Court No. - 49

Case :- WRIT - B No. - 53092 of 2004

Petitioner :- Heera Lal
Respondent :- Board Of Revenue And Others
Counsel for Petitioner :- S.K. Purwar,Ranjeet Kumar Mishra,Suresh Kumar Maurya
Counsel for Respondent :- C.S.C.,D.D. Chauhan,Krishna Kant Singh,V.K. Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Suresh Kumar Maurya, learned counsel for the petitioner, Mr. Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel for the State respondents and Mr. Krishna Kant Singh, learned counsel for respondent no.4, Land Management Committee.

2. Brief facts of the case are that petitioner along with others were granted agriculture lease in respect to plot No. 157 situated Village Panethi, Tehsil Kol, District Aligarh on 6.11.1976 which was approved in accordance with law on 29.11.1976. On the basis of lease, petitioner came in possession and recorded in revenue record. An application for cancellation of petitioner's lease was filed by private respondent no.3 on 3.9.1991. In the aforementioned cancellation proceeding, show cause notice was issued to the petitioner along with other allottees accordingly objections were filed to the show cause notice. Additional Collector vide order dated 16.9.1993 cancelled the lease of 19 allottees including petitioner. Against the order dated 16.9.1993, petitioner and others filed revision before the Commissioner. The aforementioned revisions were heard by Additional Commissioner (Judicial) Agra Division Agra and a reference was sent before Board of Revenue vide order dated 13.9.1996 to allow a three revision and dismissed the one revision. On the basis of reference sent by Additional Commissioner, Board of Revenue vide ex-parte order dated 17.1.1997 rejected the reference and remanded the case before Collector Aligarh with certain observations. Against the order dated 17.1.1997, an application for recall was filed before Board of Revenue which was dismissed vide order dated 1.4.2003. Hence this writ petition challenging the order dated 1.4.2003, 17.1.1997 passed by respondent no.1, Board of Revenue and order dated 16.9.1993 passed by respondent no.2, Additional Collector, Aligarh.

3. This Court entertained the matter on 14.12.2004 and granted conditional interim order which is as under:-

"Unless ordered otherwise further proceedings in pursuance of order passed by Board of Revenue, U.P. Allahabad dated 17.1.1997 shall remain stayed for a period of one year provided that within four months from today, the petitioner deposits Rs. 10,000/- before the Collector, Aligarh. The said amount shall be kept in consolidated Gaon Sabha fund.

Order regarding disbursement of this amount shall be passed at the time of final disposal of the writ petition."

4. On 15.12.2005, another order was passed on 15.12.2005 which is as under:-

" It is sated by the petitioner's counsel that the petitioner has complied with the condition in the impugned order and has made the necessary deposit.

List after a month.

Interim order to continue till the next date of listing."

5. In pursuance of the order dated 14.12.2004, Gaon Sabha has filed his counter affidavit in the matter and petitioner has filed his rejoinder affidavit.

6. Counsel for the petitioner submitted that petitioner was granted agriculture lease in the year 1976 and remained in possession over the allotted plot. He further submitted that cancellation proceeding has been initiated after 15 years at the instance of private party resulting into cancelling the petitioner's lease which is wholly illegal. He submitted that in view of the provisions contained under Section 198 (6) of U.P.Z.A. and L.R. Act, the proceeding cannot be entertained after prescribed period of limitation. He submitted that impugned order passed by respondents are wholly illegal and liable to be set aside. He further placed reliance upon the judgment of this Court reported in **2018 (140) RD 220 Jitendra Kumar @ Gopal Vs. State of U.P. and Others** and **2010 (109) RD 566 Suresh Giri and Others Vs. Board of Revenue and Others** in order to demonstrate that cancellation proceeding initiated by stranger beyond the prescribed period of limitation cannot be entertained.

7. On the other hand, Mr. Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel for the State respondents and Mr. Krishna Kant Singh, learned counsel for respondent, Land Management Committee submitted that petitioner was not found eligible for the grant of lease, as such, the lease granted in favour of the petitioner was cancelled. He submitted that Revisional Court has rightly passed the impugned order and no interference is required in the matter.

8. I have considered the arguments advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that petitioner was granted agriculture lease in the year 1976 and the cancellation proceeding has been initiated on the basis of private complaint after 15 years from the date of execution of agriculture lease in favour of the petitioner. There is also no dispute about the fact that Additional Collector has cancelled the lease and Board of Revenue has rejected the reference sent by Commissioner and ordered to Collector to proceed further in the matter.

10. In order to appreciate the controversy involved in the matter, the perusal of the provision contained under Section 198 (6) of U.P.Z.A. and L.R. Act will be relevant which is as follows:-

> "***(6) Every notice to show cause mentioned in sub-section (5) may be issued—***
>
> ***(a) in the case of an allotment of land made before November 10, 1980 (hereinafter referred to as the said date), before the expiry of a period of [seven years] from the said date; and***
>
> ***(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, whichever be later]."***

11. This Court in the case reported in ***2018 (140) RD 1 (Rishi Pal & Others Vs. State of U.P. & Others)*** has considered the scope of Section 198 (6) of U.P.Z.A. and L.R. Act and held that time barred cancellation proceeding initiated on the basis of private complaint cannot be entertained. The relevant paragraph of the judgment are as follows:-

> ***"7. Having heard the learned counsel for the parties, I am of the view that the orders dated 1.6.2011 and 23.3.2012 cannot be sustained and are to be quashed.***
>
> ***8. The pattas were executed in the year 1992. Under Sub-section (6) of Section 195 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the complaint which was filed in the year 2003-04 was barred by limitation by almost six years.***
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> ***9. Further, I hold that since the question of limitation goes to the very root of the matter, even though it was not agitated before the courts below, it can definitely be raised here in this Court. Section 3 of the Indian Limitation Act would also be relvant. The same is being reproduced here as under:***
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> ***"Section 3.- Bar of limitation - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.***

(2) For the purpose of this Act, -

(a) A suit is instituted, -

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted -

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter-claim, on the date on which the counter-claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court"

10. The question of limitation had to be therefore looked into by the Court even if he dendant /opposite party had not raised it.

11. Further, after the application which was filed by Hardas was dismissed for non prosecution then he alone could have filed the application for restoration. State was a party whose actions were being adjudicated upon in the complaint which was filed by Hardas. It could not therefore, have supported the restoration application of Hardas.

12. The writ petition is, therefore, allowed. The orders dated 1.6.2011 and 23.3.2012 are quashed.

13. It is made clear that this relief would be confined to the petitioners who had filed the instant writ petition."

12. Considering the ratio of law laid down by this Court in **Rishi Pal (Supra)** as well as fact that cancellation proceeding in the instant matter has been initiated by private party after 15 years from the date of execution of lease in favour of the petitioner, the impugned orders cannot be sustained.

13. Considering the entire facts and circumstances, the impugned orders

dated 1.4.2003 and 17.1.1997 passed by respondent no.1 and order dated 16.9.1993 passed by respondent no.2 are liable to be set aside and the same are hereby set aside. The writ petition stands **allowed**. The lease granted in favour of the petitioner on 6.11.1976/ 29.11.1976 is hereby affirmed.

14. It is further directed that amount of Rs. 10,000/- deposited by petitioner before Collector Aligarh for consolidated Gaon Sabha fund under the interim order dated 14.12.2004 shall be refunded to petitioners within period of **two months** from the date of production of certified copy of this order before authority concern.

Order Date :- 18.3.2024
Vandana Y.

Digitally signed by :-
VANDANA YADAV
High Court of Judicature at Allahabad