(2008) 02 AHC CK 0249

In the Allahabad High Court

Mauni Ashram APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Citation : (2008) 2 AWC 1331 : (2008) 104 RD 474

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—These three writ petitions were nominated to me by Hon''ble the Chief Justice after being released by two Hon''ble Judges.

2. I heard the matter for the first time on 24.1.2008 as fresh and appointed an advocate of this Court to make spot inspection and submit report alongwith map. Commissioner Sri S.P. Misra, advocate inspected the spot and submitted the report. Thereafter matters were heard on 21 and 22 February, 2008 and judgment was reserved on 22.2.2008 by the following order passed in the first writ petition:

Heard Sri B.B. Paul. Sri R.K. Ojha and Sri A.P. Tiwari, learned Counsel appearing for the petitioners in all the three writ petitions, Sri Nripendra Mishra, learned Counsel for the Pollution Board respondent in one of the writ petitions, Sri R. N. Singh, learned senior counsel, appearing for main contesting respondent in all the three writ petitions assisted by Sri Anuparh Kulshreshtha. Sri Sanjay Goswami, learned Additional Chief Standing Counsel, has also been heard on behalf of State. Sri V.K. Singh, learned Counsel for Gaon Sabha, had been called yesterday (arguments in this case started yesterday and concluded today). Sri V.K. Singh stated that at present, at none of the four disputed plots, i.e., 37, 38, 39 and 43, name of Gaon Sabha is recorded. However, he stated that he had been informed that some cases u/s 33/39 of the Land Revenue Act were pending. However, learned Counsel could not give any details of the said cases.

Learned Counsel for Allahabad Development Authority has also been heard.

Judgment reserved.

Put up for delivery of judgment on 26.2.2008.

Registrar General is directed to at once summon the file of Revision No. 137 of 2007-08 from the Board of Revenue, Allahabad and attach with the file of this writ petition.

Sri R.N. Singh, learned senior counsel, categorically stated that his client had absolutely no intention of encroaching upon any part of the kharanja shown in the Commissioner''s map. Sri Anupam Kulshreshtha, the other learned Counsel, stated that in case his client intends to make any constructions, then permission from Pollution Board will be sought. However, learned Counsel further added that for constructing boundary wall, no permission is required.

Interim order earlier granted in these writ petitions shall remain in operation till the delivery of the judgment.

3. The main contesting respondent in these writ petitions is Kriya Yog Satsang Samiti Anusandhan Sansthan Allahabad, through its Secretary (hereinafter referred to as "Kriya Yog Sansthan"). The dispute relates to four plots, viz., plot Nos. 37, 38, 39 and 43. It appears that Kriya Yog Sansthan, contesting respondent, filed some application before the Chief Revenue Officer, Allahabad stating therein that it was recorded bhumidhar of plot Nos. 38, 39 and 43, however, some people were trying to interfere in its possession and preventing from making constructions. The Chief Revenue Officer, Allahabad passed an order on 27.3.2002 recording that the Deputy Collector stated that the land was of Gaon Sabha, however, no clear report in that regard was filed by Lekhpal or Kanungo and even though there were several complaints in that regard but no inquiry was made. The Chief Revenue Officer opined that without any inquiry and merely on the basis of suspicion constructions could not be stopped and in case applicant (Kriya Yog Sansthan, the contesting respondent in these writ petitions) was making construction on its bhumtdhari land then the Deputy Collector had no right to stop that. In the operative portion it was mentioned that in case construction was being made by the Kriya Yog Sansthan in its land comprised in plot Nos. 38, 39 and 43 which had no concern with Gaon Sabha, then there was no justification to stop the said construction. It was further observed that in case the position was otherwise, then the Deputy Collector after inquiry should submit clear report before the Chief Revenue Officer so that further proceedings to protect the interest of Gaon Sabha could be taken.

4. Thereafter a public interest litigation was initiated in this High Court against Kriya Yog Sansthan, the contesting respondent in the form of Writ Petition No. 27546 of 2004 filed by Zila Nishad Sabha and others in which status quo order was passed. However, writ petition was dismissed by a Division Bench of this Court on 27.11.2007.

5. Thereafter Kriya Yog Sansthan filed revision before the Board of Revenue, being Revision No. 137 of 2007-8/Alld., Kriya Yog Sansthan v. State of U.P., Deputy Collector, Phulpur, Station House Officer, Jhunsi and Mukhya Rajasva Adhikari (C.R.O.), against part of the order dated 22.3.2002, referred to in the order dated 27.3.2007 issued by Chief Revenue Officer.

6. In the order of Chief Revenue Officer dated 27.3.2002 there was a mention that Deputy Collector Phulpur had passed an order on 22.3.2002 stopping the constructions over plot Nos. 38, 39 and 43. In the revision Board of Revenue passed an order on 24.12.2007 directing the respondents 1 to 3 not to interfere in the possession of Kriya Yog Sansthan over the land in dispute. It was specifically directed in the order dated 24.12.2007, passed by Board of Revenue that respondents 1 to 3 shall not interfere in the right of the applicant Kriya Yog Sansthan to do agriculture or make constructions over the land in dispute in accordance law. The Board of Revenue in the revision on 8.1.2008 passed an order summoning the Station House Officer in charge of Police Station, Jhunsi either personally or through advocate on 24.1.2008 to explain as to why contempt proceedings should not be initiated against him as he was interfering in the construction work of Kriya Yog Sansthan over the land in dispute. The said orders of the Board of Revenue have been challenged through these writ petitions.

7. The file of revision before the Board of Revenue has been summoned. The prayer made in the revision is that the order of Chief Revenue Officer dated 27.3.2002 may be modified by directing the opposite parties 1 to 3 to enforce the stay order and to protect the revisionist from any person trying to encroach upon the said property.

8. In fact, the revision has been filed for enforcement of order of Chief Revenue Officer dated 27.3.2002 and the Board of Revenue through its orders dated 24.12.2007 and 8.1.2008 has enforced the order of the Chief Revenue Officer. The very first sentence of the order dated 24.12.2007 states that argument of revisionist''s counsel on the maintainability of the revision has been heard.

9. In the order dated 24.12.2007 the learned Member of the Board of Revenue has observed that Kriya Yog Sansthan is a national and international level institution and the crops grown by it in the plots in dispute are used for supplying food to inmates and Kriya Yog Sansthan was imparting the instruction free of cost and inmates were supplied food free of cost. It is not clear from where learned Member Board of Revenue got this information. On the file there is a letter written by the Secretary Kriya Yog Sansthan on its letter head bearing no date. It is addressed to Member Board of Revenue and complains about disobedience of order dated 24.12.2007 hence it must have been written after that date. It appears that on the basis of said letter subsequent order dated 8.1.2008 was passed. Before Courts applications are given in a particular proforma and not on letter heads of the parties. In the said letter it is mentioned that Kriya Yog Sansthan is a national and international institute. No such thing

was mentioned in the grounds of revision or affidavit filed in support of stay application.

10. Absolutely no revision before Board of Revenue is maintainable for enforcement of orders of lower revenue authorities (Chief Revenue Officer in the instant case). Order dated 27.3.2007, passed by Chief Revenue Officer was in favour of Kriya Yog Sansthan, hence no revision was maintainable against the said order by Kriya Yog Sansthan. Through the revision enforcement of the said order was sought from the Board of Revenue. Learned Counsel for Kriya Yog Sansthan has placed reliance upon Section 5 of the Land Revenue Act, and has contended that such a revision was maintainable as Board of Revenue exercised administrative powers. However, I do not agree with the learned Counsel for Kriya Yog Sansthan. Section 5 is quoted below:

5. Controlling powers of State Government and Board respectively : Subject to the superintendence, direction and control of the State Government, the Board shall be the Chief Controlling Authority in the matters, provided under the Act, excepting matters relating to disposal of cases, appeals and revisions.

11. The orders passed by Board of Revenue are utterly without jurisdiction, unheard of and unwarranted. The revision is not even, accompanied by delay condonation application. It is also important to note that plot No. 37 was not mentioned in the order of the Chief Revenue Officer, however. Board of Revenue included the same also in its order.

12. The inspection report of the learned Commissioner appointed by this Court reveals that the plots in dispute are adjacent to river Ganga. In order to ascertain as to whether Gaon Sabha or the State had any claim over these plots Sri V.K. Singh, learned standing counsel for Gaon Sabha, which is also one of the respondents in the writ petition, was specially called by the Court. The statement of the learned Counsel is quoted in the order dated 22.2.2008 (supra).

13. This is a regular writ petition and it cannot be treated to be a public interest litigation as the jurisdiction to hear public interest litigation is of particular Division Bench. However, petitioners also do riot appear to have any locus standi or grievance against the orders passed by the Board of Revenue. The Court repeatedly asked the learned Counsel for the petitioner of the first writ petition, viz., Mauni Ashram to show its title. The only reply was that the Ashram was in existence since long. Learned Commissioner has also noted the existence of Ashram. However, the Ashram is situate on the main road, which is quite away from the plots in dispute.

14. Learned Counsel for Kriya Yog Sansthan stated that part of plot No. 37 was purchased by it on 7.3.2002, i.e., about two, three weeks before the passing of the order by the Chief Revenue Officer and the area of the purchased portion was quite small i.e., 13 biswas and that they purchased it from the recorded tenure holder. From the report of the learned Commissioner it is clear that a kharanja road is passing througt plot No. 37, which is a public path. Two other pathways

have also been shown in the said map by the Advocate Commissioner.

15. The other two petitioners also failed to show that they had any interest in the plots in dispute. These cases present a peculiar situation. Even though none of the petitioners has got any locus standi still the orders passed by the Board of Revenue are utterly without jurisdiction and shock the conscience of the Court. While exercising writ jurisdiction the Court is not as much tied down by the procedure as while hearing appeals, revisions etc., governed by CPC vide Shiv Kumar Sharma Vs. Santosh Kumari,

16. The Board of Revenue in its order dated 24.12.2007 has mentioned that according to the report of Revenue Inspector dated 15.4.2002 available on the file plot Nos. 37. 38, 39 and 43, according to the khatauni are bhumidhari property of ''Kriya Yog Sansthan''. Photostat copy of the said report, which was filled alongwith stay application only states that plot Nos. 38, 39 and 43 are bhumidhari land and not of Gaon Sabha land. It is not mentioned in the said report that that these plots are entered as bhumidhari land of ''Kriya Yog Sansthan''. In respect of plot No. 37 it is mentioned that part of the said plot has been purchased by ''Kriya Yog Sansthan'' through registered sale deed and the remaining portion of the said plot is entered as ''matrook''. During the course of arguments it was categorically stated by the learned Counsel for ''Kriya Yog Sansthan'' that it had purchased only 13 biswas of plot No. 37. The total area of plot No. 37 is quite big. In the said report dated 15.4.2002 it is mentioned that inspection was made with a team of Lekhpals and it was found that on part of plot Nos. 38, 39 and 43 boundary was being constructed by Dr. Yogi Satyam (office bearer of ''Kriya Yog Sansthan''), which had been stopped by the administration. It is mentioned in the very beginning of the said report that plot Nos. 37, 38, 39 and 43 are situate on the bank of river Ganga (Ganga Nadi Ke Kinare).

17. If some one is owner or bhumidhar of some land and wants to construct boundary wall to separate and protect his land and some one, including the Government prevents or attempts to prevent him from doing so, then the proper remedy is filing of suit for injunction by the said person. Revenue authorities on miscellaneous applications cannot grant the desired injunction. Even administrative authorities in order to maintain the law and order can direct the parties to maintain status quo until their rights are adjudicated by competent court. Under administrative powers such orders are ordinarily not to be passed which have got the effect of changing position of existing state of affairs.

18. The subsequent order passed by the Board of Revenue dated 8.1.2008 is more shocking than the earlier one. In the said order it is observed that police authorities had demolished the boundary wall of ''Kriya Yog Sansthan'', hence they must appear before the Court to show cause as to why they shall not be punished for contempt.

19. Even though petitioners of these writ petitions may not have a very direct

interest or grievance to challenge the impugned orders passed by the Board of Revenue, still the Court is of the opinion that the impugned orders being utterly without jurisdiction and traversty of justice require to be set aside.

20. In any case, according to the Commissioner''s report a public road in the form of kharanja is existing in Plot Nos. 37 and any person who occasionally uses the said road is entitled to approach the Court for preventing any possible encroachment upon the said road. For this purpose it is not necessary that the said road must be the only road available to that person for egress and ingress of his adjoining property.

21. Accordingly impugned orders are set aside. In view of the statement of learned Counsel for ''Kriya Yog Sansthan'' respondent recorded in the order dated 22.2.2008 and quoted above, there is no need to issue any further direction to the respondent ''Kriya Yog Sansthan''. However, it is observed that they are bound by the above statement and they shall not do any thing in violation of the above statement and undertaking. The coloured map prepared by Advocate Commissioner and contained in his report shall form part of this judgment.

22. Writ petitions are disposed of accordingly.

23. However, it is reiterated and clarified that ''Kriya Yog Sansthan'' respondent is at complete liberty to initiate such proceedings before competent court/courts which may legally be available to it.

24. Before parting, the Court places on record its surprise on the lack of interest shown by the State authorities in the matter, particularly in contesting these writ petitions, even though according to the reports plots in dispute are situate on the bank of river Ganga and plot No. 37 contains a public road in the form of kharanja.

25. The original records of Revision No. 137 of 2007-08 summoned from the Board of Revenue shall at once be returned back to the Board of Revenue, Allahabad.