

Court No. - 52

Case :- WRIT - C No. - 3743 of 2020

Petitioner :- Krishna Gopal And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shiv Bahadur Singh, ,Pawan Singh
Pundir,Rohit Dwivedi

Counsel for Respondent :- C.S.C.,Kaushal Kishore Mani

Hon'ble Saurabh Srivastava,J.

1. Heard Sri S.B.Singh, learned counsel for petitioners and Sri Prabhakar Tripathi, learned Standing counsel appearing on behalf of respondent no. 1.

2. Counter affidavit has been preferred on behalf of respondent no. 1 as well as on behalf of respondent no. 2 also which is available in the records and the same has been replied by the petitioner through rejoinder affidavit.

3. Present petition has been filed seeking following reliefs:

"(i) issue a writ order or direction in the nature of certiorari quashing the impugned orders dated 15.10.2019 (Annexure no. 8) and 19.12.2016 (Annexure no. 6) passed by member Board of Revenue Circuit, Court no. 2, Agra in Revision no. 1441 of 2016, State and others vs. Krishna Gopal and others."

4. It is the case of the petitioners that orders dated 27.05.1988 and 13.12.2012 has been passed in favour of the petitioners by the Assistant Collector and Commissioner during proceedings of 229B of U.P.Z.A & L.R. Act, 1950. Being aggrieved with the same, respondent no. 1 preferred Revision under Section 333 of U.P.Z.A & L.R. Act, 1950, before the learned Board of Revenue after prescribed period of limitation defined under the statutory provisions and as such the revision preferred by respondent no. 1 was accompanied with the delay condonation application on 21.11.2016. It is apparent from the records that the same was taken on 19.12.2016 and without issuing notices over the application under Section 5 of the Limitation Act, 1963 to the petitioners, the same has been allowed and was admitted for final hearing by way of issuing notices to the petitioners, effect and operation of the order dated 27.05.1988 and 13.12.2012 has been kept in abeyance till the disposal of revision.

5. After service of notice, petitioners preferred recall application for seeking recall of the order dated 19.12.2016 but the same has been decided by way of rejecting the same after the gap of more than two years vide order dated 15.10.2019, with the finding recorded by learned Board of Revenue that the order dated 19.12.2016 is interim in nature and the same is not final for any of the parties and the matter is still pending to be decided on merits, which impugned the present petition.

6. While assailing the orders dated 19.12.2016 and 15.10.2019 passed by learned Board of Revenue, learned counsel for petitioners raised his arguments that learned Board of Revenue was bound as per the procedure to issue notices to the petitioners upon application preferred by the respondent no. 1 under Section 5 of the Limitation Act, 1963 and proper opportunity has to be afforded to the petitioner for filing objection over the same. On the contrary, the delay condonation application preferred along with revision has been allowed on the first date of hearing that too at the admission stage and the revision was admitted and the notices which were issued only for contesting the matter over the ground preferred by the revisionist before the learned Board of Revenue. While filing the recall application for seeking recall of the order dated 19.12.2016 that too was only to the extent for recalling the interim order through which the effect and operation of the orders passed by learned Assistant Collector and Additional Commissioner has been kept in abeyance, the other grounds mentioned in the recall application is for indicating the illegality involved while passing the order dated 19.12.2016 but the same has not been considered and dealt which culminated into order dated 15.10.2019.

7. Per contra, learned Standing counsel supported the stand taken up while passing the order dated 15.10.2019 and reiterated that the order dated 19.12.2016 is interim in nature and the same is not final. The matter is still pending to be adjudicated on its own merits and the petitioner is at liberty to contest the same.

8. After having the rival submissions and pleadings available in the records, it is apparent that the order which has been said to be interim in nature has been contested by the petitioners and the same has been adjudicated finally in shape of rejecting the recall application preferred by the petitioner after the gap of two years and nine months and as such the fate of the longevity of the pendency of the matter which has been preferred by the respondent no. 1 can only be assumed, the same cannot be determined. The arguments raised by learned counsel for the petitioners with regard

to legality of the procedure which has been deviated by learned Board of Revenue seems to be justified. It is the procedure available and must be followed by any Court of law while dealing with the cases in shape of any pleadings, supported with the delay condonation application along with stay application, the same has to be dealt in accordance with the strict provision as defined under Rule 3A Order 41 of Code of Civil Procedure, 1908, wherein it has been mentioned that while entertaining application preferred under Section 5 of the Limitation Act, 1963, the subsequent application preferred along with the same has to be dismissed and the (appellant provisions for filing appeal/revision prescribed under the statutory law wherein the provision of Code of Civil Procedure, 1908 shall be applicable *mutatis mutandis*).

9. In the instant matter, the notices have not been issued over application preferred by the respondent no. 1 under Section 5 of the Limitation Act, 1963 and at the time of allowing the application preferred under Section 5 of Limitation Act, 1963 the subsequent application has been also allowed by way of granting interim order in favour of the respondent no. 1 till the pendency of the revision which is contrary to the provisions and procedure applicable to the followed by the Appellate/Revisionist Court.

10. In view of the aforementioned facts and circumstances, orders dated 19.12.2016, 15.10.2019 passed by Board of Revenue are hereby set aside. However, it is made clear that the revision preferred by respondent no. 1 shall be decided as expeditiously as possible preferably within a period of six months from the date of production of certified copy of this order, wherein it has been fairly submitted by learned counsel for the petitioner that no objection has been preferred till today and as such petitioner is also directed to prefer his objection to the revision within a month from today.

11. Writ petition stands ***allowed*** accordingly.

Order Date :- 1.12.2023

Shaswat