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(2010) 11 AHC CK 0261

Allahabad High Court

Case No: Writ C. No"s. 44150 of 1998 and 5642 of 2001

Siya Ram and Another	APPELLANT
Vs	
Addl. Collector and Others Siya Ram Vs State of U.P. and Others	RESPONDENT

Date of Decision: Nov. 9, 2010

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sibghat Ullah Khan, J.
Heard learned Counsel for the Petitioners and learned standing counsel for the Respondents.

2. The first writ petition is directed against order dated 30.09.1991 passed by Tehsildar, Etawah in the case of Gram Sabha v. Siya Ram and Ors. Copy of the judgment is Annexure-VI to the first writ petition, which does not bear any number. The allegation against the Petitioners was that they had illegally encroached upon an area of 0.09 acres of Gaon Sabha Plot No. 156, which was abadi plot. Petitioners contended that land had been allotted to them in the year 1978 for making constructions. Through the impugned order Tehsildar Etawah held that as constructions had not been made within three years, hence patta automatically stood cancelled. It was also observed that even till the date on which order was passed no constructions had been made. Against the said order, Petitioners filed revision, which was registered as Case No. 10 of 1996-97, Siya Ram and Ors. v. Gaon Sabha. A.D.M. Etawah dismissed the revision on 31.03.1997, hence the first writ petition. In the first writ petition stay order was granted on 21.12.1998 staying Petitioners" dispossession, however recovery of damages was not stayed. Accordingly, proceedings for the same were initiated. Through the second writ petition, recovery proceedings have been challenged.

3. Revisional court in its judgment dated 31.03.1997 even though noticed the statement of Lekhpal that a kachcha room had been constructed long before however it did not record any finding regarding its effect. The statement of Lekhpal is Annexure-IV to the first writ petition. Revisional court held that patta appeared to be doubtful or illegal. The trial court had not recorded any finding regarding illegality or genuineness of the patta. Moreover in the first complaint, which was filed against the Petitioner on 23.05.1984 by Pradhan, copy of which is Anenxure-I to the first writ petition, there was no allegation that construction had not been made within three years of allotment.

4. Accordingly, writ petitions are allowed. Both the impugned orders are set aside. Matter is remanded to Tehsildar, Etawah. The Tehsildar is directed to decide the matter afresh. It shall particularly decide as to whether any patta was in fact granted to the Petitioners (or their father) on 17.09.1978, copy of which has been annexed as Annexure-V to the first writ petition or not. If patta is genuine then proceedings shall be dropped otherwise Petitioners shall be evicted and heavy damages per year shall be awarded against the Petitioners. Petitioners are directed to appear before Tehsildar Etawah on 20.12.2010 along with certified copy of this judgment failing which these writ petitions shall be deemed to have been dismissed.