

Case :- WRIT - C No. - 7447 of 2020

Petitioner :- Vishwanath

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Arun Kumar Tiwari, Vinod Shanker
Giri

Counsel for Respondent :- C.S.C., Bhupendra Kumar
Tripathi, Himanshu Pandey

Hon'ble Anjani Kumar Mishra, J.

Heard learned counsel for the petitioner and Shri Bhupendra Kumar Tripathi for the Gaon Sabha as also learned Standing Counsel for the State-respondents and Shri Himanshu Pandey for the respondent nos. 6 to 11.

Petitioner is aggrieved by the construction of a road over plot nos.473 and 474 situated in village Neebhapur, Tehsil Machhali Shahar, District Jaunpur, which is recorded as Naveen Parti. To facilitate construction of this road. the revenue entry of Naveen Parti has been changed by an order passed by the Tehsildar on 23.02.2020.

The issue involved in the writ petition is whether the Tehsildar is empowered to order of change in the class of land as recorded in the Khatauni. To justify the order dated 23.02.2020, counsel for the contesting respondents and counsel for the Gaon Sabha have relied upon Section 25 of the U.P. Revenue Code, 2006.

The aforesaid provision is quoted below -

"Section 25- Rights of way and other easements.- In the event of any dispute arising as to the route by which a tenure holder or an agricultural labourer shall have access to his land or to the waste or pasture land of the village (other than by the public roads, paths or common land) or as to the source from or course by which he may avail himself of irrigational facilities, the Tahsildar may, after such local inquiry as may be considered necessary, decide the matter with reference to the prevailing custom and with due regard to the convenience of all the parties concerned. He may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed. "

Upon a bare perusal of the Section extracted above, I do not find any substance in the submissions made on behalf of the respondents.

The Tehsildar under Section 25 is only empowered to settled a dispute regarding a pathway. He does not have any jurisdiction

to create a new path way or for that purpose, to change the class of land from banjar to any other class.

Under the circumstances, the order passed by the Tehsildar is found to be without jurisdiction and is liable to be set aside.

The other submission of counsel for the respondent is that the writ petition has been filed malafide and that is an attempt to perpetuate the unauthorized occupation of the petitioner over the land belonging to the Gaon Sabha entered as banjar in the revenue records.

The submission of counsel for the respondents may or may not be true. This Court is not going into this aspect of the matter nor is the Court in any way protecting the unauthorized occupation of the petitioner, if any.

The order, whereby the class of land has been changed from the banjar to road having been found to be without jurisdiction is hereby set aside.

In any case, this Court is of the considered opinion, that banjar land of which Gaon Sabha the custodian, ultimately vests in the State. The State can, at any point of time, resume any land, which has been given in the management of the Gaon Sabha.

The State can also, after such resumption, ensure construction of a road, in case, the same is required.

Under the circumstances, this writ petition is allowed. The order dated 23.02.2020 is hereby set aside.

It is, however, provided that in case, a road is required, the State authorities may proceed in the matter in consonance with the directions and observations contained in the body of this judgement.

Order Date :- 5.11.2020

RKM