

Court No. - 50

Case :- WRIT - B No. - 28027 of 2003

Petitioner :- Bhola

Respondent :- State Of U.P. Thru Secre. Board Of Revenue And Others

Counsel for Petitioner :- R.P. Singh Yadav, Baij Nath Pal, Krishna

Mohan Misra, Kumar Sreshtha, R.P. Yadav, Vinod Tripathi

Counsel for Respondent :- C.S.C., V.K. Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Kumar Anish, learned counsel for the petitioner, Sri Vishal Singh, learned Standing Counsel for the State and Sri Sunil Kumar Singh, learned counsel for Land Management Committee.

2. Brief facts of the case are that a Suit was filed by the petitioner under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (herein after referred to as U.P.Z.A. & L.R. Act) in respect to plot nos. 335 and 190 situated at village Dubli, Pargana Dankaur, Tehsil Sikandrabad, District Bulandshahar. The issues were framed before the trial Court and parties have adduced evidence in support of their cases. The trial Court vide judgment/decreed dated 03.11.1995 decreed the plaintiff's Suit granting benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act recording finding of the fact that petitioner belongs Scheduled Caste (Jatav) Community and has been found in possession since long as well as plot in dispute is not public utility plot, as such petitioner is entitled to be recorded as bhumidhar with non transferable right. The judgment and decree passed by the trial Court dated 03.11.1995 was challenged in appeal under Section 331 of the U.P.Z.A. & L.R. Act before the Commissioner which was registered as Appeal No. 15 of 1995-96. The aforementioned appeal was allowed by Additional Commissioner vide judgment dated 25.06.1997 setting aside the judgment/decreed dated 03.11.1995. Second appeal filed by petitioners was heard and dismissed by the Board of Revenue vide order judgment dated 14.01.2002. Hence this writ petition for following reliefs:-

"I. To issue a writ of Certiorari quashing the order dated 14.01.2002 and 25.06.1997 passed by the respondent no. 2 and 3 respectively.

II. To Issue a writ of Mandamus directing the respondent no. 4, 5 and 6 not to disturb the petitioner

from his legal possession over the land is dispute.

III. To pass such other and further order or order which may this Hon'ble Court may deem fit and proper circumstances of the case.

IV. To award the petition to the petitioner from the respondents."

3. This Court entertained the matter and granted the interim order on 10.07.2003. In absence of counter affidavit, this Court admitted writ petition on 06.10.2005.

4. Learned counsel for the petitioner submitted that a Suit filed under Section 229-B of the U.P.Z.A. & L.R. Act was rightly decreed by the trial Court directing to record the name of the petitioner over the plot in question. He further submitted that decree of the trial Court has been set aside in appeal only on the ground that land is covered under Section 132 of the U.P.Z.A. & L.R. Act, as such the petitioner is not entitled for the benefit of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act on the ground of possession. He next submitted that second appeal filed by the petitioner has been dismissed in arbitrary manner. He further placed the Government Order dated 03.08.2023 issued in respect to 'shor land' by which 'shor land' has been held to be general category land. He submitted that in view of the Government Order dated Dated 03.08.2023 issued by the Government the ground on which the appeal filed by the Gaon Sabha cannot be allowed and the judgment/decreed passed by the Additional Commissioner as well as Board of Revenue should be set aside.

5. On the other hand learned Standing Counsel and learned counsel for the Gaon Sabha submitted that the appeal and second appeal were rightly decided at the relevant point of time by the Additional Commissioner and Board of Revenue. They further submitted that the petitioner is not entitled to the benefit of the Government Order dated 03.08.2023 as the appeal was decided in the year 1997. They next submitted that no interference is required in the matter against the impugned order dated 14.01.2002/25.6.1997 and writ petition is liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

7. There is no dispute about the facts that land in dispute was recorded as 'shor' in the record and a Suit under Section 229-B of the U.P.Z.A. & L.R. Act filed by the petitioner was decreed by the trial Court granting the benefit of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act, but in appeal Additional Commissioner has set aside the judgment/ decreed of trial Court on the ground that land in question is public utility land as well as second appeal filed by petitioner has been dismissed.

8. In order to appreciate the controversy involved in the matter, a perusal of the Government Order dated 03.08.2023 will be relevant, which is as under:-

**संख्या - 14/2023/अ०मु०स०-280/एक-1-2023-
1-1099/101/2023**

प्रेषक,
सुधीर गर्ग,
अपर मुख्य सचिव,
उ०प्र० शासन।

सेवा में,

1. समस्त मण्डलायुक्त, उत्तर प्रदेश।
जिलाधिकारी, उत्तर प्रदेश।

2. समस्त

राजस्व अनुभाग - 1

लखनऊ: दिनांक: 03 अगस्त, 2023

विषय- उ०प्र० में शौर भूमि को अनारक्षित श्रेणी की भूमि माने जाने के संबंध में।

महोदय,

उपर्युक्त विषयक जिलाधिकारी बुलन्दशहर को सम्बोधित शासन के पत्र संख्या- डब्ल्यू - 09/एक-1-2016 -1(44)/2015 दिनांक - 18.05.2016 (छायाप्रति संलग्न) का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा शौर भूमि को उ०प्र० जमींदारी विनाश और भूमि व्यवस्था अधिनियम, 1950 की धारा -132 की भूमि मानते हुए वर्तमान में सार्वजनिक उपयोगिता की भूमि नहीं माना गया था।

2- इस सम्बन्ध में उक्त आदेश संख्या- डब्ल्यू - 09/एक-1-2016 -1 (44)/2015 दिनांक 18.05.2016 को निरस्त करते हुए मुझे यह कहने का निदेश हुआ है कि प्रदेश में जहां भी शौर भूमि खतौनी में अंकित है, उसे (शौर भूमि) श्रेणी -6(4) के अंतर्गत ऊसर की भांति अनारक्षित/ सामान्य श्रेणी की भूमि मानी जायेगी।

3- उक्त आदेश मा० मंत्रि-परिषद् के आदेश के अनुपालन में गोपन अनुभाग -1 के अशासकीय पत्र संख्या - 4/2/11/2023 - सी०एक्स०(1) दिनांक - 01.08.2023 के क्रम में निगत किया जा रहा है।

संलग्नक - यथोक्त।

भवदीय,
(सुधीर गर्ग)
अपर मुख्य सचिव।

9. The perusal of the Government Order as quoted above fully demonstrates that 'shor land' at present will not come under the public utility land. The perusal of the judgment passed by trial Court fully demonstrates that there was proper exercise of jurisdiction by the trial Court by framing the issues and giving opportunity to the parties to lead evidence in holding that petitioner is in possession of disputed plot since long and belong to Scheduled Caste (Jatav), Community as such petitioner is entitled to be recorded over the plot in question as bhumidhar with non transferable right.

10. Hon'ble Apex Court in the case reported in AIR 2003 Supreme Court

4102 Manorey alias Manohar Versus Board of Revenue & others has considered the scope of the proceeding under Section-122-B (4-F) Of U.P.Z.A. & L.R. Act. Relevant paragraph of the judgment rendered by Hon'ble Apex Court in Manorey alias Manohar (Supra) will be relevant for perusal which is as under:-

“Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (supra) (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by

specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision.

That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-Section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored.

It is surprising that the State of U.P. had chosen to file an appeal against the order of the S.D.O., in tandem with the Gaon Sabha. It seems to be a clear case of non-application of mind on the part of the concerned authorities of the State who are supposed to effectuate the socio-economic objective of the legislation.

The appeal is allowed. The orders of the Board of Revenue and the High Court are set aside. The S.D.O's order is restored. No costs.”

11. Considering the finding of fact recorded by the trial Court as well as the Government Order dated 03.08.2023 no useful purpose will be served by remanding the matter back to the appellate Court to decide the appeal in the light of the Government Order dated 03.08.2023 rather to decide the matter finally considering entire aspect of the matter.

12. Considering the entire facts and circumstances of the case, the impugned judgment and order dated 14.01.2002 passed by the respondent no. 2 and 25.06.1997 passed by respondent no. 3 are liable to be set aside and same are hereby set aside.

13. The writ petition stands **allowed** and judgment/decreed passed by trial Court dated 03.11.1995 is hereby affirmed. The entry of the plot in dispute be corrected accordingly forthwith.

13. No order as to costs.

Order Date :- 4.3.2025
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