

Mobin Khan vs Collector Sitapur on 27 March, 2025

Author: Irshad Ali

Bench: Irshad Ali

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17686

Court No. - 4

Case :- WRIT - C No. - 1003066 of 2000

Petitioner :- Mobin Khan

Respondent :- Collector Sitapur

Counsel for Petitioner :- R.K. Sharma,Bahar Ali,R K Sharma

Counsel for Respondent :- C.S.C.,R.N. Gupta

Hon'ble Irshad Ali,J.

1. Heard Sri Bahar Ali, learned counsel for the petitioner and Sri. S.P. Maurya, learned Additional Chief Standing Counsel for the respondent - State.

2. By means of present writ petition the petitioner is challenging the orders dated 22.03.2000 passed by opposite party No.1 & 2 contained as annexure Nos.1 & 2 to the writ petition as well as order dated 01.12.1999 passed by opposite party No.2 contained as annexure-7 to the writ petition with a further prayer to issue writ of mandamus directing opposite parties not to dispossess the petitioner from khasra plot No.345 and not to execute and enforce the orders dated 29.09.2000 and 22.03.2000 passed by opposite parties No.1 & 2.

3. While entertaining the writ petition, an order was passed on 21.12.2000, which is being quoted below:

"Admit.

Note on behalf of opposite parties 1 and 2 has been accepted by the Chief Standing Counsel. Notice on behalf of opposite party No.3 has been accepted by the Chief Standing Counsel who prays for and is granted six weeks' time to file counter affidavit.

Sri R.K. Sharma, learned counsel for the petitioner, submits that the case was fixed for the evidence of the Lekhpal as evident from the order dated 15.3.2000 and without recording any statement of the Lekhpal of the village and ignoring the order dated 12.4.1999 passed by the U.P. Zila Adhikari, Mishrikh, the opposite party No.2 passed by impugned order dated 22.3.2000. Prima facie, it appears that the order dated 22.3.2000 is arbitrary.

In view of the aforesaid facts, the operation and enforcement of the orders dated 22.03.2000 and 29.9.2000 contained in Annexures 2 and 1 respectively shall remain stayed."

4. Factual matrix of the case is that a consolidation proceeding village map was prepared and the petitioner plot No.345 and 300 were demarcated as well as plot No.345 of the gaon sabha was also demarcated in the year 1966-67. The petitioner moved an application under Section 41 of U.P. Land Revenue Act for settlement of boundaries of plot No.300 and 345. Due to passage of time, neighbors encroached upon petitioner's land and real area was reduced, which was registered as case No.38.

5. On 10.11.1996, the Rajasva Nirikshak submitted his report after measuring the plot Nos.300 and 345 in accordance with survey rules and found that some southern portion of land of plot No.345 was encroached upon by plot No.354. Up Jila Adhikari, Misrikh on the basis of report of Rajasva Nirikshak passed order demarcating the boundaries of petitioners' plot No.345 on 12.04.1999.

6. The Additional Tehsildar, Mishrikh issued notice on form 49-A Rule 115-C of U.P. Z.A.&L.R. Act against the petitioner for encroaching upon the land of plot No.354 and called upon the petitioner to file objection by 14.12.1999. The petitioner appeared before the Assistant Collector, First Class, Misrikh, Sitapur and took time to file objection. The petitioner filed written objection against notice dated 01.12.1999 denying the contents of the notice and stated that he got demarcated the boundaries of the plot No.345 by order dated 22.04.1999. The proceedings were politically motivated and the opposite party No.2 fixed 09.02.2000 for evidence of Lekhpal. On 09.02.2000, the evidence of Lekhpal was not recorded. Opposite party No.2 fixed 23.02.2000 for evidence of Lekhpal. Opposite party No.2 gave general date 15.03.2000 and the Advocates were abstaining from work due to All India Strike. Due to abstinence from work by the Advocates date was fixed by opposite party No.2 on 22.03.2000 for evidence of Lekhpal. Opposite party No.2 went himself on the spot, got uprooted the wheat and urad crops of the petitioner and cut away 35 young mango

trees existing over plot No.345.

7. Against the order of opposite party No.2 the petitioner filed revision No.122 under Section 122-B (4-A)/333 of U.P. ZA&LR Act. The revision was also dismissed vide order dated 29.09.2000. Both the orders have been assailed in the present writ petition.

8. Learned counsel for the petitioner submitted that it is admitted by the parties that no evidence of Lekhpal was taken despite repeated dates fixed in the matter. In this regard, the petitioner has stated in paragraph 31 to 34 of the writ petition that the Lekhpal did not submit evidence in the matter. The statement narrated in paragraph 31 to 34 of the writ petition has been replied by filing counter affidavit in paragraph 20 & 21, where there is no denial that the Lekhpal was examined by taking evidence.

9. He next submitted that while making inspection by the Tehsildar, no measurement took place on the date, when inspection was made by the Tehsildar. This fact has also been narrated in paragraphs 31 to 34 of the writ petition, which has not been denied in the counter affidavit.

10. On the other hand, learned Additional Chief Standing Counsel submitted that the impugned orders are just and valid and do not suffer from any infirmity or illegality. Opposite party Nos.1 & 2 have rightly passed the orders on the basis of inspection made by himself. The revisional court has not committed any error of law in dismissing the revision filed by the petitioner.

11. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

12. On perusal of paragraph 31 to 34 of the writ petition, specific averment has been made that no measurement took place on the date when inspection was made by the Tehsildar. The counter affidavit also does not deny the correctness of the facts stated in the writ petition. It is also relevant to state that in spite of time allowed for taking evidence of Lekhpal, no evidence was taken of the Lekhpal. This is also a very relevant factor for consideration of claim setup by the parties.

13. For deciding encroachment on plot No.345, the Tehsildar inspected the spot but did not make any measurement on the spot. Respondent No.2 went himself on the plot got uprooted the wheat and urad crops of the petitioner and cut away 35 young mango trees existing over plot No.345. Due to non taking evidence of Lekhpal and passing the impugned orders, the orders suffer from apparent illegality and are liable to be set aside.

14. The fact in regard to not taking measurement on the site while making inspection by the Tehsildar is also relevant factor for determination of encroachment made by the petitioner. Due to non measurement of the area, the impugned orders suffer from error of law and are liable to be set aside.

15. In view of reasons recorded above, the impugned orders dated 29.9.2000 and 22.03.2000 passed by opposite party No.1 & 2 contained as annexure Nos.1 & 2 to the writ petition as well as

order dated 01.12.1999 passed by opposite party No.2 are hereby set aside.

16. The writ petition succeeds and is allowed.

17. The matter is remanded back to the Tehsildar to permit the Lekhpal to make inspection on the spot and thereafter pass an order in accordance with law recording evidence of the Lekhpal.

Order Date :- 27.3.2025 Adarsh K Singh