

A.F.R.

Court No. - 85

Case :- WRIT - C No. - 41221 of 2024

Petitioner :- Jayraj Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pulak Ganguly

Counsel for Respondent :- C.S.C.,Sunil Kumar Singh

Hon'ble Kshitij Shailendra,J.

**WHETHER BHUMIDHARI RIGHTS CAN BE
CONFERRED OR DECLARED BY SUB DIVISIONAL
OFFICER ON ADMINISTRATIVE SIDE**

1. Heard Sri H.C. Dwivedi, learned counsel holding brief of Sri Pulak Ganguly for the petitioner, learned Standing Counsel for the State respondents and Sri Sunil Kumar Singh, learned counsel for the Gaon Sabha.

RELIEF CLAIMED:

2. Prayer made in the writ petition is to issue a writ of mandamus commanding the respondents to grant absolute Bhumidhari rights in favour of the petitioner in view of Sections 131A and 131B of the U.P.Z.A. & L.R. Act, 1950 (in short 'Act, 1950') read with Section 76 of U.P. Revenue Code, 2006 (in short 'Code, 2006'). Further prayer is to issue a direction for consideration of the petitioner's representations dated 07.05.2022 and 15.06.2024 moved before the Sub-Divisional Officer concerned.

CONTENTION OF PETITIONER

3. Learned counsel for the petitioner submits that on account of certain previous proceedings in relation to the lease granted in favour of the petitioner and with the passage of time, the petitioner

has acquired status of Bhumidhar with transferable rights. Reference to Section 131A and 131B of the Act of 1950 has been made in this regard and, by referring to Section 76 of the Code-2006, it is urged that as per Sub-section (2) thereof, after expiry of a period of five years from acquiring the status as Bhumidhar with non-transferable rights before the commencement of Code, 2006, the tenure holder would acquire status as Bhumidhar with transferable rights, therefore such rights should be conferred upon him by Sub-Divisional Officer.

ANALYSIS:

4. The Court has considered the submissions and has also gone through the provisions of U.P.Z.A. & L.R. Act, 1950 and U.P. Revenue Code, 2006. For the purpose of case, Sections 131A and 131B of the Act, 1950 are reproduced as under:-

"131A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.- Subject to the provisions of Section 132 and Section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha under Section 117 or belonging to the State Government, in the portion of District Mirzapur South of Kaimur Range, other than the land notified under Section 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, **shall be deemed to have become a Bhumidhar with non-transferable rights of such land :**

Provided that where the land in cultivatory possession of a person, together with any other land held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, **the rights of a Bhumidhar with non-transferable rights shall accrue** in favour of such person in respect of so much area of the first-mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him, and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act.

131B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years.- (1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such

bhumidhar for a period of ten years or more, **shall become a bhumidhar with transferable rights on such commencement.**

(2) Every person who is a bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, **shall become bhumidhar with transferable rights** on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3)"

(emphasis by Court)

5. A bare perusal of the aforesaid provisions would reflect that the Act, 1950 contemplated conferment of status as Bhumidhar with transferable rights on those who had been Bhumidhar with non-transferable rights with reference to certain provisions which came into existence pursuant to amendments made in the Act, 1950 during the course of time.

6. As far as Section 76 of the Code, 2006 is concerned, the same is reproduced as under:-

"76. Bhumidhar with non-transferable rights. - (1) Every person belonging to any of the following classes **shall be called a bhumidhar with non-transferable rights** and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhar by or under this Code, namely :-

(a) to (e)

(2) Every person who **was a Bhumidhar with non-transferable rights** immediately before the commencement of this Code and had been such Bhumidhar for a period of [five years] or more, ***shall become*** Bhumidhar with transferable rights on such commencement.

(3) Every person who was a Bhumidhar with non-transferable rights on the commencement referred to in [sub-sections (1) and (2)] or becomes Bhumidhar with non-transferable rights after such commencement **shall become** Bhumidhar with transferable rights after expiry of [five years] from his becoming Bhumidhar with non-transferable rights.

(4)"

7. Sub-section (2) of Section 76 provides that every person who was a Bhumidhar with non-transferable rights, immediately before the commencement of this Code and had been such Bhumidhar for a period of five years or more, **shall become** Bhumidhar with transferable rights on such commencement.

8. A careful reading of the aforesaid provisions would reveal that all the three provisions; Sections 131A, 131B of Act, 1950 and 76 of Code, 2006 speak of conferment of status upon the concerned tenure holder as Bhumidhar with transferable rights, however, **the provisions do not provide for a forum for making conferment or such declaration. Certainly, the Sub-Divisional Officer or any other officer has not been held to be empowered, on administrative side, to grant such a declaration in favour of concerned tenure holder under the aforesaid provisions.**

9. The Court now proceeds to consider the statutory provisions granting declaration of rights and finds that Section 144 of the Code, 2006 deals with **declaratory suit** to be filed by the tenure holder, who claims to be Bhumidhar of any holding or part thereof. The provision reads as under:-

"144. Declaratory suits by tenure holders.- (1) Any person **claiming to be a bhumidhar** or asami of any holding or part thereof, whether exclusively or jointly with any other person, **may sue for a declaration of his rights** in such holding or part.

(2) In every suit under sub-section (1) instituted by or on behalf of :-

(a) a bhumidhar, the State and the [Gram Panchayat] shall be necessary parties;

(b) an asami, the land-holder shall be a necessary party."

10. A plain and simple reading of Section 144 would reflect that a person claiming to be a Bhumidhari or Asami of any holding or part thereof, may sue for a declaration of his rights in such holding

or part thereof and State of U.P. and Gram Panchayat shall be necessary parties to such proceedings, if instituted.

HELD:

11. In view of scheme of the Code, 2006, notwithstanding that the petitioner might have acquired status as that of Bhumidhar with transferable rights, such an aspect needs adjudication by the Sub-Divisional Officer in appropriate suit proceedings under Section 144 of the Code, 2006, where the State as well as Gram Panchayat shall be necessary parties and would have their say in the proceedings, and not an administrative side on a bare application.

12. In view of the above, without examining the merits of the claim of the petitioner as Bhumidhar with transferable rights, it is held that Sub Divisional Officer has no jurisdiction to grant such a declaration on administrative side, however, he is certainly competent to grant such a declaration in appropriate statutory proceedings under Section 144 of the Code, 2006.

MANDAMUS CANNOT BE ISSUED:-

13. As far as writ of mandamus is concerned, **In Oriental Bank of Commerce Vs. Sunder Lal Jain and another (2008) 2 SCC 280**, the Apex Court, after referring to its earlier judgments in **Bihar Eastern Gangetic Fisherman Cooperative Society Ltd. Vs. Sipahi Singh (1977) 4 SCC 145; Lekhraj Sathramdas Lalvani Vs. N.M. Shah, AIR 1966 SC 334 and Dr. Uma Kant Saran Vs. State of Bihar 1993(1) SCC 485**, observed that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation."

14. The above exposition of law makes it clear that writ of mandamus cannot be issued on mere asking unless the pre-conditions are satisfied. Such well-defined conditions are not satisfied in the present case.

15. Since it has been found that the Sub Divisional Officer has no statutory competence to grant a declaration of Bhumidhari rights on administrative side, no writ of mandamus, as prayed for, can be issued. However, the petitioner is always at liberty to institute statutory proceedings under Section 144 of the U.P. Revenue Code, 2006.

16. The writ petition is, accordingly, **disposed of** with the aforesaid liberty.

Order Date :- 24.4.2025
AKShukla/Pkb