

**Court No. - 52**

**Case :-** WRIT - C No. - 19325 of 2023

**Petitioner :-** Mahesh And Another

**Respondent :-** State Of U.P. And 8 Others

**Counsel for Petitioner :-** Janardan Shukla

**Counsel for Respondent :-** C.S.C.,Sudhir Bharti

**Hon'ble Saurabh Srivastava,J.**

1. Heard learned counsel for the parties and perused the record.
2. The writ petition is directed against the order 30.12.2022 passed by respondent no. 3, Additional Sub-Divisional Officer, Tehsil Deoria, District Deoria, in Case No. 71 of 2003-04 preferred by Arjun and Om Prakash, being co-sharer in the property in question on basis of sale-deeds, under Section 176 of U.P.Z.A. & L.R. Act, 1950 seeking partition of the property in question; and, the order dated 23.03.2023 passed by respondent no. 2 in appeal preferred by petitioners under Section 331(3) of U.P.Z.A. & L.R. Act rejecting the stay application preferred by the petitioners and fixing the date in the appeal.
3. It is contended by learned counsel for the petitioners that in the suit for partition, Land Management Committee was not made party and hence the suit itself was not maintainable being barred by Section 176(2) of U.P.Z.A. & L.R. Act. It is further contended that the order dated 30.12.2022 has been passed *ex-parte* without affording any opportunity of objection to the petitioners, despite being co-shares in the land in dispute and, therefore, the same is bad in the eyes of law. All these aspects were pressed before appellate authority by the petitioners while filing the appeal along with stay application, but the appellate authority, while fixing the date for hearing in the appeal, rejected the stay application summarily without assigning any reason. The order rejecting stay application is cryptic and non speaking and, thus, liable to be set aside.
4. Learned counsel for the respondents, when confronted, could not controvert the aforesaid submissions advanced by learned counsel for the petitioners.
5. In view of above, the writ petition is allowed in part. Order dated 23.03.2023 passed by respondent no. 2 rejecting the stay application preferred by the petitioners along with the appeal preferred under Section 331(3) of U.P.Z.A. & L.R. Act is hereby quashed and set aside.
6. Respondent no. 2 is hereby directed to proceed with the appeal, being Case No. 339 of 2023 (Heera etc. Vs. Smt. Indrawati), preferred by the petitioners under

Section 331(3) of U.P.Z.A. & L.R. Act and decide the same as expeditiously as possible, preferably within a period of nine months from the date a certified copy of this order is produced before him after affording proper opportunity of hearing to all the concerned parties.

7. Till the pendency of the appeal, all the parties are directed to maintain status quo.

**Order Date :- 2.11.2023**

P.Sri.