

Court No. - 51

Case :- WRIT - C No. - 25065 of 2023

Petitioner :- Smt. Ashok Kumari

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Jay Prakash Singh

Counsel for Respondent :- C.S.C.,Avinash Chandra Srivastava

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Rajesh Prasad, holding brief of Mr. Jay Prakash Singh, learned counsel for the petitioner, Mr. Amit Kumar Srivastava, learned Standing Counsel for the State-respondents and Mr.Avinash Chandra Srivastava, learned counsel for respondent No.4-Gaon Sabha.

2. Brief facts of the case are that petitioner filed a suit under Section 229-B of U.P. Z.A.& L.R. Act, 1950 impleading Sarnam Singh and others as defendants and aforesaid suit was decreed vide judgment and decree dated 03.12.2008. Against the judgment and decree dated 03.12.2008, an application dated 27.01.2012 under Order 9 Rule 13/Section-151 C.P.C. was filed on behalf of the State for recalling the order judgment and decree dated 03.12.2008 as well as for condoning the delay in filing the application. The trial court vide order dated 27.04.2023 allowed the application dated 27.01.2012. Against the order dated 27.04.2023, a revision under Section 333 of U.P.Z.A.& L.R. Act was filed before the Commissioner on behalf of the petitioner, which was registered as revision No.916 of 2023 computerized Case No.C20230100000916 and the same was dismissed as not maintainable vide order dated 06.07.2023 passed by the Additional

Commissioner, (Judicial) Agra Division, Agra. Hence this writ petition.

3. Learned counsel for the petitioner submitted that suit for declaration filed by petitioner was decreed on merit after framing issues as such the application under Order 9 Rule 13/Section 151 C.P.C. along with prayer for condonation of delay filed after four years cannot be entertained by the trial court. He further submitted that suit was decreed on merit, as such recall application at the instant of the State cannot be maintained. He further submitted that there is no specific order for condonation of delay of 4 years in filing the recall application. He further submitted that impugned order passed by the trial court as well as revisional court be set aside.

4. On the other hand, learned Standing Counsel and learned Standing Counsel for the goan sabha submitted that suit for declaration has been decreed by passing cryptic judgment without making any adjudication of the dispute in accordance with law, as such the same has been rightly set aside on the application filed by the State. They further submitted that the interest of the State is very much involved in the matter and in order to cause injury to the interest of the State, suit has been got decreed in arbitrary manner. They further submitted that no interference is required in the matter and petitioner should participate in the proceeding for adjudication of the dispute afresh before the trial court.

5. I have considered the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that suit for declaration filed by the petitioner was decreed but on the application filed by the

state, the decree has been set aside and the suit has been restored to its original number.

7. Perusal of the judgment and decree passed by the trial court reveals that there is no proper adjudication of the dispute by the trial court. The trial court has only framed the issues, mentioned the case of the plaintiff and decreed the suit expunging the revenue entry which is not proper exercise of jurisdiction under Section 229-B of U.P.Z.A.& L.R. Act. In the proceeding under Section of 229-B of U.P.Z.A.& L.R. Act even the ex parte judgment and decree should be passed in proper manner by the Court concern. The suit for declaration cannot be decreed by only framing issues and mentioning the case of the plaintiff as suit for declaration under Section 229-B of U.P.Z.A. & L. R. Act now Section 144 of U.P. Revenue code, 2006 are suit of special character which can not be decided in arbitrary manner.

8. This Court in the case reported in **1985 R.D. 71 Paras Nath singh Vs. The Deputy Director of Consolidation and others** has held that if by setting aside the impugned order another illegal order will be restored then the Court under Article 226 of the Constitution of India should not interfere with the impugned order although the order impugned is illegal or irregular. Paragraph No.21 of the judgment rendered in Paras Nath (supra) is relevant which is as follows:

"21. It is, no doubt, correct to say that any order passed without jurisdiction is a nullity and deserves to be quashed. But if as a result of quashing that order another wrong and illegal order would be restored, this Court would refuse to interfere with the impugned order which appears to be quite proper equitable and just order. As mentioned above, the power under Article 226 of the Constitution is devised to advance justice and not to

thwart it. To me it appears to be well settled that an order which is illegal cannot be quashed or set aside in writ jurisdiction if quashing of it results in bringing on record another illegal order."

9. Considering the facts and circumstances of the case, no interference is required in the matter and writ petition is dismissed.

10. However, trial court is directed to conclude the proceeding of the suit in accordance with law expeditiously and preferably within a period of **six months** from the date of production of certified copy of this order after giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties.

Order Date :- 13.10.2023

PS*