

Court No. - 48

Case :- WRIT - B No. - 588 of 2023

Petitioner :- Rajendra Singh And 4 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Anshu Chaudhary

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsbery,J.

1. This Court has passed following order on 15.03.2023 :-

"Heard Mr. Anshu Chaudhary, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

Learned counsel for the petitioners submitted that objection under Section 9A(2) filed by the petitioners has been allowed vide order dated 29.12.2011. He further submitted that order dated 29.12.2011 has attained finality. No appeal or revision has been filed against the order dated 29.12.2011. He further submitted that impugned order has been passed on the misconceived ground exercising the revisional power. He further submitted that perusal of the impugned order dated 09.01.2023 indicates that the same has been passed in a mechanical manner without application of mind. He further submitted that application filed on behalf of the petitioners under Section 27 (3) of the U.P.C.H. Act for rectifying the CH Form-45 which was not prepared in accordance with the final order of the Consolidation Officer dated 29.12.2011 but the District Magistrate/Collector has exceeded his jurisdiction in passing the impugned order. He submitted that unless the order dated 29.12.2011 is set aside the claim of the petitioners cannot be rejected.

Matter requires consideration.

Learned counsel for respondents shall file counter affidavit within six weeks.

Learned Standing Counsel shall file their rejoinder affidavit within two weeks thereafter.

List this matter in the Additional Cause List on 11.07.2023.

Until further order of this Court, the effect operation of the order dated 09.01.2023 passed by District Magistrate/Collector shall remain stayed. "

2. Sri Suresh Chandra, learned A.C.S.C. for State has drawn attention of this Court on paragraph No.11 of counter affidavit that order dated 29.12.2011 passed by Consolidation Officer has now been challenged by way of filing an appeal.

3. Sri Anshu Chaudhary, learned counsel for petitioners submits that observation made by Collector in impugned order dated 09.01.2023 will come in the way and it

will influence the Appellate Court and further prays that appeal be decided expeditiously.

4. In the aforesaid circumstances, there is merit in argument of learned counsel for petitioner that order dated 29.12.2011 is still hold field, therefore, this writ petition is **disposed of** with following directions:-

(i) The order dated 09.01.2023 is set aside and Collector is directed to decide it afresh after outcome of application for interim prayer, if any, filed by respondents in appeal.

(ii) The Appellate Authority is directed to decide the interim prayer within a period of four weeks from today and thereafter to decide the appeal preferably within six months, if there is no legal impediment.

Order Date :- 13.12.2023

P. Pandey