

Reserved on 19.02.2025

Delivered on 17.03.2025

Court No. - 50

Case :- WRIT - B No. - 11318 of 1996

Petitioner :- Ram Babu

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- Arvind Srivastava,Deepak Kumar
Kulshrestha,Rudra Pratap Singh,Satya Narayan Yadav

Counsel for Respondent :- H.O.K. Srivastava,Rajeev Sharma,S.C.,S.N.
Pandey

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Arvind Srivastava, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Mr. Rajeev Sharma, learned counsel for respondent no. 2/ Gaon Sabha.

2. The Brief facts of the case are that a suit under Section 229-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "U.P.Z.A. & L.R. Act") was filed by the petitioner and respondent no.4-Latoori Singh in respect to plot No.132, area 4.72 hectare (old Plot No.226/.87, 228/.97, 230/.28, 231/.23, 232/.33, 233/.78, 234/.60, 235/.30, 233, 234/1.10) stating that petitioner acquired the land in dispute by means of lease from the Zamindar on 15.02.1946 and the lease was duly mutated in the revenue records in 1354 Fasli. It has also been mentioned in the plaint that the plaintiffs remained in possession of the disputed plot w.e.f 15.02.1946. During the consolidation operation in the

village in question, the name of the petitioner could not be recorded over the plot in question. The aforementioned suit was registered as Suit No. 8/5/10 before the Sub-Divisional Officer, Shikohabad. The aforementioned suit was decreed by the Sub-Divisional Officer, Shikohabad, vide judgment and decree dated 18.02.1993, directing to record the name of the petitioner as well as respondent no.4 over the plot in question as Bhumidhar with transferable rights. On behalf of the petitioner, an application under Section 152 of the Civil Procedure Code was filed for correcting a clerical mistake in the judgment and decree dated 18.02.1993, to the effect that the new plot number should be mentioned in the operative portion of the judgment in place of the old plot number, as during consolidation operation new plot numbers has been allotted to the old plot number. The trial court allowed the application filed by plaintiff/petitioner vide order dated 28.12.1993 substituting new plot number. An appeal was filed by one Lakhan Singh, alleging himself to be the Pradhan of the Gaon Sabha. The appeal filed by Lakhan Singh was barred by limitation also. The aforementioned appeal was dismissed by the Court of Commissioner/ Additional Commissioner vide judgment dated 18.01.1995 on the grounds of limitation as well as on the locus of Lakhan Singh to file the appeal. A second appeal was filed by respondent No.2/Gaon Sahba before respondent No.1/ Board of Revenue which was registered as second Appeal No. 18 of 1994-95 before respondent No.1/Board of Revenue. The aforementioned second appeal was allowed, setting aside the judgment of the Court of Commissioner/

Additional Commissioner dated 18.01.1995 and remanding the matter back to the first appellate court to decide the appeal on merits in accordance with the law. Hence, this writ petition has been filed by the petitioner seeking the following reliefs:-

"(1) a writ, order or direction in the nature of certiorari quashing the order passed by the opposite party No.1 dated 07.03.1996 (Annexure No.4 to the writ petition).

(2) a writ or any other writs and / or to pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case, otherwise, the petitioner shall suffer irreparable loss and injury."

3. This Court entertained the matter on 11.04.1997 and granted interim protection, staying the operation of the impugned order passed by respondent no. 1/Board of Revenue.

4. In pursuance of the order dated 11.04.1997, a counter affidavit was filed on behalf of the Gaon Sabha and the petitioner has filed his rejoinder affidavit.

5. Learned counsel for the petitioner submitted that the suit under Section 229-B of the U.P.Z.A. & L.R. Act, filed by the petitioner along with respondent no.4, was decreed in a proper manner, after sufficient service upon State as well as gaon sabha directing to record the plaintiffs' names

as Bhumidhar with transferable rights. He further submitted that no proper appeal/ revision has been filed against the judgment and decree of the trial court dated 18.02.1993 passed under Section 229-B of U.P.Z.A. & L.R. Act as such the same has attained finality. He further submitted that time-barred appeal filed by Lakhan Singh, alleging himself to be the Pradhan, was filed against the provisions of Gram Sabha Manual, as such the same has rightly been dismissed by Court of Commissioner/ Additional Commissioner on the grounds of locus of Lakhan Singh to file appeal as well as on the ground of limitation . He further submitted that the second appeal filed by the Gaon Sabha has been allowed setting aside the judgment and decree of the Court of Commissioner/ Additional Commissioner as well as remanded the matter back to the First Appellate Court/ Court of Commissioner to decide the first appeal afresh which is abuse of process of law. He further submitted that procedure which has been prescribed under the law is to be followed in proper manner otherwise the entire proceeding will be vitiated. He submitted that procedure has been prescribed for filing suit/ appeal/second appeal/ revision/ application on behalf of the Gaon Sabha, but the same has not been followed in proper manner, as such the matter cannot be remanded back to the first appellate court to decide the appeal afresh. He further submitted that second appeal filed by the Gaon Sabha has been allowed in arbitrary manner, as such the impugned order should be set aside and the judgment and decree dated 18.02.1993/ 28.12.1993 passed by the trial court should be affirmed. In

support of his arguments, learned counsel for the petitioner placed reliance upon the following judgments of the Hon'ble Supreme Court and High Court:-

- 1. 1986 AWC 25 Ballo Vs. Bundu Khan***
- 2. 2010 (109) RD 167 Ram Dular Singh vs. Deputy Director of Consolidation***
- 3. 2003 (3) SCC 472 Chief Conservator of Forest, Govt. of A.P. vs. Collector and others.***
- 4. 2020 (148) RD 637 Mohd. Islam and others vs. Board of Revenue U.P., at Allahabad and others***
- 5. 2019 (6) ADJ 62 Prakash Chandra vs. Deputy Director of Consolidation, Kanpur Nagar and 4 others.***

6. On the other hand, Mr. Rajeev Sharma, learned counsel appearing for the Gaon Sabha as well as the learned standing counsel for the state respondents submitted that the suit under Section 229-B of U.P.Z.A. & L.R. Act was decreed in illegal and arbitrary manner, as such the same cannot be sustained in the eyes of the law. They submitted that the first appeal filed by Lakhan Singh before the Commissioner was in accordance with the law as such Board of Revenue has rightly remanded the matter back before first appellate court to decide the appeal on merit in accordance with law. They further submitted that the Court of Commissioner/ Additional Commissioner/

first appellate court has dismissed the first appeal filed by Lakhan Singh as Gram Pradhan of Gram Sabha on the grounds of limitation and maintainability. They submitted that land in dispute was recorded as pasture land during the consolidation operation and no steps were taken by the plaintiffs to get themselves recorded during the consolidation operation, as such suit filed by the petitioner along with respondent no.4 was barred under Section 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (herein after referred to as U.P.C.H. Act), They further submitted that in the suit under Section 229-B of the U.P.Z.A.&L.R. Act, no notice was served on the gaon sabha nor counsel had any knowledge about the institution or pendency of suit filed by petitioner along with respondent No.4, as such matter requires reconsideration of the dispute on merit and in accordance with law. They further submitted that in first appeal before the commissioner an application under Section 5 of the Indian Limitation Act filed for condonation of delay in filing the appeal against the judgment and decree of the trial court dated 18.02.1993 was filed, as such the dismissal of first appeal on the ground of limitation is not in accordance with law. They further submitted that plaintiffs had impleaded gaon sabha as one of the defendant in the suit and suit was proceeded ex parte accordingly gaon sabha had full right to file an appeal. He further submitted that the appeal filed by Lakhan Singh, Pradhan of the Gram Sabha, cannot be termed incompetent in view of the provisions contained in Paras 128 and 131 of Gaon Sabha Manual They further submitted that in view of the entry of the

plot in question, no right will accrue in favor of the petitioner, therefore, no interference is required against the impugned order passed by the Board of Revenue remanding the matter back to the first appellate court to decide the appeal afresh on merit. In support of their arguments, they placed reliance upon the following judgments of the Hon'ble Apex Court as well as this Court:

1. A.I.R. 2001 SC 3215, Hinch Lal Tiwari vs. Kamala Devi and others

2. A.I.R. 2011 SC 1123 Jagpal Singh and others vs. State of Punjab and others

3. Writ C No.41708 of 2001, Baboo Ram and Another vs. The Commissioner Basti and others

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

8. There is no dispute about the fact that the suit under Section 229-B of the U.P.Z.A. & L.R. Act was filed by the petitioner along with respondent no.4, which was decreed by the trial court vide judgment and decree dated 18.02.1993. The appeal filed by Lakhan Singh, alleging himself to be the Pradhan of the Gram Sabha along with an application under Section 5 of the Limitation Act, was dismissed by the Court of Commissioner/ Additional Commissioner on the grounds of limitation and maintainability. The second

appeal filed by the Gaon Sabha before the Board of Revenue was allowed, setting aside the order of the Court of Commissioner/ Additional Commissioner dated 18.01.1995, and the matter was remanded back to the first appellate court/ court of Commissioner/ Additional Commissioner to decide the appeal on merit in accordance with law.

9. In order to appreciate the controversy involved in the matter, first of all the perusal of the judgment and decree passed by the trial court, annexed as Annexure-1 to the writ petition will be relevant, which is as under:-

श्री राम बाबू पेटिशनर
बनाम
बोर्ड आफ रेवेन्यू यू०पी०,
इलाहाबाद व अन्य। रेस्पान्डेन्ट्स

न्यायालय परगनाधिकारी शिकोहाबाद
वाद संख्या 8/5/10/10-10-91 धारा 229 बी.ज.वि.उ.
राम बाबू आदि ग्राम तिलियानी परगना व
बनाम तहसील शिकोहाबाद
गाँव सभा

निर्णय

प्रस्तुत वाद राम बाबू आदि के प्रार्थना पत्र दिनांक 10.10.1991 पर योजित हुआ जिसमें उल्लेख किया गया कि वादी राम बाबू न. 228/0-97 230/0-78, 232/0-36 है जिसका नया नम्बर 132 है व लटूरी 0-78 व 231/0.23 है जिसका नया नम्बर 132 है, के वादीगण मालिक व काविज व दखील चले आ रहे हैं। ग्राम में पर्चों को देखने से मालूम हुआ कि विवादित भूमि पर अधिकारों पर कूप्रभाव पड़ने की सम्भावना है विवादित भूमि का पट्टा जमींदार द्वारा वादी की 15-2-46 में दिया गया था तब से वादी लगातार काविज व दखील चले आते हैं दौरान चकबन्दी वादी ने उक्त पट्टा की दाखिल खारिज हेतु प्रार्थना पत्र सं. चकबन्दी अधिकारी के समक्ष प्रस्तुत किया था जिस पर सहायक चकबन्दी अधिकारी महोदय ने वादी का कब्जा सहदत लेकर कह दिया था कि उनके उक्त पट्टा की दाखिल खारिज का आदेश कर दिया है अतः वादी निश्चित होकर अपने घर बैठ गये। उसके बाद कागजात सरकारी का मुआयना नहीं किया और न कराया जिससे वादीगण को इल्म नहीं हो सका कि विवादित भूमि उनके नाम ग्राम पर्चों में अंकित नहीं हुई है अतः प्रार्थना की गयी है कि वादीगण को विवादित भूमि के संक्रमणीय भूमिधर घोषित हो।

नियमानुसार सम्मन निर्गत किये गये। ग्राम सभा एवं सरकार की ओर से कोई आपत्ति प्रस्तुत नहीं की गयी है वादीगण ने अपनी तहरीरी साक्ष्य में नकल जोत चकबन्दी आकरा पत्र 49 व नकल खतौनी 1354 फ. पट्टा तथा नकल फर्द जमींदारान दाखिल की गयी है तथा बयान शिवनरायन पुत्र राम सहायक निवासी जहागीरपुर अंकित कराये गये हैं।

मेरे द्वारा वादी के विद्वान अधिवक्ता के तर्क सुने गये एवं पत्रावली का अवलोकन किया गया। पत्रावली के अवलोकन से स्पष्ट है कि सम्मन की तामील ग्राम प्रधान पर है परन्तु कोई आपत्ति नहीं की गयी है। वादी ने अपने दावे के समर्थन में गवाहान श्री शिवनरायन पुत्र श्री राम सहाय निवासी जहागीरपुर ग्लैरई के बयान कराये हैं जिसने स्वीकार किया है कि तत्कालीन जमींदारान जैल सिंह ने 15.2.1946 को गाटा संख्या 228/0.97.230/0.28, 232/0.33, 233/0.78, 235/0.30, 234/0.60 डि. रकबा 1-10 का पट्टा राम बाबू धानुक को दिया था व 226/0.78, 272/0.23 डि. का पट्टा लटूरी नि. दौलतपुर कर्खा को दिया था इस पर जैल सिंह के हस्ताक्षर हैं जिसकी मैं पहिचानता हूँ। इस भूमि पर वादीगण काविज व दखील चले आ रहे हैं। पत्रावली साक्ष्य से यह भी स्पष्ट है कि 1354 असली नकल खतौनी ग्राम माहदपुर पर वादीगण का नाम अंकित हो चुका है। वादीगण का कथन है कि चकबन्दी में प्रार्थना पत्र दिया था लेकिन नाम दर्ज नहीं हुआ है।

वादीगण द्वारा जमींदार के आदेश की नकल हिन्दी व उर्दू में है पत्रावलित की गयी है वादीगण ने अपने साक्ष्य में शिवनरायन गवाह को प्रस्तुत किया है जो कि अभी जीवित है जिसके द्वारा पट्टे को सिद्ध किया गया है। वादीगण के विद्वान अधिवक्ता के तर्क हैं कि वादीगण अनुसूचित जाति के सदस्य हैं इससे वर्षों से काविज होने के कारण उनका कब्जा भी परिपक्व हो गया है क्योंकि इनका विवादित आराजी पर 30 जून 1985 से पूर्व का कब्जा है। उपरोक्त विवेचना से मैं इस निष्कर्ष पर पहुँचता हूँ कि वादीगण पट्टेवाली भूमि पर पट्टे के समय से काविज व दखील चले आ रहे हैं ग्राम सभा तथा राज्य सरकार की ओर से कोई आपत्ति प्रस्तुत नहीं की गयी है इस प्रकार से दावा वादी डिग्री किये जाने योग्य है।

आदेश

दावा वादीगण डिक्री किया जाता है। गाटा संख्या 228/0.97, 230/0.78, 232/0.33, 233/0.78, 235/0.30, 230/0.60 236/1-10 कुल रकबा 4-36 राम बाबू पुत्र धानुक ग्राम माहदपुर का नाम संक्रमणीय भूमिधर अंकित हो तथा गाटा संख्या 226/0.78, 232/0-23 पर लटूरी पुत्र कल्याण सिंह निवासी दौलतपुर कर्खा का नाम संक्रमणीय भूमिधर अंकित किया जाय। तदनुसार परवाना अमलदरामद जारी किया जाय। वाद आवश्यक अनुपालन पत्रावली निक्षेप की जाय।

ह० अ०

(रामदीन)

परगनाधिकारी शिकोहाबाद

दिनांक 18.2.1993

आज यह निर्णय व दिनांक हस्ताक्षरित होकर खुले न्यायालय में उद् घोषित किया गया।

दिनांक 18.2.1993

10. The perusal of the judgment of the trial court as quoted above demonstrate that issues were not framed in the suit and the trial court vide judgment and decree dated 18.02.1993 decreed the plaintiff suit recording the name of plaintiffs as bhumidhar with transferable right. The appeal was filed by Lakhan Singh before the Commissioner, but copy of the grounds of appeal has not been annexed either along with writ petition or along with supplementary affidavit/ rejoinder affidavit although copy of the judgment of the first appellate court dated 18.01.1995 is annexed along with supplementary affidavit. The judgment of Additional Commissioner (Judicial) dated 18.01.1995 demonstrate that appeal was dismissed as not maintainable as well as on the ground of limitation.

11. In respect to filing of appeal on behalf of the Gaon Sabha , paras 128 and 131 of the Gaon Sabha Manual will be relevant for perusal which is as under:

"128. The conduct of Gaon Sabha Litigation shall not depend upon the individual discretion of the Chairman of the Bhumi Prabandhak Samiti (Land Management Committee) but shall be a matter of a resolution of the Bhumi Prabandhak Samiti (Land Management Committee) as a whole. In urgent cases, however, the Chairman can take action on his own and seek ratification of the Bhumi Prabandhak Samiti (Land

Management Committee) afterwards by including in the agenda of the next ensuing meeting."

131. Lawyers have been appointed who shall represent the Bhumi Prabandhak Samiti (Land Management Committee) and give it legal advice where necessary. the Committee shall not engage any lawyer other than the penal lawyer appointed. In important cases, however special lawyers can be engaged with the specific provisions of the Collector in writing.

There is a Vakil or mukhtar in each tehsil and one civil and one revenue lawyer at the district headquarters. The District Government Counsel incharge of the whole work.

The Bhumi Prabandhak Samiti (Land Management Committee) requiring the advice of a lawyer should request the Tahsildar or the Sub-divisional Officer to arrange for it.

The Chairman of Bhumi Prabandhak Samiti (Land Management Committee) shall consult the penal lawyer in all cases in which he is summoned or is impleaded as defendant.

If in any case the Bhumi Prabandhak Samiti (Land Management Committee) refuse to sign a plaint or to defend a case, as advised by the panel lawyer or the special lawyer, if engaged, as the case may be, or as instructed by the Tahsildar or the Sub-Divisional Officer, the lekhpal as Secretary of the Bhumi Prabandhak Samiti (Land Management Committee) shall act for the Bhumi Prabandhak Samiti (Land Management Committee) under orders of the Tahsildar for the above purpose only."

12. This Court in the case reported in **2011 (114) RD 106 Jagdish Pandey (Dead) through L.Rs. Versus Additional Collector (City) Gorakhpur and others** has held that para 131 of Gaon Sabha Manual is binding and peremptory in nature. Paragraph Nos. 10, 11, 12 of the Judgment rendered by this Court in the Case of **Jagdish Pandey (Supra)** will be relevant for perusal which are as under:-

"10. The judgment in the case of Gaon Sabha v. Ram Karan Singh (Supra) on which reliance has been placed holds that an appeal filed in terms of Para 128 of the Gaon Sabha Manual did not require passing of a resolution by the Land Management Committee as a condition precedent and that the appeal so filed on behalf of the Gaon Sabha through its counsel was competent. It was further held that even if a Vakalatnama had not been executed in favour of the Gaon Sabha then too even the empaneled counsel was entitled to represent the appeal and, therefore, the appeal cannot be held to be incompetent.

11. In the instant case, the facts are entirely different as involved in the decisions aforesaid. Here it is the admitted case that the memo was not signed by the Gram Pradhan and that he had, as a matter of fact, refused to sign the said memo of revision. The Respondent No. 4 Sri Komal was never authorized either by the Gaon Sabha or by the Land Management Committee to sign the memo of revision. The decision, therefore, in the case of Gaon Sabha v. Ram Karan Singh (Supra) does not apply on the facts of the present case as the same is clearly distinguishable. Learned Counsel for

the Gaon Sabha Sri M.N. Singh invited the attention of the Court to the decision of the Board of Revenue which though may not be a precedent for the High Court to follow straightway but is of great persuasive value. After having threadbare discussed the provisions of the Gaon Sabha Manual it was clearly held that the procedure prescribed for presentation of such appeals and revisions does not allow any deviation from the Rules as prescribed under the Gaon Sabha Manual. If para-131 as relied by the learned Counsel for the Petitioner and by the learned Counsel for the Gaon Sabha is applicable then in that view of the matter there can be No. doubt that if the officials of the Land Management Committee or the Gram Pradhan has refused to sign the memo of revision, the Secretary of the Land Management Committee has to carry out the procedure upon an order to be passed by the Tehsildar.

12. In the instant case, it is admitted on record that the Gram Pradhan had refused to sign the memo of revision. On the contrary, the respondent no.4, Komal in his individual capacity signed the same. The respondent no.4 had no authority to do so and be a substitute of the Lekhpal, who is enjoined with this duty. Under the provisions of paragraph-131, the District Government Counsel ought to have called upon the Tehsildar to send the Lekhpal for appropriate signatures in order to file a memo of revision and that having not been done, the District Government Counsel failed to apply the provisions of paragraph-131. He could not have made Sri Komal a substitute in place of the Lekhpal of the village."

13. The U.P. Gaon Sabha and Bhumi Prabandhak Samiti Manual has become U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual and provisions contained under paras 128, 129, 130 and 131 of U.P. Gaon Sabha and Bhumi Prabandhak Samiti Manual became paras 101, 102, 106 and 105 of U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual.

14. In the instant matter during Consolidation operation, the plot in question was recorded as pasture land but without framing any issue including issue of Section 49 of U.P.C.H. Act, the suit under Section 229-B of U.P.Z.A.& L.R. Act filed by petitioner was decreed. The law is well settled that suit under Section 229-B of U.P.Z.A.& L.R. Act cannot be decided without framing issues in the suit. So far as filing of appeal by Lakhan Singh as Pradhan of Gaon Sabha is concerned, the appeal was filed by Lakhan Singh as Pradhan of Gaon Sabha as such there was compliance of para No.128 and 131 of Gaon Sabha Manual because the appeal was filed by Lakhan Singh as Pradhan and the memo of appeal was signed by Lakhan Singh as Pradhan., It is also material to mention that appeal was accompanied by delay condonation application dated 04.05.1994 which has been annexed as Annexure No.C.A.5 to the counter affidavit of gaon sabha. A resolution was also passed by Land Management Committee for filing appeal against the judgment/decreed dated 18.02.1993/28.12.1993.

15. Perusal of finding recorded by Board of Revenue while deciding the

second appeal in respect to maintainability of appeal filed by Lakahn Singh as Gram Pradhan will be relevant which is as under:-

"Second Appeal No.18 of 1994-95/ Firozabad

Gaon Sabha....Vs.....Ram Babu

Under Section 229-B of U.P.Z.A. & L.R. Act

Village-Mahadpur, Pargana-Shikohabad

1.....

2.

3.....Additional Commissioner finds the appeal has been filed by Pradhan in his individual capacity. This is manifestly incorrect reading of memorandum of appeal. It reads Lakhan Singh, Pradhan, Gaon Sabha. The description is merely a trifle."

16. In view of the aforementioned facts and circumstances of the case, there is no illegality in the remand order dated 07.03.1996 passed by Board of Revenue to decide the appeal on merit after passing necessary order for condonation of delay in filing appeal against the judgment/ decree of trial court dated 18.02.1993/28.12.1993.

17. The case law cited by learned Counsel for the petitioner are not applicable in the facts and circumstances of the instant case.

18. Considering the entire facts and circumstances of the case, no interference is required against the impugned order dated 07.03.1996 passed by respondent No.1/Board of Revenue.

19. The writ petition is dismissed and Court of Commissioner/ Additional Commissioner is directed to decide the appeal No.32 of 1994 under Section 331 (3) of U.P.Z.A.& L.R. Act in pursuance of the remand order dated 07.03.1996 passed by Board of Revenue expeditiously preferably within period of **three months** in accordance with law from the date of production of certified copy of this order.

20. No order as to costs.

Order Date :- 17.3.2025
PS*