

Court No. - 52

Case :- WRIT - C No. - 21775 of 2023

Petitioner :- Manoj Kumar And 4 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Naveen Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Naveen Srivastava, learned counsel for the petitioners and Shri Shashi Kant Kushwaha, learned standing counsel appearing on behalf of all the respondents.

2. The case of the petitioners is that proceedings under Section 115 of U.P.Z.A.&L.R. Act had already been initiated way back in the year 1986 and the same has been culminated with order dated 9.12.1986 passed by respondent no.4 through which it has been determined that father of the petitioners is in illegal possessor of plot no. 578 situated at Village Kundaliya Tehsil Chandauli District Deen Dayal Upadhyay Nagar, as per the averments made in the petitioner as well as arguments raised by learned counsel for the petitioners, no action has been initiated by the responding authorities in pursuance to the order dated 9.12.1986 and by the passage of time all five sons of Late Mewa Lal who contested the case No.159 under Section 115 of U.P. Zamindary Abolition & Land Reforms Act were holding the possession and constructed their residential house over the same.

3. All of a sudden vide notice dated 30.5.2023 respondent no.5 initiated the execution of the order dated 9.12.1986 as is apparent from the notice itself which had been served upon the petitioners under Section 115 (3) of U.P. Z.A &L.R. Act.

4. Being aggrieved with the notice dated 30.5.2023, petitioners preferred the instant writ petition and before filing the same an application has been preferred before respondent no.2 for seeking

withdrawal of the notice issued by respondent no.5, while filing the application on 14.6.2023 before respondent no.2, more or less the same averments have been made through a separate application before Divisional Commissioner, Varanasi division, District Varanasi. Both the applications made before respondent no.2, which were non-statutory application without any specific provision contained either in the U.P.Z.A.&L.R. Act or U.P. Revenue Code, 2006, respondent no.3 made an endorsement for disposing the matter as per provision vide endorsement dated 14.6.2023, in pursuance to the specific endorsement made by respondent no.3 certain report has been submitted by the concerned Tehsildar before respondent no.2, whereupon entire matter over the application preferred by the petitioners has been decided vide order dated 25.8.2023, through which entire stand taken by the petitioners has been negated and the order alongwith the notice issued by respondent no.5 has been decided as justified by respondent no.2.

5. Although the protection under Section 67-A has been sought through the instant writ petition but nothing has been submitted at the time of placing application before the respondent nos. 2 and 3, perhaps the same has not been made since no statutory application has been preferred either in shape of appeal or under Section 67-A of U.P. Revenue Code, 2006.

6. During pendency of the instant petition, order dated 25.8.2023 had been passed by respondent no.2 which was sought to be challenged through the amendment application and the same was allowed by this court, now the notice dated 30.5.2023 issued by respondent no.5 and order dated 25.8.2023 issued by respondent no.2 over the application preferred by petitioners is under challenge in the instant writ petition on the ground that once the order has been passed way back in the year 1986, the responding authority has no cause of action to execute the same after expiry of near about 37 years, during that period all five sons of Late Mewa Lal who contested the matter before respondent no.5

during proceedings under Section 115 of U.P.Z.A.&L.R. Act.

7. Per contra, learned standing counsel came up with the instructions issued by respondent no.5 through which it has been specifically submitted that no demolition has been carried and the relevant photographs have already been appended alongwith the instructions but the temporary encroachment maintained by the petitioners has been removed on 26.6.2023.

8. After having the rival submissions extended by the learned counsel for the parties it is crystal clear that the order dated 9.12.1986 passed by the competent revenue authority exercising its power under Section 115 of U.P.Z.A.&L.R. Act is still holding the filed and the same has never been challenged or upheld by any appellate authority and at no point of time the ground for seeking protection under Section 67-A of the Code has been properly adjudicated by the authority who is empowered under the statutory provision, but the notices issued under Section 115 of U.P.Z.A.&L.R. Act against the petitioners, considering the period from the order dated 9.12.1986 to notice dated 30.5.2023 it was the revenue authority who were duty incumbent to reascertain the factual position existing over the plot in dispute before initiating any action in pursuance to the order dated 9.12.1986. By bare perusal of the documents appended alongwith writ petition as well as the amendment application it is also factually not disputed that no further action has been initiated by the petitioner also for challenging the order dated 9.12.1986 or the execution initiated by respondent no.5 by way of issuing notice dated 30.5.2023.

9. In view of the aforementioned facts and circumstances, petitioners are hereby permitted to avail legal remedy available under the statutory provisions of U.P.Z.A.&L.R. Act as well as U.P. Revenue Code, 2006, if so advised, within two months wherein the protection under Section 67-A of U.P. Revenue Code, 2006 may also be taken up. If the same has

been advised, proceedings initiated in pursuance to notice dated 30.5.2023 shall remain kept in abeyance till 23.1.2024.

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

Order Date :- 16.11.2023

Rakesh