

Court No. - 51

Case :- WRIT - C No. - 13766 of 2023

Petitioner :- Suresh

Respondent :- State Of U.P. And 22 Others

Counsel for Petitioner :- Dhananjay Kumar Thakur, Manish Kumar Jain

Counsel for Respondent :- C.S.C., Deepak Gaur, Manish Kumar Jain

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Dhananjay Kumar Thakur, learned counsel for the petitioner, Sri Manish Kumar Jain, learned counsel for private respondents, Sri Deepak Gaur, learned counsel for the respondent no.3-gaon sabha and Sri Sridhar Tripathi, learned standing counsel for the state-respondents.

2. The instant petition has been filed against the order passed by the S.D.O. dated 10.3.2023 in Case No.T2022064502024929, under Section 229-B of the U.P. Z.A. & L.R. Act as well as for mandamus, directing the private respondents, not to interfere in the peaceful possession of the petitioner.

3. Counsel for the petitioner submitted that the impugned order has been passed in arbitrary manner by the S.D.O. and the same is liable to be set aside. He further submitted that the contesting respondent had obtained the decree in the suit under Section 229-B of the U.P. Z.A. & L.R. Act in collusive manner which has been recalled on the restoration application filed by the petitioner.

4. On the other hand, Sri Manish Kumar Jain, learned counsel for the private respondents submitted that the impugned order dated 10.3.2023 has been challenged by the petitioner before the Commissioner also, under Section 210 of the U.P. Revenue Code, 2006 through Revision No.908/2023 and the said fact has not been disclosed by the petitioner in the instant petition, as such, the instant writ petition is liable to be dismissed with cost for concealing the material facts. He further submitted that the suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by the contesting respondent is pending before the trial court, as such, petitioner should avail the remedy in the pending suit rather revision or writ petition before this Court. He further

submitted that Revision No.908/2023 has also been dismissed by the Additional Commissioner vide order dated 21.9.2023.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that the suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by the contesting respondent was decreed but on the restoration application filed by the petitioner, the decree was set aside and the suit was restored to its original number vide order dated 24.10.2022.

7. In view of the order dated 24.10.2022, passed by the S.D.O., restoring the suit to its original number, no interference is required against the order passed by the S.D.O. during the pendency of the suit coupled with the fact that the petitioner has also challenged the order dated 29.10.2022 and 10.3.2023 before the Commissioner concerned, under Section 210 of the U.P. Revenue Code, 2006 and no disclosure has been made in the instant writ petition regarding availing of alternative remedy.

8. Considering the facts and circumstances of the case, the writ petition is dismissed but with a warning to the petitioner to be cautious in disclosing the material facts while availing the judicial remedy from the court concerned.

9. However, the trial court is directed to decide the pending suit, in accordance with law, after framing issues and giving parties to lead evidence, expeditiously, preferably within a period of 6 months from the date of production of the certified copy of the order.

Order Date :- 17.10.2023

C.Prakash