

Court No. - 52

Case :- WRIT - C No. - 5777 of 2022

Petitioner :- Ghanshyam Singh

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

Counsel for Petitioner :- Anil Kumar Mishra

Counsel for Respondent :- C.S.C.,Pradeep Singh

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Anil Kumar Mishra, learned counsel for petitioner and Sri Tarun Gaur, learned Standing counsel appearing for the respondent nos. 1, 2 and 3.

2. Present petition has been filed seeking following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 18.01.2022 (Annexure no. 12), 15.11.2021 (Annexure no. 10) and 04.01.2019 (Annexure no. 8) passed by respondent no. 2 and order dated 13.04.2018 (Annexure no. 6) passed by respondent no. 3 and respondents may further be directed not to evict the petitioner from his house constructed over the Gata no. 650kha situated at village Gegraon, Pargana Kantit, District Mirzapur.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent not to evict and demolish to the petitioner from his house constructed over the Gata no. 650 kha situated at village Gegraon, Pargana Kantii, District Mirzapur.

(iii) issue a writ, order or direction in the nature of mandamus directing the respondent not to realise the fine imposed by the respondent no. 3 upon the father of the petitioner, who died before passing the order dated 13.04.2018."

3. It is the case of the petitioner that proceedings under Section 122B of U.P.Z.A & L.R Act, 1950 has already been initiated which culminated into order dated 13.04.2018 passed by respondent no. 3 through which father of the petitioner has been determined as illegal encroacher over the plot no. 650M area 1.422 hectare over the portion determined in illegal possession of the father of the petitioner was 0.025 hectare situated at village Gegraon, Tehsil Sadar, District Mirzapur.

4. Being aggrieved with the order dated 13.04.2018, petitioner preferred revision before respondent no. 2 on dated 12.09.2018 since during pendency of the proceedings under Section 122B of U.P.Z.A & L.R Act, 1950, father of the petitioner expired on dated

12.12.2017 and as such the same was decided in absence of petitioner or his legal representative and the matter was adjudicated only on the basis of the objection preferred by father of the petitioner. Revision preferred by petitioner has been dismissed in default on dated 04.01.2019 and the same has been sought to be restored with proper application preferred by the petitioner elaborating the grounds for the same but unfortunately the restoration preferred by petitioner was again dismissed in default on dated 15.11.2021.

5. For seeking recall of the order dated 04.01.2019 and 15.11.2021, fresh restoration application has again been preferred by the petitioner but due to serious illness of the petitioner the same could not be attended by him and the latest recall/restoration application was also dismissed in default on dated 18.01.2022.

6. Learned counsel for the petitioner confined his prayer only for seeking direction in the nature of mandamus commanding respondent no. 2, for deciding the matter on merits rather to contest the matter in presence of three orders passed consecutively as dismissed in default over the revision preferred by the petitioner.

7. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition but showed his agreement only to the extent for remitting back the matter to respondent no. 2 for deciding on basis of merits of the matter, since it is crystal clear from order dated 04.01.2019, 15.11.2021 and 18.11.2022 that at no point of time, merit of the matter has ever been discussed and the same has been adjudicated by respondent no. 2, while adjudication of the revision preferred by the petitioner.

8. Be that as it may, without interfering into the merits of the revision preferred by the petitioner, order dated 04.01.2019, 15.11.2021 and 18.01.2022 passed by respondent no. 2 are hereby set aside. Matter is remitted back to respondent no. 2 for deciding the revision preferred by the petitioner on merits after due opportunity of hearing afforded to all concerned.

9. The above mentioned direction may be complied with as expeditiously as possible preferably within a period of six months from the date of production of certified copy of this order.

10. Writ petition stands ***disposed of*** accordingly.

Order Date :- 24.11.2023/Shaswat