

Reserved On:18.2.2025

Delivered On:10.3.2025

Case :- WRIT - B No. - 4172 of 2004

Petitioner :- Kushum Lata And Others

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- H.M.B. Sinha,Gopal Verma,Sanjay Kumar Om

Counsel for Respondent :- C.S.C.,Sunil Kumar Singh,Utpal Chatterji,V.K. Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri H.M.B. Sinha, learned counsel for the petitioners, Sri Sunil Kumar Singh, learned counsel for the Land Management Committee and Sri R.C. Srivastava, learned Additional Chief Standing Counsel for the State.

2. Brief facts of the case are that petitioners were allotted 'Asami Patta' in the year 1982 in respect to the plots of Khata as mentioned in paragraph no. 3, 3A, 7A of the writ-petition situated at village Khani Kateri, Tehsil-Siyana, District-Bulandsahar. Land Management Committee initiated proceeding and passed proposal on 03.09.1990 for ejectment of the petitioners. Tehsildar vide order dated 14.01.1991 has passed the order for ejectment of the petitioners and order was approved by Sub-Divisional Officer vide order dated 28.11.1991. Petitioners challenged the order of Tehsildar dated 14.01.1991 before the Commissioner, which was registered as Revision No. 18 of 1991-92, under Section 218 of

the U.P. Land Revenue Act, 1901. The aforementioned revision was heard by Additional Commissioner (Judicial) Meerut Division, Meerut. The aforementioned revision was decided vide order dated 18.03.1993 by Additional Commissioner sending the reference before the Board of Revenue for setting aside the order dated 14.01.1991. In pursuance of the order of Additional Commissioner dated 18.03.1993, the matter was registered as reference case no. 89 of 1992-93 before the Board of Revenue, U.P. Lucknow. The Board of Revenue vide order dated 06.12.2003 rejected the reference and maintained the order dated 28.11.1991 passed by Sub-Divisional Officer. Hence this writ petition on behalf of the petitioners for following reliefs:-

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 6.12.2003 and order dated 14.01.1991.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondents may not eject to the petitioners from the disputed plots.

(iii) issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) award the cost of the petition to the petitioners."

3. This Court entertained the matter on 25.02.2004 and granted interim order for maintaining status quo regarding the disputed plot. In pursuance of the order dated 25.02.2004 parties have exchanged their pleadings.

4. Learned counsel for the petitioners submitted that impugned order dated 14.01.1991 was passed in exparte manner, as such the order dated 14.01.1991 cannot be sustained in the eye of law. He further submitted that no proceedings has been initiated as provided under Sections 202 and 220 of U.P. Zamindari Abolition and Land Reforms Act, 1950 herein after referred to as U.P.Z.A. & L.R. Act, as such the impugned order dated 14.01.1991/28.11.1991 passed for ejectment of the petitioners cannot be sustained in the eye of law. He next submitted that Additional Commissioner has rightly made the reference to the Board of Revenue to set aside the order dated 14.01.1991, but Board of Revenue has rejected the reference sent by the Additional Commissioner in arbitrary manner. He submitted that entire area of plot no. 860 is not 'Pasture Land', as such 'Asami Patta' of the petitioners cannot be cancelled by the respondents. He further submitted that petitioners are still in possession of the plot in question, as such the impugned order should be set aside and authorities should be directed to record the name of the

petitioner over the plot in question. He placed reliance upon the judgment of this Court passed in Writ-B No. 24167 of 2017 Karamjeet Singh and 2 Others Board of Revenue, U.P. Lucknow and 2 others dated 19.03.2024 as well as judgment of this Court passed in Writ-C No. 50041 of 2017 Gangadheen Vs. State of U.P. & 4 others dated 31.10.2017 in support of his argument. He further submitted that amount of due lagan has been paid by petitioner in the year 2004 by way of money order sent by petitioners, as such impugned orders passed by respondents are liable to be set aside.

5. On the other hand, Sri R.C. Srivastava, learned Additional Chief Standing Counsel for the State and Sri Sunil Kumar Singh, learned counsel for the Land Management Committee submitted that petitioner were granted 'Asami Patta' for one year, which was automatically cancelled due to non payment of lagan, as such there is no illegality in the order dated 14.01.1991 passed by Tehsildar as approved by Sub-Divisional Officer vide order dated 28.11.1991. They further submitted that proposal for cancelling 'Asami Patta' has been made by respondent no. 4-Land Management Committee and the final order was accordingly passed by the authorities, which requires no interference by this Court. He submitted that so far as opportunity of hearing is concerned, the proper opportunity was afforded to petitioners and

the Board of Revenue has decided the revision after hearing the petitioners recording finding of fact that petitioners cannot be recorded over the plot in question. They further submitted that provisions of Section 220 of U.P.Z.A. & L.R. Act is not applicable in the instant matter, as such writ petition filed by the petitioner is liable to be dismissed. They next submitted that plot in question were recorded as 'Pasture Land' in revenue record, as such no right will accrue in favour of the petitioner in any manner. They placed reliance upon judgment of this Court passed in Writ-B No. 38209 of 2016 Parabdin Vs. Board of Revenue, U.P. Lucknow and 4 Others dated 2.09.2016 as well as judgment passed in Writ-C No. 59049 of 2016 Dharmendra and 10 Others Vs. State of U.P. 2 Others dated 10.01.2017 in order to demonstrate that no right will accrue to the person, who are in possession of public utility plots.

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 petitioners were granted 'Asami Patta' in the year 1982. The proceeding was initiated and order for ejectment of the petitioner was passed by the Tehsildar on 14.01.1991 on the ground that petitioner was Asami Pattedar for one year and they had not deposited rent prescribed for the same. There is also no dispute about the fact that order dated

14.01.1991 was approved by Sub-Divisional Officer on 28.11.1991. There is also no dispute about the fact that revision filed by the petitioners has been dismissed by board of revenue rejecting the reference as well as maintained the order of ejectment passed against the petitioner.

8. In order to appreciate the controversy involved in the matter perusal of the finding of fact recorded by Board of Revenue will be relevant, which is as under:-

इन दी हाईकोर्ट आफ जुडिकेचर एट इलाहाबाद।
एनेक्चर नं० **(31-4)**
इन
सिविल मिस० रिट पिटीशन नं०
----- आफ
2004
(जिला- बुलन्दशहर)
कुसुमलता एण्ड अदर्श

पिटीशनर
बनाम
बोर्ड आफ रिब्यून्स यू०पी० एट लखनऊ
एण्ड अदर्श

--- रिस्पाण्डेन्टस्
श्रीमती कुसुमलता आदि बनाम उ०प्र० सरकार
निर्देश स० **88** सन् **92-93** जिला बुलंदशहर
आदेश
उभयपक्षों की बहस सुनी गयी व पत्रावली का
अवलोकन किया गया कि आयुक्त के आदेश दि०
18.3.93 द्वारा परिषद को संस्तुति भेजी जिसपर
सुनवाई हुयी।

मामले के तथ्य यह है कि ग्राम खानी कटीरी तहसील
स्याना के भूमि प्रबन्धक समिति ने प्रस्ताव दि०
3.9.90 द्वारा श्रेणी 3 के पांच ग्राममामले के तथ्य यह
है कि ग्राम खानी कटीरी तहसील स्याना के भूमि

प्रबन्धक समिति ने प्रस्ताव दि० 3.9.90 द्वारा श्रेणी 3 के पांच ग्राम समाज के आराजी को लगान अदायगी न करने के आधार पर निरस्त करने का प्रस्ताव किया ये आसामी पुत्र यादराम, जमील खॉ पुत्र खलील खॉ, कुसुमलता पत्नी महीपाल सिंह लियाकत पुत्र शेख अब्दुल व कान्ती पत्नी गोपीसिंह है। तहसील की जांच से यह तथ्य आया कि ये आसामी। वर्ष के लिये थे परन्तु गत 15 वर्षों से खतौनी में इनका नाम चला आ रहा है व लगान भी नहीं दिया है। परगना अधिकारी ने इनके नाम निरस्त करने के आदेश दिये तथा आयुक्त ने धारा 220 जेड०ए० एक्ट की प्रक्रिया जो लगान अदा न करने की दशा में बेदखली की है उसका पालन न होना कहा, अतः परगनाधिकारी का आदेश दि० 14-1-91 निरस्त करने की संस्तुति बोर्ड को की गयी, धारा 220 में कहा गया है कि यदि कोई आसामी तीन माह से अधिक लगान का बकायेदार है तो धारा 221 में आसामी को नोटिस देते हुये बेदखली की कार्यवाही की जाती थी।

प्रस्तुत मामला भिन्न है, यह स्पष्ट है कि सन् 82 में पाचों व्यक्तियों की फसली वर्ष 1375 (श्री) व अन्य 1385 फ० के आसामी बनाया गया। तहसील की रिपोर्ट से भी यह स्पष्ट है कि ये 1 वर्ष हेतु आसामी थे, अतः इनका ग्राम सामाज की सम्पत्ति पर श्रेणी-3 के रूप के इन्द्राज केवल 1 वर्ष के लिये वैध था न कि अन्य वर्षों हेतु, इनका इन्द्राज स्वतः शून्य था। आवेदकगणों ने ऐसा कोई साक्ष्य नहीं दिया कि उनकी आसामी पट्टेदारी अधिक बढ़ायी गई अतः परगनाधिकारी ने एक वर्ष के उपरान्त शून्य हो चुके इन्द्राजों को निरस्त कर कर्तव्यपालन किया।

अतः निर्देश अस्वीकार कर परगनाधिकारी के आदेश दि० 28-11-91 की पुष्टि की जाती है।

ह० / अस्पष्ट 6-12-03
(पी०के० झा)

सदस्य (न्यायिक)

सत्य प्रतिलिपि

ह०/अ०

अनुभाग अधिकारी

राजस्व परिषद, उ०प्र० (न्याय विभाग)

लखनऊ।

9. Perusal of the finding fact recorded by Board of Revenue demonstrate that petitioners were granted 'Asami Patta' for one year and due lagan was not paid by the petitioners. Counter affidavit filed on behalf of the State contains the fact that plot in dispute was recorded as 'Pasture Land' (Public Utility Land), but in the rejoinder affidavit it has been stated that entire area of plot in question is not pasture land, but there is no documentary proof in support of the averment made in the rejoinder affidavit.

10. So far as case law cited by learned counsel for the petitioners are concerned, the same will not be applicable in the instant matter as for getting the benefits of Section 76(1) (dd) of the U.P. Revenue Code, 2006, the land should not be covered by Section-132 of U.P.Z.A. & L.R. Act/Section-77 of U.P. Revenue Code, 2006.

11. In the present instant matter no revenue entry has been annexed along with the writ petition that land in question was not covered under Section 132 of the U.P.Z.A. & L.R. Act now section 77 of U.P. Revenue Code, 2006.

12. Considering the entire facts and circumstances of the case, there is no scope of interference against the impugned order dated 06.12.2003 passed by respondent no.-1/Board of Revenue.

13. The writ-petition is ***dismissed.***

14. No order as to costs.

Order Date :- 10.3.2025

Neetu