

Court No. - 4**Case :-** WRIT - C No. - 1000408 of 2001**Petitioner :-** Mohd. Naiem**Respondent :-** Additional Commissioner Admin Gonda And Others**Counsel for Petitioner :-** Shyam Krishna Srivastava, Najam Zafar, Rafar Farooqui, T.H. Khan, Z. Jilani**Counsel for Respondent :-** C.S.C., D.C. Mukherjee, Deepak Seth, Iqbal Ahmad, Jitendra Saxena, Kumar Ayush, Mohd. Aslam Khan, Mohd. Kumail Haider, Mohd. Mustafizul Haq, Mohiuddin Khan, R.N. Gupta**Hon'ble Rajesh Singh Chauhan, J.**

Heard Sri M.M. Haq, learned counsel for the petitioner, Sri A.S. Tiwari, learned Addl. C.S.C. for the State respondents and Sri Mohd. Kumail Haider and Iqbal Ahmad, learned counsel for the respondent no. 5.

By means of this petition the petitioner has assailed the order dated 29.12.2000 passed by the Additional District Magistrate / Additional District Collector, Balrampur in Case No. 7/11/19/49/31 filed u/s 122C(6) of the U.P.Z.A. & L.R. Act, 1950 thereby in a suit filed by the private opposite party the authority has cancelled the patta being granted in favour of the petitioner u/s 122C. The petitioner has also assailed the order dated 23.1.2001 passed by the Additional Commissioner, Administration, Devi Patan Mandal, Gonda in a revision whereby the revisional authority has rejected the revision holding that any order being passed u/s 122C(6) of U.P.Z.A. & L.R. Act is a final order, therefore, no revision would be maintainable.

Learned counsel for the petitioner has stated that initially one suit u/s 122 C(6) of U.P. Z.A. & L.R. Act bearing Suit No. 195 : State vs. Naim, has been filed before the Chief Revenue Officer, Gonda and Chief Revenue Officer, Gonda vide order dated 5.2.1996 cancelled the lease given to the petitioner for the reason that the lease given to the petitioner on Gata no. 396 is a land recorded in the revenue record as a 'Sadak Khas'. He has further stated in his order that the lease granted by the Sub-Divisional Officer concerned is per se illegal as no lease can be granted on the public utility land and the preferential list has not been prepared.

The aforesaid order has been assailed by the petitioner by filing revision before the Commissioner and that revision of the petitioner was allowed vide order dated 13.1.1998 by the Additional Commissioner, Administration, Faizabad Mandal, Faizabad setting aside the order dated 5.2.1996 passed by the Chief Revenue Officer. In the aforesaid order the revisional

authority has categorically indicated that any order u/s 122C(6) can be passed by the Collector after following the due procedure of law, therefore, the order passed by the Chief Revenue Officer is without jurisdiction order.

Thereafter the private opposite party being aggrieved for the fact that on account of lease given to the petitioner on Gata no. 396 which is a public utility land his right to utilize such land being a tenure holder of the adjacent gata number has filed a case before the Additional District Magistrate / Additional Collector, Balrampur. In the aforesaid case the notices were issued to the petitioner and petitioner participated in the proceedings. The Addl. District Magistrate / Assistant Collector, Balrampur has allowed the case of the private opposite party vide order dated 29.12.2000 cancelling the order dated 8.2.1991 passed by the Sub-Divisional Officer, Uttraula granting lease to the petitioner and directed that the documents be corrected accordingly. The petitioner assailed the aforesaid order dated 29.12.2000 filing the revision before the Additional Commissioner and the said revision was dismissed vide order date 23.1.2001 being not maintainable but the learned counsel for the petitioner has stated that when the issue in question has already been adjudicated, the same issue should have not been adjudicated under some provision of law. He has further submitted that when a lease was given to the petitioner by the S.D.O. concerned, the said lease may not be cancelled by the Additional District Magistrate / Assistant Collector invoking powers of section 122C(6) of the U.P.Z.A. & L.A. Act.

Therefore, the impugned order dated 29.12.2000 is liable to be set aside and the revisional order is liable to be set aside inasmuch as if any order u/s 122C(6) has been passed without jurisdiction, the same may be decided under the revisional authority.

Learned Addl. C.S.C. as well as learned counsel for the private opposite party have opposed the aforesaid submission of learned counsel for the petitioner. They have submitted that while setting aside the order dated 5.2.1996 passed by the Chief Revenue Officer the revisional court vide order dated 13.1.1998 has itself observed that the power u/s 122C(6) can be invoked only by the Collector and in the present case the impugned order dated 29.10.2000 has been passed by the Addl. District Magistrate / Additional Collector, Balrampur, therefore, the order dated 29.12.2000 has been passed strictly in accordance with law. Further attention has been drawn towards section 122C(7) which provides that every order passed by the Assistant Collector under sub-section 4 shall be subject to the provisions of section 122-C(6) and every order passed by the

Collector under sub-section 6 shall be final and provision of section 333A shall not apply in relation thereto. Therefore, the order passed by the revisional authority dated 23.1.2000 is patently legal and justifiable.

Learned counsel for the opposite party have also stated that in the present case the petitioner was given lease on 8.2.1991 without having any proposal of the Land Management Committee and no preferential list was prepared in terms of section 122-C(3) of U.P.Z.A. & L.R. Act. They have also stated that the relevant fact has not been considered that the petitioner was himself having his own house in the village in question, therefore, he should have not been given lease for housing purposes. Further, when the impugned order dated 29.12.2000 was passed, there was no house or constructed area on the gata in question, however, the petitioner has constructed one house on the area after 29.12.2000 which is also illegal and unwarranted .

Having heard learned counsel for the parties and having perused the material available on record, I would like to refer the order dated 24.4.2023 passed by this Court wherein the learned Standing Counsel was directed to seek instructions about the current status of the area in question. In compliance of the aforesaid order Sri A.S. Tiwari, learned Addl. C.S.C. has produced the copy of instruction letter dated 2.5.2023, same is taken on record.

As per aforesaid letter dated 24.4.2023 the Tehsildar, Uttraula conducted the fresh spot inspection in respect of the Gata no. 396/0.053 Hect. The aforesaid gata number is still recorded as 'Sadak Khas' in the revenue records. Presently, the petitioner has constructed one pakka room encroaching 0.008 Hect. land of the aforesaid gata number, however, that pakka room is vacant as none is residing in such pakka room for the reason that the petitioner is having his own pakka house in the village in question where he lives with his entire family. Further, remaining part of Gata no. 396 there is a vacant pathway as the same is being utilized by the villagers. Naxa najri to this effect has been enclosed with the instructions which also indicates the same fact. So as to show the nature of the land the copy of khatauni and khasra has been filed with the instructions.

Therefore, from the aforesaid instructions it is clear that the petitioner has constructed one pakka room over the gata in question after 29.12.2000 when the impugned order has been passed wherein it has been categorically indicated that there was no construction over the gata in question and that fact has not been disputed by the petitioner before the revenue

authorities. Notably, there was no proposal of the Gram Sabha / Land Management Committee to allot the land to the petitioner as no such document is available on record. As per the material available on record no list has been filed to convince the Court that a preferential list in terms of section 122C(3) of U.P.Z.A. & L.R. Act has been prepared. The impugned order dated 29.12.2000 provides that the petitioner is having his own residential house in the village and that fact has again been indicated by the S.D.O., Uttraula, Balrampur in its comments to show that the petitioner is living in his own house along with his family and no one is living in pakka room constructed over Gata no. 396 on 0.008 Hect. The earlier order dated 5.2.1996 was passed by Chief Revenue Officer and that order may not be treated as order being passed u/s 122-C(6) inasmuch as the power to pass any order u/s 122-C(6) vests with the Collector, therefore, earlier revisional authority has rightly indicated this fact while setting aside the order dated 5.2.1996 passed by the Chief Revenue Officer. However, the impugned order dated 29.12.2000 has been passed by the Additional District Magistrate / Additional Collector having power u/s 122-C(6) of the U.P.Z.A. & L.R. Act. The impugned order dated 29.12.2000 is not an ex-parte order rather it has been passed after hearing all the parties including the petitioner and perused the material available on record. The revisional authority has rightly rejected the revision of the petitioner vide order dated 23.1.2001 inasmuch as in view of 122-C(7) of the U.P.Z.A. & L.R. Act the order have been passed by the Collector u/s 122-C(6) shall be final.

Therefore, in view of the above, I do not find any infirmity or illegality in the impugned orders dated 29.12.2000 passed by the Additional District Magistrate / Additional District Collector, Balrampur in Case No. 7/11/19/49/31 filed u/s 122C(6) of the U.P.Z.A. & L.R. Act, 1950 and order dated 23.1.2001 passed by the Additional Commissioner, Administration, Devi Patan Mandal, Gonda

Accordingly, the writ petition is **dismissed**.

Consequences to follow.

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(Rajesh Singh Chauhan, J.)

Order Date :- 3.5.2023

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