(2017) 01 AHC CK 0170

In the Allahabad High Court

Case No : Writ C No. 1833 of 2017

Ram Achhaibar APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Revenue Code, 2006 — Section 67, Section 67, Section 67(5)

Citation : (2017) 134 RD 735

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

Bench : Single Bench

Advocate : Salilendu Kumar Upadhyay, Advocate, for the Petitioners; C.S.C. and Ram Babu Yadav, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mrs. Sunita Agarwal, J.—By means of the present writ petition, the petitioners are challenging the orders dated 23.5.2016 passed by the Assistant Collector-I/Tehsildar, Tehsil Gyanpur, District Bhadohi and also the order dated 29.10.2016 passed by the Collector, Bhadohi, District Bhadohi in an appeal filed by them.

2. It appears that a notice in Form-49Ka was issued to the petitioner no. 1 on account of encroachment in Plot Nos. 449 area 0.006 hectares, 450 area 0.003 hectares and 615 area 0.010 hectares which were alleged as the land of ''Rasta" and "Khalihan". The said proceedings had been initiated on the basis of report of Lekhpal dated 14.7.2009. The petitioner no. 1 filed his objection on 19.8.2010. It was categorically stated in the objection filed by the petitioner no. 1 that no constructions have been made by him on Plot No. 449 and further his old house is existing in Plot No. 635 which is adjacent to Plot No. 615 which is recorded as ''Rasta".

3. On the said objections, it appears that while fixing the date 23.5.2016 for hearing, a direction was given by the Assistant Collector-I/Tehsildar, Tehsil

Gyanpur to the revenue team to make an on-the-spot inspection and submit a report after demarcation. The report dated 22.5.2016 was submitted which clearly states that the petitioner no. 1 has not encroached Plot Nos. 449 and 450 whereas in an area of 0.008 hectares of Plot No. 615 which is recorded ''Rasta'', the petitioner had made encroachment and constructed his house and "Madaha".

4. It is further recorded that in 0.003 hectares of Plot No. 615 there exists a "Pakka Well" had been constructed by the Gaon Sabha. In approximately 0.071 hectares of Plot No. 615, the petitioner had made encroachment and has started cultivation.

5. Considering the said report and revenue record, it was found by the Assistant Collector-I/Tehsildar, Tehsil Gyanpur, District Bhadohi that the land set apart for public purpose under Section 132 of U.P.Z.A.&L.R. Act has been encroached by the petitioner. However, with respect to Plot Nos. 449 and 450, it is category recorded that there is no encroachment of the petitioner no. 1. The appeal filed by the petitioner no. 1 has been rejected by the Collector on the same ground.

6. Challenging the orders impugned, the contention of learned counsel for the petitioners is that the notice in the shape of Form-49Ka issued to the petitioners on the basis of report dated 14.7.2009 submitted by the Lekhpal ought to have been revoked/set aside for the reason that in the fresh report submitted by the revenue team on 22.5.2016, it was made clear that there was no encroachment on the plot bearing numbers 449 and 450. The report submitted by the Lekhpal could not have been admitted in part as has been done by the Tehsildar.

7. It is further submitted that the adjacent Plot No. 635 is the Bhumidhar plot of Smt. Indu Devi (the petitioner no. 2 herein), the daughter-in-law of petitioner no. 1 and also two other persons namely Santosh Kumar and Upendra Kumar. No notice whatsoever had been issued to these persons though their rights have been affected by the orders impugned.

8. In support of his argument, the reference is made to the alleged entries in the name of Santosh Kumar, Upendra Kumar and Smt. Indu Devi in the document appended at page ''44'' of the paper book. The reference has also been made to the "Khatauni" for the year 1421-1426 fasli wherein there is a reference of order dated 15.7.2015 passed by the Tehsildar with reference to Plot No. 635 in the remark column.

9. Considering the abovenoted submissions made by the learned counsel for the petitioners, it is noteworthy that the ground taken herein regarding the ownership of Plot No. 635 namely adjacent plots has not been taken in appeal filed by the petitioners under Section 67(5) of the Uttar Pradesh Revenue Code, 2006.

10. The appeal has been filed on 8.6.2016 and according to the petitioner no. 1, the name of Smt. Indu Devi has been recorded in Khatauni/Khasara pursuant to the order dated 15.7.2015 but no such averment has been made in appeal. It

was incumbent upon the petitioners to assail the order passed by the Tehsildar on the factual statement made herein at the very first opportunity before the appellate authority. In view of the above on the ground taken for the first time in the present writ petition regarding ownership of adjacent Plot No. 635, the orders impugned cannot be interfered.

11. It is further noteworthy that in paragraph ''5'' of the memo of appeal, the petitioner no. 1 himself admits that his half constructed house exists at the southern side of Plot No. 635 which is adjacent to plot no. 615 which is recorded as ''Rasta" namely public utility land.

12. From the averments made in paragraph ''6'' of the appeal, it is further evident that existence of ''Well'' near the constructions made by the petitioner no. 1 is also admitted.

13. So far as the report submitted by the Lekhpal dated 14.7.2009 is concerned, the same cannot be made basis for assailing the orders impugned for the simple reason that the said report has not been accepted by the Tehsildar rather a fresh report of the revenue team has been submitted after making an on-the-spot inspection and demarcation of the plot in question. A map has been submitted along with the report which clearly shows that adjacent to Plot No. 635, there exist ''Rasta'' in Plot No. 615 area 0.010 hectares. From the report dated 22.5.2016 which is appended at page ''39'' of the paper book, it is clear that a demarcation was also done by the revenue team during the spot inspection of the site in question.

14. In view of the facts recorded in the orders passed by the Tehsildar and the Collector, this Court comes to an irresistible conclusion that the petitioners had encroached upon a public utility land existing in plot no. 615 area 0.082 hectares which is recorded as ''Rasta'' and there is no dispute about the nature of the said land.

15. In view of the above reasons, no interference is required in the orders impugned.

16. For the contention of the learned counsel for the petitioners that the petitioners'' house exist in Plot No. 635 and there is no encroachment upon Plot No. 615, it is open for the petitioners to initiate appropriate proceeding under the Uttar Pradesh Revenue Code, 2006 or file a suit before the Competent Court of law.

17. In view of the above observations, the writ petition is dismissed.

