

Mohan and anr. Vs. District Magistrate/Collector and ors.

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SooperKanoon Citation : sooperkanoon.com/485472

Court : Allahabad

Decided On : Jul-23-2009

Reported in : 2009(4)AWC3567

Judge : S.U. Khan, J.

Appellant : Mohan and anr.

Respondent : District Magistrate/Collector and ors.

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the petitioner and learned standing Counsel for respondents No. 1 to 3 and 5.

2. Petitioners claim that on 6.5.2009, an order has been passed in their favour by Consolidation Officer, Nand Ganj, district Ghazipur in Case No 280, Mohan v. Sarkar under Section 42A of U.P.C.H. Act. Copy of the said order is Annexure-4 to the writ petition.

3. Under the aforesaid section only clerical or arithmetical errors apparent on the face of record may be corrected. This provision is equivalent to Section 152, C.P.C. However, Consolidation Authorities are very liberally using this section for passing any type of order without properly appreciating its very limited scope.

Powers under this section shall rarely be invoked and with great caution. In the order (Annexure-IV), it is mentioned that petitioners filed objections to the effect that in alleged Case No. 484, some order was shown to have been passed on 2.5.2001 and on the basis of that forged and fictitious order, mutation in the revenue records took place, which should be cancelled. This allegation/case is utterly beyond the scope of Section 42A of U.P.C.H. Act. The matter related to Plot No 496 area 0.032 hectares. From the perusal of the order (Annexure-IV), it appears that the further allegation was that order dated 2.5.2001 was mutated on 8.7.2005. In the order (Annexure-IV) it is further mentioned that the CO. called for the report from Record Room In-charge and from consolidator, who reported that the file of the said case was not found entered in the index. Ultimately it was concluded by Consolidation Officer that amaldaramad (mutation) appeared to be forged (fictitious) and it was accordingly directed to be cancelled. There is absolutely no mention in the said order that through earlier order dated 2.5.2001 property in dispute was directed to be recorded in whose name. In the said order, number of plot is mentioned as 497. In Para-3 of the writ petition, it is mentioned that property in dispute is comprised in Plots No. 496, 497 (0.032 hectares) over which petitioner is having his pucca house and chhappar and it is abadi land, hence it settled with the petitioner under Section 9 of U.P.Z.A. and L.R. Act. In Para-5, it is mentioned that in C.H. Form 23, Plot No. 497, area 0.032 hectares was already maintained as Nayee Parti in the old consolidation. Thereafter, it is mentioned in Para-6 that in the new consolidation also, the said plot was mentioned as Nayee Parti.

4. From the allegations in the writ petition, it is quite clear that since Zamindari Abolition, the land in dispute was mentioned as Nayee Parti hence it was a Gaon Sabha property. The Consolidation Officer gifted the Gaon Sabha property to the petitioner without even issuing notice to Gaon Sabha or Government counsel. No record has been filed showing that at any point of time land in dispute was entered in the name of the petitioner. The order dated 2.5.2001 alleged to be a forged order by the petitioner has also not been annexed. Under Section 11C of U.P.C.H. Act, consolidation authorities are required to protect State and Gaon Sabha property but the Consolidation Officer has done exactly contrary. Annexure-5 is copy of C.H. Form 23, which only contains the recital that by virtue of order dated

2.5.2001 passed in Case No. 484, the land allotted for Panchayat Bhawan was changed. It is quite possible that earlier some other Gaon Sabha property had been earmarked for Panchayat Bhawan and afterwards, plot in dispute was earmarked for the/said purpose. If it was so then petitioner could have absolutely no concern therewith. The prayer in this writ petition is that S.D.O. and Police authorities who are in collusion with the husband of the Pradhan should be restrained from interfering in peaceful possession of the petitioner over the land in dispute.

5. Learned Counsel for the petitioner has placed reliance upon an authority of this Court in Smt. Ashok Kumar Gupta v. State of U.P. and Ors. : 2006 (2) AWC 1525, and has argued that it is a case of house grabbing, hence respondents, who are D.M., S.D.O. Station House Officer, Pradhan and Lekhpal, should be restrained from interfering in the peaceful possession of the petitioner. On the contrary I am of the opinion that it is the petitioner who is trying to grab the Gaon Sabha land.

6. In my opinion, the order dated 6.5.2009 passed by C.O. Nand Ganj, Ghazipur is utterly without jurisdiction patently erroneous in law, hence no mandamus can be issued for enforcing the same. Moreover Gaon Sabha was not party in the said case State was party but no notice was issued to it. District Government Counsel was also neither informed nor heard. The said order is not therefore binding upon Gaon Sabha or State. Writ Petition is accordingly dismissed.

7. Collector Ghazipur is directed to thoroughly enquire about the working of the Consolidation Officer, Nand Ganj, who passed the order dated 6.5.2009 and to initiate/recommend initiation of suitable action against him. If Record Room In-charge and Consolidator gave wrong report as mentioned in the order dated 6.5.2009, then stern action must be taken against them also.

8. Office is directed to supply a copy of this order free of cost to Sri N.P. Pandey, learned standing Counsel by 3.8.2009 for immediately being sent to the Collector/D.M., Ghazipur.