(2017) 01 AHC CK 0304

In the Allahabad High Court

Case No : Writ C No. 1834 of 2017

Prakasha APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:
Uttar Pradesh Revenue Code, 2006 — Section 101(2)(d), Section 59, Section 59(2)(ii), Section 77(a)

Citation : (2017) 134 RD 727

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Jitendra Pal Singh Chauha, Advocate, for the Petitioner; C.S.C. and Rajesh Yadav, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mrs. Sunita Agarwal, J.—By means of the present petition, the petitioner is challenging the orders dated 26.2.2016 & 28.7.2016 passed by the Tehsildar/ Assistant Collector (First Class) Tehsil Budhana District Muzaffarnagar and Additional Collector (Administration) District Muzaffarnagar.

2. It appears that in the proceedings under Section 122-B of U.P. Z.A. & L.R. Act, it was found that the petitioner has encroached upon the public utility land in Plot No.103 M area 0.0050 Hectares which is recorded as "Khad ke Gaddhe" i.e. "manure pit" in the revenue records. A recall application dated 16.8.2016 was filed by the petitioner with the contention that the petitioner was ready for exchange of his bhumidhari land from the land in question which is recorded as "Khad ke Gaddhe" and his appeal has been rejected without completion of the argument of his counsel. The said application was rejected vide order dated 16.9.2016 which is also under challenge.

3. Submission of learned counsel for the petitioner is that the petitioner is that the petitioner had been in possession of the land in question since the time of his predecessors and the disputed land is an abadi land of the petitioner. The offer

given by the petitioner for exchange of the disputed land with the bhumidhari land of the petitioner was not considered while rejecting the application for recall order dated 16.9.2016.

4. The prayer made by the petitioner for exchange of his bhumidhari land from the land set apart for public purposes such as "manure pit" cannot be accepted in view of the categorical provisions of Section 101(2)(d) of the U.P. Revenue Code, 2006 (hereinafter referred to the as ''the Code, 2006'') read with Rule 101 of U.P. Revenue Code Rules, 2016. A careful reading of clause (d) of subsection (2) of Section 101 of Code, 2006 indicates that there is mandate upon the Sub Divisional Officer to refuse permission for exchange under Sub-Section (1) of land which is entrusted to any Gaon Sabha under Section 59 of the Code, 2006, in which bhumidhari rights do not accrue. Section 77 (a) says that in respect of a land mentioned therein such as land set apart for public purpose such as "manure pit", no bhumidhari right shall be accrued in favour of any person.

5. So far as settlement of abadi site is concerned, the provisions as contained in Section 67 A (1) of Code, 2006 read with Rule 68 (1) of Rules, 2016 show that the land which is referred in Section 63 of the Code, 2006, i.e. the land covered under clause (i) of sub-Section (2) of Section 59 of the Code, 2006 can be earmarked for the purpose of allotment of abadi sites to persons in the order of preference as per Section 64 of the Code, 2006. The land of "manure pits" is described as the land entrusted to Gram Sabha under clause (ii) of sub-Section (2) of Section 59 of the Code. In view of thereof, such land will not be available for the purpose of allotment as abadi site under Section 63 of the Code, 2006.

6. In view of the above discussion, it is clear that the land which has been reserved for public purposes within the meaning of Section 59(2)(ii) of the Code, 2006 cannot be exchanged or settled in favour of any person on the ground of possession.

7. The findings recorded by the revenue Authorities regarding the nature of the land being public utility land is not disputed by the learned counsel for the petitioner.

8. No other point has been pressed.

9. For the above noted reasons, there is no justification to interfere in the eviction orders passed by the revenue Authorities on the plea of exchange made by the petitioner.

10. Lastly, learned counsel for the petitioner submits that the petitioner is ready to remove the encroachment over the plot in question on his own and he may be granted reasonable time for the purpose. He also disputes the imposition of damages to the tune of Rs.40,000/- stating that the said amount is highly excessive and the petitioner is not in a position to pay such huge damages.

11. Considering the said submission, it is provided that:-

(1). the petitioner shall file an undertaking before the Collector, Muzaffarnagar within a period of three weeks along with certified copy of this order that he will remove the encroachment in Plot No.103 M area 0.0050 hectares on or before 16.3.2017.

(2). In case the petitioner files such an undertaking before the Collector, Muzaffarnagar within the period given above, no coercive action shall be taken against him.

(3). It is, further, provided that in case, the petitioner removes the encroachment on his own expenditure within a period of two months as given above, he will not be liable to pay Rs.40,000/- towards damages as imposed by the Assistant Collector, (First Class), Tehsil Budhana.

12. However, in case the petitioners fails to submit the undertaking or remove the encroachment as indicated above, the protection granted to the petitioner herein above would automatically stand vacated.

13. With the above observations and directions, the writ petition is disposed of.