIT - C No. - 7870 of 2024

Petitioner :- Noor Mohammad Khan And Others

Respondent :- State Of U.P. Thru. Add. Chief / Prin. Secy.,
Revenue, Lucknow And Others

Counsel for Petitioner :- Mohd. Mansoor, Mohammad Danish

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - C No. - 7759 of 2024

Petitioner :- Abdul Jabbar And Another

Respondent :- State Of U.P. Thru. Addl. Chief / Prin. Secy.,
Revenue, Lucknow And Others

Counsel for Petitioner :- Mohd. Mansoor, Mohammad Danish

Counsel for Respondent :- C.S.C.

Hon'ble Jaspreet Singh, J.

The instant two petitions involves similar questions of law and fact hence, both the petitions have been clubbed together and are being decided by this common judgment.

The Court has heard Sri Mohd Mansoor learned counsel for the petitioner and Sri Upendra Singh learned Standing counsel for the State respondent.

In view of the order passed by this Court, the notice to private respondents is dispensed with.

The Court shall be referring to the facts which are common to both the petitions from Writ C no.7870 of 2024, however, wherever required the facts of the connected Writ C no.7759 of 2024 shall be accordingly mentioned.

Under challenge is the order dated 27.02.2024 passed by the Sub Divisional Magistrate Gauriganj District Amethi in Case no.973 of 2024.

The facts giving rise to the instant petitions are being noticed hereinafter. The dispute-in-question relates to Gata no.91(M) area 444 Bighas 2 biswa and 0 biswansi situated in village Talamsiyaon, Pargana Gaurajamo Tehsil Gauriganj District Amethi.

The said Gata relates to surplus ceiling land and as such it is recorded in the khatauni relating fasli year 1374 to 1376. On 13.03.1967, the Deputy Commissioner/Collector had granted lease of this surplus ceiling land of Gata no.91(M) to 104 persons which included the mother of the petitioners of Writ C no.7870 of 2024 namely Smt. Gafura as well as Abdul Khaliq s/o Sultan (father of the private respondent no.5-Eidul Hasan) thereafter, the name of Smt. Gafura was duly recorded in the revenue records and so also the names of Abdul Jabbar and Tahir Ali who are petitioners in connected Writ C no.7759 of 2024 was also recorded.

In the year 2001, consolidation operations started in the village-in-question and the name of the petitioners of both the petitions was recorded in the base year khatauni. The details relating to the petitioners of both the petitions was also mentioned in CH Form no.2A, CH Form no.11, CH Form no.23 and also in the final khatauni prepared. Thus, it could be evident that the names of the petitioners was duly recorded.

At an earlier point of time, a complaint was made by the then local member of the legislative assembly, to the Collector of the village, indicating that names of certain persons as lessee was incorrectly recorded in the revenue records. The Collector, then without affording any opportunity of hearing to the parties concerned by means of the order dated 03.02.2001 directed the names of five persons to be deleted which *inter alia* included the name of the mother of the petitioners of Writ C no.7870 of 2024 and the petitioners of the connected petition no.7759 of 2024.

Since, the order dated 03.02.2001 was passed by the District Magistrate *ex parte* and without opportunity of hearing, out of five affected persons, a writ petition bearing no.130 (Consolidation) of 2001 was filed by one Sri Mohsin and Hasim and Smt Baqreedan and a coordinate Bench of this Court by means of the order dated 22.02.2001 directed the parties to maintain status quo. The petitioners of the connected petition also filed their writ petition bearing no.195 (consolidation) of 2001 wherein the coordinate Bench on 28.03.2001 passed an order of status quo and both the writ petitions i.e. Writ petition no.195 (Consolidation) of 2001 and writ petition no.130 (Consolidation) of 2001 were connected.

In so far as the mother of the petitioners of Writ petition no.7870 of 2024 is concerned, she preferred a revision before the Additional Commissioner assailing the same order of District Magistrate dated 03.02.2001 and the Additional Commissioner, Faizabad by means of the order dated

19.04.2001 passed an interim order directing the parties to maintain status quo. It is stated that in so far as the revision preferred by Smt. Gafoora is concerned, the same is still pending in the Court of Additional Commissioner Faizabad wherein the next date fixed is 26.10.2024 and the interim order dated 19.04.2021 still continues to subsist.

The petitioners of the connected petition namely Abdul Jabbar and Tahir Ali whose writ petition no.195 (Consolidation) of 2001 was dismissed for want of prosecution on 08.07.2015. As soon as the petitioners came to know of their writ petition being dismissed in default, they moved an application for restoration on 23.11.2023 and the same is pending.

It is at this stage, that the complainant i.e the respondent no.5 moved an application for 01.08.2023 under Section 38(1) of the U.P. Revenue Code, 2006 seeking correction of record only in respect of five persons against whom the initial order dated 03.02.2001 had been passed by the District Magistrate. It is urged that on 05.08.2023 the S.D.M concerned called for a record from the Tehsildar dated 17.10.2023 and the S.D.M relying upon the said report has passed the impugned order whereby the records relating to land which was leased to the petitioners of both the writ petitions have been directed to be recorded as government land. It is in the aforesaid backdrop that the petitioners of both the writ petitions have assailed the order dated 27.02.2024 by means of the instant petitions.

The primary submission of learned counsel for the petitioners in both the petitions is that the impugned order dated 27.02.2024 has been passed without affording any opportunity of hearing to the parties and behind their backs. It is urged that since the order has been passed in terms of the Section 38(1) of the U.P. Revenue Code, 2006, the said Section itself provides that the said order is to be passed after affording an opportunity of hearing to the parties and not before that. It is further urged that the order is also bad in the eyes of law for the reason that in so far as the petitioners of Writ petition no.7870 of 2024 are concerned, the revision preferred by their mother namely Gafoora is still pending before the Additional Commissioner wherein an interim order subsists.

It is further urged that the private respondent no.5 namely Eidul Hasan concealed the fact from the S.D.M that in respect of the order dated 03.02.2001 the revision was still pending wherein interim order was subsisting, hence, the order as far as it relates to the petitioners of Writ petition no.7870 of 2024 is concerned, the same was wholly without jurisdiction as the S.D.M had no right to pass an order based on the order dated 03.02.2001

which remained the subject matter of the pending revision where an order of status quo was passed.

Another submission of learned counsel for the petitioners is that in so far as Abdul Jabbar and Tahir Ali are concerned, the order impugned dated 27.02.2024 is bad as it violates their right of hearing and the said order suffers from the vice of having been passed without affording any opportunity of hearing, hence, the said order is bad in eyes of law.

This Court noticing the aforesaid fact had required learned Standing counsel to seek specific instructions to ascertain whether the order impugned dated 27.02.2024 has been passed after affording opportunity of hearing to the parties or it is exparte without informing the concerned petitioners.

Learned Standing counsel has provided the written instructions in both the connected petitions and it has clearly been stated that the said orders have been passed without issuing any notice to the petitioners. It has also been stated in the written instructions that from the file-in-question, no notice is said to have been issued. In the case of **Noor Mohammad Khan and ors vs State of U.P.** similar instructions have been given that no notice was issued or served to Smt. Gafura. It further indicates that since the order impugned has been challenged being violative of principles of natural justice and as per the written instructions, this position is not disputed hence, with the consent of learned counsel for the parties the petition is being disposed of finally at the admission stage itself.

Since, it is the admitted position that the said order was passed without notice being issued or served to the petitioners of both the petitions, hence, apparently, the impugned orders are exparte. It also could not be disputed that the revision preferred by Smt.Gafura against the order dated 03.02.2001 is still pending before the Additional Commissioner and the interim order continues to subsist.

In this view of the matter, this Court is of the clear view that the said order passed by the S.D.M dated 27.02.2024 could not have been passed. The basis of the order dated 27.02.2024 is the alleged earlier order dated 22.01.2001 which is the subject matter of the appeal and the order of status quo passed by the Additional Commissioner which is binding on the S.D.M could not have been ignored. Even otherwise, the impugned order dated 27.02.2024 indicates that it has been passed under Section 38(1) of the U.P. Revenue Code, 2006 hence, if the said Section is perused, it would reveal that sub Section (3) of Section 38 states that the Sub Divisional Officer or the Collector as the

case may be, only after considering any objections filed and evidence produced before him shall take a decision, thus, the rule of providing an opportunity of hearing is implicit in the said Section.

Since it is undisputed that no notice was issued to the petitioners of the two writ petitions, hence, the order becomes bad in the eyes of law as not only is it behind the back of the petitioners who has already noticed above is against the letter and spirit of the order passed by the Additional Commissioner dated 19.04.2001 which continues to subsist. Hence, this Court is of the clear view that the impugned order dated 27.02.2024 cannot be sustained and, accordingly, is liable to be set aside.

The writ in the nature of certiorari is issued quashing the impugned order dated 27.02.2024. Both the petitions are allowed.

This Court further directs that the petitioners shall appear before the S.D.M concerned in the said proceedings on 30.09.2024 and, thereafter, the S.D.M concerned after affording full opportunity of hearing to the parties but without granting any unnecessary adjournment shall decide the matter afresh. Since, the instant order has been passed at the behest of the petitioners, hence, no further notice is required to them. They shall appear before the Court concerned on **30.09.2024**.

It is also clarified that the impugned order has been set aside primarily on the ground of violation of principles of natural justice and procedural defects, hence, the Court has not examined the merits of the plea or grounds as would be available to the parties which needless to say shall be considered and decided by the court concerned. The S.D.M concerned shall decide the matter finally, preferably, within a period of eight weeks from the date a certified copy of this order is placed before the authority concerned provided that there is no legal impediment.

Accordingly, the writ petition is **allowed**. Costs are made easy.

Order Date :- 12.9.2024

Harshita