

Court No. - 7

Case :- WRIT - C No. - 11517 of 2023

Petitioner :- Parmeshwar

Respondent :- Commissioner, Devipatan Mandal, Gonda And Others

Counsel for Petitioner :- Surya Narayan Mishra, Surya Bhushan
Srivastava, Swatantra Dev

Counsel for Respondent :- C.S.C., Karunakar Srivastava, Pankaj Gupta

Hon'ble Saurabh Lavania, J.

Heard Shri Surya Narayan Mishra, learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned State Counsel for State-opposite party nos.1 to 3, Shri Vikram Nath Pandey, Advocate on behalf of Shri Pankaj Gupta who has put in appearance on behalf of opp. party no.4 and Shri Karunakar Srivastava, learned counsel for opp. party no.6.

The present writ petition has been filed for the following main relief :-

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 02.11.2023 passed by the Commissioner Devipatan Mandal, Gonda, in Case No. 1035 of 2023 (Computerized No.C202308000001035), Parmeshwar Vs. Suresh and others so far as it relates to the revision and order dated 07.06.2017 passed by the Up-Ziladhipari, Tehsil-Tarabganj, District-Gonda, in Case No.T.2001083600009, U/s 176 U.P. Z.A.L.R. Act, (Contained as Annexure No.01 and 02), in the interest of justice."

Brief facts of the case are to the effect that undisputedly the petitioner being co-sharer of Gata Nos. 489/1-03, 229/0-10, 234/0-17 (in short 'land in issue') situated at Village Udaypur Grant, Pargana Nawabganj, Tehsil Tarabganj, District Gonda, is having 1/3 share and in regard to land in issue a suit no. 19 of 2001 under Section 176 of U.P.Z.A. & L.R. Act, 1950 (in short 'Act of 1950') was instituted before opposite party no.2/Up-Ziladhipari, Tehsil Tarabganj, District Gonda for partition and in the suit a preliminary decree was prepared in terms of the order dated 04.05.2005 and thereafter an application for appointment of Commission was preferred by petitioner on 01.04.2009 and the Lekhpal concerned prepared report dated 22.02.2010 i.e. a proposal of division of land in issue (Kurra Chittha and map) and the same was submitted on 11.08.2010 before the opposite party no.2 and this report dated 22.02.2010 was confirmed by opposite party no. 2 on 07.06.2017.

After the aforesaid, an application for restoration of case was moved by the opposite party no. 8-Narendar (alleged to be moved by the petitioner and opposite party no.8), which was not pressed as is evident from impugned order dated 25.08.2022 and is apart from the application dated 02.02.2022 preferred

by the opposite party no. 8 (Annexure no. 8 to this petition) against which the petitioner preferred an objection dated 09.02.2022.

From the record, it is apparent that the petitioner did not file an application for restoration of case/ recall of final order dated 07.06.2017 and nor did he file the objection to the report dated 22.02.2010 before passing the order dated 07.06.2017, whereby the opposite party no.2 confirmed the report dated 22.02.2010. However, the petitioner preferred an objection on 23.02.2022 against the report dated 22.02.2010.

After considering the aforesaid, the opposite party no.2 by the impugned order dated 25.08.2022 confirmed the final order dated 07.06.2017.

Challenging the order dated 07.06.2017 the petitioner filed a revision and by means of an appeal, the petitioner assailed the order dated 25.08.2022 and both these cases were decided by a common order dated 02.11.2023 (impugned order). Vide order dated 02.11.2023 the opposite party no. 1/Commissioner, Devi Patan Mandal, Gonda, modified the order dated 07.06.2017. As per this order, the petitioner would get the land for road over western side of the Gata No. 233.

It would be apt to indicate that against the order dated 02.11.2023 and praying other reliefs, the petitioner filed Writ-C No. 10581 of 2023 and the same was dismissed as not pressed vide order dated 11.12.2023, which reads as under:-

"Heard.

This Court has passed the following order on 06.12.2023:

"Shri Upendra Singh, learned Additional Chief Standing Counsel and Shri Karunakar Srivastava, learned counsel for the respondent no.6 have raised a preliminary objection that this petition has been filed against the composite order dated 02.11.2023 passed on a first appeal filed by the petitioner against the order dated 25.08.2022 and the revision against the order dated 07.06.2017, which is not maintainable because the petitioner has a remedy of second appeal against the first appellate order.

Shri Surya Narayan Mishra, learned counsel for the petitioner seeks time to examine and argue on the maintainability.

As prayed, put up on 11.12.2023 as fresh.

The order has been passed in presence of Shri Vikram Datt Pandey, Advocate holding brief of Shri Pankaj Gupta, learned counsel for the Gaon Sabha."

Shri Surya Narayan Mishra, learned counsel for the petitioner submits that in view of the objection raised by learned Additional Chief Standing counsel, petition may be dismissed as withdrawn with

liberty to the petitioner to file second appeal against the first appellate order before the appropriate Court or forum and challenge the order passed in the revision in fresh petition.

There is no objection by the learned Additional Chief Standing counsel as well as Lalit Kumar Singh, Advocate holding brief of Shri Karunakar Srivastava and Shri Vivekanand Pandey, Advocate holding brief of Shri Panka Gupta, learned counsels for the respondents.

In view of the above, the writ petition is dismissed as not pressed with the liberty as prayed for.

Office is directed to return the certified copies annexed along with the petition to the learned counsel for the petitioner in accordance with law after keeping photocopies on record."

In the aforesaid background, the present petition has been filed challenging the order dated 02.11.2023 passed in Revision by opposite party no. 1 and order dated 07.06.2017 passed by opposite party no. 2.

For seeking the reliefs sought, it is submitted that vide order dated 07.06.2017 passed by the opposite party no.2, the report dated 22.02.2010 prepared by the Lekhpal was confirmed and vide order dated 02.11.2023 the opposite party no.1 affirmed the order of opposite party no.2 dated 07.06.2017 with modification to the effect that some land be provided for road on western side of Gata no.223 and the same amount of land be provided to the concerned from the land of the petitioner from whom the land would be provided to the petitioner and both these impugned orders are unsustainable in the eye of law because by these orders, the report which was not prepared as required under Rule 131 of the U.P. Zamindari Abolition and Land Reforms Rules, 1954, (in short 'Rules of 1954') has been confirmed. As the mandatory provisions were not followed while preparing the report and without taking note of the same, the opposite party no.2 confirmed the report vide order dated 07.06.2017 and the opposite party no.1 also affirmed the report dated 22.02.2010 vide order dated 02.11.2023 and as such the impugned orders are liable to be set aside.

In support of his contentions, he has drawn attention of this Court upon the judgment passed in the case of **Ram Ji Lal vs. Board of Revenue, Alld. and Ors. (MANU/UP/2220/2015)**. The relevant portion of which reads as under :-

"8. Thus word "holding" used in Rule 131 means the total land held by tenure holders. Rule 131 contemplate principles of division of holding. Under Rule 131 (1) (d) effort should be made to avoid to split the existing filed. In order to assure to follow the principles of Rule 131 (1) (d), it has been further provided under Rule 131 (1) (e) that plots which are in separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in excess to his share. Thus principles of Rule 131 (1) (e) serves the object of Rule 131 (1) (d). If there are several plots for division between co-

sharers, then in order to avoid split of the plots, the plot in separate possession of a tenure holders be allotted in their kurra. Suppose if a plot situated on a High Way, having commercial value, has to divided between co-sharers and one of the co-sharer was having his share covering whole frontage on roadside land in private separation and other co-sharers were on backside. Then according to the principles under Rule 131 (1) (a) that valuation of the portion allotted to each party shall be proportionate to his share in the holding, Assistant Collector would be justified in allotting share to all the co-sharers giving frontage on roadside and previous possession in such a situation has to be disregarded. Thus, the principle contained under Rule 131(1) (e) is not the solitary principle. The principles as provided under Rule 131 (1) (a) (b) and (c) have also to be followed. Dividing joint holding has to be made considering all the principles contained under Rule 131."

Learned counsel for the respondents have opposed the contentions of learned counsel for petitioner and stated that a suit for partition of holdings was filed as Case No. T.2001083600009 under Section 176 of the Act of 1950 with regard to Gata No.489/-03, 22/0-10, 230/0-10, 233/5-63 and 234/0-17 situated in village Udaypur Grant, Pargana Nawabganj, Tehsil Tarabganj, District Gonda and in the said suit a preliminary decree was passed on 04.04.2005 holding that the Parmeshwar (petitioner), Ram Chandar (predecessor in interest of opposite party nos.5 to 7) and Narendar (opp. party no.8/ defendant) are entitled to one-third share each. The division of share with regard to land in issue is undisputed and accordingly the preliminary decree was not challenged.

It is also stated that thereafter for the purposes of passing of final decree report was called upon and the revenue official namely Lekhpal submitted a report dated 22.02.2010 and this report was confirmed by the opposite party no.2 vide order dated 07.06.2017 and no objection was filed by the petitioner against the report of Lekhpal dated 22.02.2010 before passing the order dated 07.06.2017. Thus, the petitioner accepted the report dated 22.02.2010 and being so, now the petitioner is estopped from challenging the report and the final order dated 07.06.2017 passed in case on the basis of Rule 131 of the Rules of 1954.

It is further stated that infact the petitioner was not aggrieved at any point of time by the order dated 07.06.2017. Elaborating this aspect it is stated that after passing of order dated 07.06.2017 the aggrieved party, the co-sharer namely Narendar (opposite party no.8) preferred an application for restoration/recall of order dated 07.06.2017 and subsequently the said application was not pressed by Narendar/ opposite party no. 8 by preferring an application dated 02.02.2022 and considering the same, the opposite party no. 2 passed the order dated 25.08.2022, whereby affirmed the order dated 07.06.2017 and rejected the application/objection of the petitioner dated 23.02.2022 filed against the report dated 22.02.2010, which itself was not maintainable as was filed after confirming the report dated 22.02.2010 vide order dated 07.06.2017.

It is also stated that thereafter the petitioner preferred a revision along with an

application for condonation of delay challenging the order dated 07.06.2017 and also challenged the order dated 25.08.2022 by means of an appeal and by the impugned order dated 02.11.2023 the appeal as also the revision were decided and by this order, the order dated 07.06.2017 has been modified by providing land to the petitioner for road on western side of Gata No. 233, which is just and proper. However, the petitioner approached this Court by means of Writ C No.10581 of 2023 (Parmeshwar vs. Commissioner Devipatan Mandal, Gonda and others) and on an objection learned counsel for the petitioner withdrew the writ petition with liberty to file second appeal against the order passed in the appeal and challenging the order passed in the revision by means of fresh petition.

It is also stated that it appears that the petitioner has not approached the appellate authority challenging the order dated 25.08.2022.

At this stage, on query being put to Shri Surya Narayan Mishra, learned counsel for the petitioner that as to whether any second appeal has been filed in terms of the order of this writ Court dated 11.12.2023, Shri Surya Narayan Mishra, learned counsel fairly stated that second appeal has not been filed till date.

It is also stated that all the brothers, namely, Parmeshwar (petitioner), Ram Chandar (predecessor in interest of opposite party nos.5 to 7) and Narendar (opp. party no.8) have been provided the share over the land in issue facing pitch road and the petitioner has been provided a share which is rectangular in shape and other brothers have been provided the land which is not in rectangular shape, which is evident from the map appended to the present petition at page 43. A perusal of the same indicates that the petitioner has been provided a rectangular shaped plot.

It is also stated that considering the fact that the petitioner himself accepted the report dated 22.02.2010 of the Lekhpal, it is for the reason that no objection was filed by the petitioner to the report of Lekhpal, and even the petitioner has not approached the Court concerned by moving an appropriate application to get the order dated 07.06.2017 recalled, whereby the report of the Lekhpal dated 22.02.2010 was confirmed, the petitioner has no case and accordingly no interference is required in this petition, more particularly when the revisional Court has already extended the benefit to the petitioner.

Considered the submissions made by the parties and perused the record.

Impugned orders have been impeached on the ground that the report is not in terms of Rule 131 of the Rules of 1954. No doubt that the report of the Lekhpal is not strictly in terms of the Rule 131 of the Rules of 1954 and despite the same this Court is not inclined to entertain the present writ petition challenging the order dated 07.06.2017, whereby the report of the Lekhpal was confirmed, and the impugned order dated 02.11.2023, whereby the final order dated 07.06.2017 has been modified to the extent that land be provided to the petitioner for road on the western side of the Gata no.233. It is for the following reasons:-

(i) The preliminary decree dated 04.04.2005 was not challenged by the petitioner,

(ii) Against the report of the Lekhpal dated 22.02.2010, the petitioner has not filed any objection. Thus he accepted the report,

(iii) The petitioner accepted the order dated 07.06.2017, whereby report of the Lekhpal dated 22.02.2010 was confirmed, as no application for recall of order dated 07.06.2017 was filed by the petitioner and the party aggrieved namely Narendra filed the application for recall of order dated 07.06.2017, which was subsequently not pressed by him,

(iv) The objection dated 23.02.2022 to the report of Lekhpal dated 22.02.2010 filed by the petitioner itself was not maintainable as it was filed after confirmation of the report dated 22.02.2010 of the Lekhpal vide order dated 07.06.2017,

(v) The petitioner has been provided a land adjacent to the pitch road and the same appears to be rectangular in shape, though land of other brothers is not in rectangular in shape,

(vi) Before this Court also no evidence has been placed by the petitioner to substantiate that over the land in issue trees and boring of the petitioner are situated and only vague averments have been made.

Accordingly, this Court finds no force in the writ petition. It is ***dismissed***.

No order as to costs.

Order Date :- 4.1.2024

Arnima