

Reserved on 30.10.2023

Delivered on 17.11.2023

Court No. - 51

Case :- WRIT - C No. - 25024 of 2023

Petitioner :- Rudra Prasad Pandey

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sachida Nand Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. M.D. Mishra assisted by Mr.Sachchida Nand Tiwari learned counsel for the petitioner and Mr. Mridul Kumar learned Standing Counsel for the State-respondents.

2.The instant petition on behalf of petitioner (Rudra Prasad Pandey) in individual capacity has been filed for following relief:-

"(i) Issue a writ of mandamus, directing/ commanding the Sub Divisional Officer, Meja, District-Prayagraj/respondent No.2 to decide the application under Section 38 of the U.P.Revenue Code, filed by the petitioner on 11.01.2022 within a stipulated period as fixed by this Hon'ble Court."

3. This Court has passed following order on 07.08.2023:

"Learned Standing counsel prays for and is granted 10 days time for seeking instructions in the matter specifically over the issue with regard to the registration of the case preferred by the petitioner way back in the month of January, 2022.

Put up this case on 21.08.2023 as fresh."

4. On 22.09.2023 following order was passed by this court:

"1. Heard Sri Sachida Nand Tiwari, learned counsel for the petitioner and Sri G.K. Saxena, learned Addl. C.S.C. for the state-respondents.

2. In compliance of the order of this Court dated 7.8.2023,

instruction dated 19.8.2023 has been placed before the Court, which is taken on record wherein it is mentioned that plot no.322-kha (old no.249/1) is recorded in the name of U.P. State Electricity Board. It is further mentioned in the instruction that proceeding under Section 38 of the U.P. Revenue Code, 2006 has been initiated by way of application dated 11.1.2022 in which report was called for, accordingly, report dated 2.3.2023 has been submitted in the aforementioned proceeding under Section 38 of the U.P. Revenue Code, 2006. It is further mentioned that after submission of the report dated 2.3.2023, report has been called from the U.P. State Electricity Board who is presently recorded over the plot no.322-kha. It is also mentioned that after submission of the report from the U.P. State Electricity Board, further proceeding shall take place in the matter, in accordance with law.

3. Learned counsel for the petitioner submitted that the court concerned is not proceeding according to the provisions of the Code/Act and Rules framed under U.P. Revenue Code, 2006, as such, direction be issued for registration of the case as well as direction for conclusion of the proceeding as provided under the Code and Rules framed thereunder.

4. On the other hand, Sri G.K. Saxena, learned Addl. C.S.C. submitted that the writ petition at the instance of the petitioner is not maintainable as petitioner is not the person aggrieved to file the writ petition for the relief claimed in the matter.

5. Counsel for the petitioner shall address the Court about the maintainability of the petition on the next date fixed in the matter.

6. Put up this matter as fresh on 10.10.2023.

7. Learned Addl. C.S.C. shall intimate about the status of the proceeding on the next date fixed in the matter."

5. In pursuance of the order dated 07.08.2023 and 22.09.2023 instruction 19.08.2023 and 07.10.2023 were placed before the Court which are on record. In the aforementioned instruction sent by Sub Divisional Officer, Prayagraj, it is mentioned that proceeding initiated at the instance of the petitioner under Section 38 of U.P. Revenue 2006 in respect to correction of entry of Plot

No.332 Kha is pending to consider the maintainability of the proceeding and the same shall be decided after opportunity of hearing to the parties.

6. Mr. M.D. Mishra, learned Counsel assisted by Mr. Sachchida Nand Tiwari, learned counsel for the petitioner submitted that petitioner has filed the application dated 11.01.2022 under Section-38 of U.P. Revenue code, 2006 for correction of entry of plot No.332-Kha area 1.1760 hectare by expunging the name of U.P. State electricity Board and recording the same as pond in the record as such writ-petition filed on behalf of petitioner under Article 226 of the Constitution of India for the registration and disposal of the proceeding under Section 38 of U.P. Revenue code, 2006 is maintainable. He further placed the provisions contained under Article 226 of the Constitution of India in support of his argument in order to demonstrate that writ petition under Article 226 of the Constitution of India on behalf of petitioner is very much maintainable. He further submitted that plot in question was recorded as pond in 1359 fasli as such name of U.P. Rajya Vidut Partishad cannot be recorded over the same unless there is any adjudication by any Court so immediate steps be taken for correcting the revenue entry of plot in question which has already been initiated by petitioner by filing application dated 11.01.2022 under Section 38 of U.P. Revenue Code, 2006. He further submitted that more than 1 year 10 month has passed but proceeding has not been registered and concluded in accordance with law.

7. Mr. Mridul Kumar, learned Standing Counsel for State-respondents submitted that writ petition on behalf of petitioner in individual capacity under Article 226 of Constitution of India in

respect to plot in question is not maintainable. He further submitted that petitioner has already filed two public interest litigation in respect to plot in question which were disposed of by this Court as such instant writ petition in individual capacity is not maintainable. He further submitted that proceeding initiated by petitioner under Section 38 of U.P. Revenue Code, 2006 is under process at the stage of maintainability as plot No.332 Kha is recorded in the name of Uttar Pradesh Rajya Vidyut Parishad. He submitted that writ petition is liable to be dismissed as not maintainable.

8. I have considered the argument advanced by learned counsel for the parties and perused the record.

9. There is no dispute about the fact that plot No.332 Kha is recorded in the name of Uttar Pradesh Rajya Parishad in the current Khatauni and petitioner has filed an application dated 11.01.2022 under Section-38 of U.P. Revenue Code, 2006 before Sub-Divisional Officer, Meja Prayagraj for recording the plot No.332Kha as pond after expunging the entry of U.P. Rajaya Vidyut Parishad from record which is pending. There is also no dispute about the fact that petitioner has already filed two public interest litigation before this Court in respect to different area of the same plot for removal encroachment but the instant petition has been filed by petitioner in individual capacity on the ground that petitioner was filed the application dated 11.01.2002 for correction of revenue entry of plot No.332 Kha.

10. Since petitioner's individual right and title is not affected by the entry in question in any manner a such writ petition on behalf of petitioner in individual capacity under Article 226 of the Constitution of India is not maintainable in spite of the fact that

petitioner has filed the application dated 11.01.2022 under Section 38 of U.P.Revenue Code, 2006.

11. Considering the entire facts and circumstances of the case writ petition filed on behalf of petitioner is not maintainable and dismissed accordingly. However pending proceeding under Section 38 of U.P. Revenue Code, 2006 in respect to plot No.332 Kha shall be concluded expeditiously in accordance with law.

Order Date :- 17.11.2023

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