

Court No. - 52

Case :- WRIT - C No. - 27739 of 2022

Petitioner :- Sri Bihari Ji Seva Trust

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Avneesh Tripathi,Raghwendra Prasad Mishra

Counsel for Respondent :- CSC

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Raghwendra Prasad Mishra, learned counsel for petitioner and Sri Rajesh Kumar Tiwari, learned Additional Chief Standing counsel assisted by Sri Surendra Kumar, learned Standing counsel appearing on behalf of respondent no. 1 to 3.

2. Present petition has been filed seeking following reliefs:

"i) Issue a writ, order or direction in the nature of mandamus directing to the respondent no.2&3 to take decision in the application dated 05.11.2021 & 14.06.2022 (Annexure 13 & 16) submitted by the petitioner with in stipulated time, pending before him, within stipulated time."

3. It is the case of the petitioner that plot no. 1081 area 0.36 acre was recorded in the name of Mandir Banky Bihari Ji Maharaj since 1375F to 1377F and plot no. 108 area 0.0400 is recorded as chak marg in revenue records. With intention to grab the property pertains to Banky Bihari Temple one Bhola Khan Pathan along with his agents submitted an application to the then Chief Minister of U.P. Government, Lucknow way back in the year 2004 with prayer that Khasra no. 108/4, 108/5 and 1093/190 may be recorded as graveyard (kabristan), whereas there was hardly any plot no. 108/4 and 108/5 ever available in the records of 1375F-1377F.

4. Only upon the aforesaid application, respondent no. 4 passed an order dated 03.12.2004 through which the above mentioned three plot numbers have been entered against U.P. Sunni Central Wakf Board and later on plot no. 1081 area 0.345 hectare was also directed to be recorded as graveyard (kabristan).

5. After having knowledge of the above mentioned incident which took place without observing the proper procedure of law defined under the statutory provision contained under U.P.Z.A & L.R Act, 1950, villagers submitted an application before the respondent no. 2 on dated 16.06.2020,

upon which eight member committee was constituted to enquire into the matter and the committee submitted its report that the entry of graveyard (kabristan) has been wrongly recorded against plot no. 1081 and the matter has been sent to the respondent no. 4 to expunge the name of graveyard. Communication between respondent no. 2 and 4 has already been appended as Annexure no. 8 to the petition.

6. Over the several communications and repeated reminders between the State authorities as well as respondent no. 4 nothing has been culminated substantially in shape of redressal of the grievances of the petitioner and ultimately petitioner submitted an application on dated 05.11.2021 before the respondent no. 2 for correction of the revenue entries, specifically against the plot no. 1081 in favour of the petitioner, whereupon certain legal opinion has been sought and the same has been given by the District Government Counsel, Mathura for expunging the entry in favour of kabristan from plot no. 1081 but nothing has been came out from the *inter se* communication as well as legal opinion given by the District Government Counsel Mathura, which rises cause of action in favour of the petitioner for filing the instant petition before this Court.

7. At the admission stage, considering the grievances of the petitioner, this Court called the specific counter-affidavit over the issue in *lis* whereupon counter-affidavit has been preferred on behalf of respondent no. 2 and 3 on dated 15.11.2022.

8. During pendency of the matter, when the learned Additional Chief Standing counsel initiated his arguments on the basis of the counter-affidavit dated 15.11.2022 it has been transpired that the material question raised through the instant petition that under which circumstances the entry available in the revenue record from the basic year has been disturbed? The same has not been answered in the same counter-affidavit which was preferred by learned Additional Chief Standing counsel.

9. Considering the non-availability of the answer to the core issue all the records pertaining to plot no. 1081 situated at village Shahpur, Tehsil Chata, District Mathura has been summoned through concerned Sub-Divisional Officer, whereupon present incumbent as Sub-Divisional Officer appeared in person along with the entire records pertaining to plot no. 1081, through which it has been transpired that the initial entry in the revenue records against the plot no. 1081 was available in the name of the Mandir Bihari Ji Virajman Mandir but later on in the year 1970 the same has been changed in the proceedings under Section 186 of U.P.Z.A. & L.R. Act, 1950, initiated without issuing any notice to the petitioner and

no relevant records were available in connection to the proceedings under Section 186 of U.P.Z.A. & L.R. Act, 1950. Thereafter on the own wishes and whims of the revenue authorities the entry recorded in the year 1970 has again been changed in the year 1991 vide order dated 30.09.1991 which culminated into plot no. 1081 as pond (pokhar) and plot no. 1081 has been turned into 1081/1 but the area remained intact as mentioned in the revenue records against plot no. 1081 i.e. measuring 0.146 hectare which was initially 0.36 acre. After conversion calculation it has been found that 0.36 acre is equivalent to 0.146 hectare and as such there is hardly any change in the measuring area of the plot nos. 1081 and 1081/1 which was recorded against the name of Mandir Bihari Ji Virajman Mandir. The above mentioned relevant records brought to the notice of the Court by the Additional Chief Standing counsel received through Sub Divisional Officer, Tehsil Chatta, District Mathura was also filed in shape of affidavit after serving copy of the same upon learned counsel for the petitioner.

10. After having knowledge of the two proceedings initiated by the State respondents *suo moto*, Sri Raghuvendra Prasad Mishra, learned counsel for petitioner prayed and granted time for filing amendment application and the same has been preferred on dated 11.09.2023 which is available in the records. Through the amendment application preferred by the learned counsel for the petitioner order dated 13.08.1970 passed in Case no. 106/ No. 1081M/0.36, malgujari 0.64 under Section 186 of U.P.Z.A. & L.R. Act, 1950 along with the order dated 30.10.1991 passed by the then Sub Divisional Officer, Chatta, District Mathura have been sought to be quashed by this Court and the same has been prayed to be treated as part of the main prayer as available in the petition.

11. Learned Additional Chief Standing counsel assisted by Sri Surendra Kumar vehemently opposed the prayer as made in the petition as well as sought through the amendment application on the basis of the documents appended along with the affidavit on behalf of the respondent no. 3 preferred on dated 05.09.2023, through which it has been submitted that the effect of the application preferred by one Bhola Pathan is not over the plot as alleged by the petitioner against name of Mandir Bihari Ji Virajman Mandir i.e. plot no. 1081/1 since it is only the change of number of plot along with the entry which has been recorded in the revenue records in favour of Gaon Sabha under the proceedings initiated and culminated vide order dated 13.08.1970 under Section 186 of U.P.Z.A. & L.R. Act, 1950 and thereafter entered as pond (pokhar) vide order dated 30.09.1991 passed by respondent no. 3, however, it is the admitted case of

the petitioner that he has not participated in the proceedings of 1970 and 1991 related to the change of revenue entries specifically for plot no. 1081, if the petitioner is aggrieved the proper remedy is available for seeking recall of the orders passed way back in the year 1970 and 1991 and there is hardly any cause of action arises in favour of the petitioner to prefer the instant writ petition.

12. After hearing all the learned counsels appearing for the rival parties and perusing the entire records appended along with the petition as well as affidavit preferred on behalf of respondent no. 3, it is crystal clear, that at no point of time, the petitioner has ever been informed before initiating the proceedings under Section 186 of U.P.Z.A. & L.R. Act, 1950 through which the plot no. 1081 has been declared as abandoned. For ready reference Section 186 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 is reproduced hereinbelow:

"Section 186. Abandonment.- (1) Where a [bhumidhar with non-transferable rights] (other than a minor, lunatic or idiot) or asami has not used his holding for a purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming for two consecutive agricultural year [the Tahsildar may, on the application of the [Gaon Sabha] or the landholder or on facts coming to his notice otherwise, issue a notice] to such [bhumidhar with non-transferable rights] or asami, as the case may be, to show cause why the holding be not treated as abandoned.

(2) The application shall contain such particulars as may be prescribed.

(3) If the Tahsildar finds that the application has been duly made he shall cause to be served on the [bhumidhar with non-transferable rights] or the asami or publish in the manner prescribed a notice in the form to be prescribed requiring him to appear and show cause on a date to be fixed why the holding be not held as abandoned.

(4) If the [bhumidhar with non-transferable rights] or the asami does not appear in answer to the notice or appears but does not contest it, the Tahsildar shall declare the holding as abandoned and thereupon, except provided in [Section 172], the holding shall be deemed to be vacant land[:]

[Provided that no declaration under this sub-section shall made in respect of a holding or any part thereof, if the same has been mortgaged by the [bhumidhar with non-transferable rights] under sub-section (3) of Section 152 and the mortgage has not been fully redeemed, in which case the Tahsildar shall move the Collector for the realization of the loan in such manner as may be prescribed.]

(5) If the [bhumidhar with non-transferable rights] or asami appears to contest the notice, the Tehsildar shall drop the proceedings.]"

13. After careful consideration of the Section 186 of U.P.Z.A & L.R. Act, 1950, there is hardly any doubt that the same cannot be proceeded against

the recorded Bhumidhar without issuing any notice for showcause for seeking the proper explanation that why the land which is recorded as an agriculture land is not being used for the agriculture purpose and why the same may not be declared as abandoned, but on the precise query made before the Sub Divisional Officer, there was hardly any documents pertains to proceeding under Section 186 of U.P.Z.A & L.R. Act, 1950, were available in the original records and there is no description of any notice ever been sent or served upon the petitioner before initiating proceedings under Section 186 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and as such the change in the entry against plot no. 1081 from Mandir Bihari Ji Virajman Mandir to Gram Sabha was not justified. In absence of any mandatory provisional notice which has never been served upon the petitioner, it cannot be presumed that the petitioner was aware about the proceedings whatsoever has been initiated in respect of plot no. 1081 and the revenue entries have been scored out from the name of the Mandir Bihari Ji Virajman Mandir to Gram Sabha. The subject matter which was not in the knowledge of the petitioner cannot be presumed to be challenged or raised at any forum of law.

14. After the lapse of near about 21 years again the revenue records have been modified to the extent that plot no. 1081 which has been recorded as the property of Gaon Sabha has been re-entered as pond (pokhar) and the endorsement of the order has been mentioned in the record of rights as order dated 30.09.1991 and the entry has been made in the revenue records on dated 30.10.1991. Again the specific query has been made before the concerned officer, who attended the Court proceeding i.e. Sub Divisional Officer, Chatta, District Mathura regarding any proceedings which culminated into order dated 30.09.1991, it was the fair submission made by Sub Divisional Officer, Chatta, District Mathura that inspite of the best efforts, no relevant documents have been traced out with regard to any proceedings whatsoever has been initiated in the year 1991 which culminated into order dated 30.09.1991, meaning thereby the entries available in the record of rights in shape of order dated 30.09.1991 through which the entry has been made on dated 30.10.1991 is having no relevancy since the same has been entered without holding any statutory proceedings provided in U.P.Z.A. & L.R. Act, 1950, and the same can also be presumed since there is hardly any communication or notice to the petitioner and again the petitioner was completely unaware about any entries whatsoever has been made in the year 1991 in shape of order dated 30.10.1991.

15. Coming to the factual aspect of the matter, the date on which the petitioner came to know regarding certain entries against plot no. 1081 as graveyard (kabristan) over the application preferred by one Mr. Bhola Pathan was first time in the year 2020 under the impression that the plot no. 1081 measuring area 0.345 has been recorded as graveyard (kabristan) which solely belongs to the Mandir Bihari Ji Maharaj Virajman Mandir. On fine scrutiny of the revenue records appended along with the affidavit preferred on behalf of the respondent no. 3 appended as Annexure no. 10 in shape of latest record of right available in the revenue records indicates plot no. 1081M measuring 0.3450 hectare as graveyard (kabristan), plot no. 1081 M measuring 15.9700 hectare as 'purani abadi' and plot no. 1081/1 measuring 0.1460 hectare as pond (pokhar) and as such it is crystal clear that the plot measuring area 0.36 acre which is converted into hectare as 0.1460 hectare against plot no. 1081/1 recorded as pond (pokhar) pertains to the Mandir Bihari Ji Maharaj Virajman Mandir and the same has no connection with the plot nos. 1081 M measuring 0.3450 hectare and 1081 M measuring 15.9700 hectare.

16. The dispute created through the instant petition with regard to plot no. 1081 has to be dealt with plot no. 1081/1 only which is having the area of 0.1460 hectare. Entry of graveyard (kabristan) has nothing to do with the plot no. 1081/1, and as such this Court is not observing anything over the proceedings whatsoever initiated for entering graveyard (kabristan) against some other plot nos.

17. It is evident from the records that the petitioner being the custodian of properties pertains to Mandir Bihari Ji Virajman Mandir is exclusively in possession of plot no. 1081/1 which is available in the revenue records measuring area 0.1460 hectare was never ever served any type of notice, intimation, information, showcause in shape of service upon the petitioner with regard to any proceeding whatsoever has been initiated by the State respondents under Section 186 of U.P.Z.A & L.R Act, 1950 before passing order dated 13.08.1970 and before passing order dated 30.09.1991 which culminated into scoring out the entries in favour of the Mandir Bihari Ji Virajman Mandir and later on recorded as Gaon Sabha and thereafter pond (pokhar) vide order dated 30.10.1991.

18. The stand taken up by learned Additional Chief Standing counsel with regard to remedy available to the petitioner for challenging the orders passed way back in the year 1970 and 1991 is not sustainable, it is to clarify that the instant matter comes under the ambit of Section 35 of U.P. Revenue Code, 2006, wherein the power vest with the Tehsildar to amend

the entries available in the record of rights on application, information or the case is otherwise, extract of Section 35 of U.P. Revenue Code, 2006 is quoted herebelow:

“Section 35. Mutation in cases of succession or transfer.- (1) On the receipt of a report under Section 33 or Section 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall issue a proclamation and [make such inquiry as appears to be necessary] and-

(a) if the case is not disputed, he shall direct the record of rights (Khatauni) to be amended accordingly;

*(b) [***]*

[(c) if the case is disputed, he shall decide the dispute and direct, if necessary, the record of rights (khatauni) to be amended accordingly.]

[(2) Any person aggrieved by an order of the Tahsildar under sub-section (1) may prefer an appeal to the Sub-Divisional Officer within a period of thirty days from the date of such order.]”

Immediately after preferring an application on behalf of the petitioner with regard to amending the entries in the revenue records pertaining to plot no. 1081, wherein the name of Mandir Bihari Ji Virajman Mandir was available in the record of rights of basic year i.e. 1359F which was later on changed and entered in the revenue records as plot no. 1081/1 measuring area 0.1460 hectare the same ought to be amended accordingly within the prescribed limitation mentioned in the statutes. The power for amending the entries now available with Tehsildar and as such the application preferred on behalf of the petitioner before the respondent no. 2 was unattended and the same has never been initiated under Section 35 of U.P. Revenue Code, 2006, since there is hardly any dispute available with regard to plot no. 1081/1 and as such there is no need in favour of the petitioner to initiate any proceedings for restoration of their rights in shape of restoration/recording name of Mandir Bihari Ji Virajman Mandir against plot no. 1081/1 area 0.1460 hectare situated at village Shahpur, Tehsil Chata, District Mathura, since the matter which has been initiated in pursuance to the application for entering the name of graveyard(kabristan) pertains to different plot numbers having different area which is not at all related to plot no. 1081/1 area 0.1460 hectare.

19. In the light of the observation made above, order dated 13.08.1970 and order dated 30.10.1991 are hereby quashed and set aside. It is hereby directed to Tehsildar/Sub Divisional Officer, Tehsil Chata, District Mathura (respondent no. 3) to enter the name of Mandir Bihari Ji Virajman Mandir against plot no. 1081/1 area 0.1460 hectare. The above

mentioned exercise shall be completed as expeditiously as possible preferably within a period of one month from the date of production of certified copy of this order by way of providing certified copy of fresh record of rights pertaining to plot no. 1081/1 measuring area 0.1460 hectare against the name of Mandir Bihari Ji Virajman Mandir to the petitioner.

20. Writ petition is accordingly *allowed*.

Order Date :- 15.9.2023

Shaswat