

Court No. - 51

Case :- WRIT - C No. - 25108 of 2023

Petitioner :- Champa Devi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Niladra Shekhar Singh,Deepak Kumar

Counsel for Respondent :- C.S.C,Arvind Singh,Maneesh Kumar

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Niladra Shekahar Singh, learned counsel for the petitioner, Mr. Mridul Kumar, learned Standing Counsel for the State-respondent and Mr. Maneesh Kumar, learned counsel for respondent Nos.4 and 5.

2. The instant writ petition has been filed for the following prayer:

"(i) issue writ, order or direction in the nature of mandamus directing the respondents not to disturb in the peaceful possession of the petitioner in Arazi No.111 area 28 decimal situated in Village-Shripatipur, Pargana-Dwaba, Tehsil-Bairiya, District-Ballia till he disposal of application of the petitioner dated 19.05.2023 in regard to delivery of possession over Arazi No.109 area 27.5 decimal situated in village-Shripatipur, Pargana-Dwaba, Tehsil-Bairiya, District-Ballia."

3. This Court vide order dated 17.08.2023, directed the learned Standing Counsel for the State-respondents to obtain instruction in the matter. In compliance of the order of this court dated 17.08.2023, instruction has been placed before this Court which is taken on record.

4. Learned counsel for the petitioner submitted that Revenue authorities are not considering the prayer of the petitioner in respect to the plot No.109 area 27.5 decimal. He further submitted that petitioner is entitled for possession in respect to the plot No.109 but authorities are not considering the claim of the petitioner on the ground that Consolidation Court has passed the

order in respect to the plot in dispute. He further submitted that petitioner was not party in the proceeding before the Consolidation Court. He further submitted that even in the pending appeal before Settlement Officer of Consolidation, petitioner is not party as such petitioner's claim cannot be refused by the Revenue Authorities. He further placed application dated 19.05.2023 filed on behalf of the petitioner before District Magistrate with the prayer that the Naib Tehsildar Bairiya, Ballia be directed to deliver possession to the petitioner over plot No.109, area 27.5 decimal.

5. On the other hand, Mr. Maneesh Kumar, learned counsel for respondent Nos.4 and 5 submitted that in the consolidation proceeding, the final order has been passed by Deputy Director of Consolidation under Section 48 of U.P.C.H. Act and the order of Deputy Director of Consolidation has been affirmed by this Court while dismissing the Writ No.29687 of 2001 vide order dated 09.08.2001. He further submitted that Writ B No.3165 of 2022 was filed before this Court on behalf of respondent Nos. 4 and 5 which was allowed vide order dated 24.01.2023 directing the Sub Divisional Magistrate to deliver the possession of plot No.111 in view of the final adjudication taken place by the Consolidation Court. He further placed copy of the order dated 24.01.2023 passed in Writ B No.3165 of 2023, which is annexed as Annexure No.5 to the writ petition. He further submitted that no interference is required in the matter.

6. Mr. Mridul Kumar, learned Standing Counsel for the State-respondents submitted that in view of the order passed by Consolidation Court, no interference is required in the matter. He further submitted that appeal under Section 11 of U.P.C.H. Act is pending before Settlement Officer of Consolidation, as such,

petitioner can file impleadment application in the pending appeal rather writ petition before this Court or application before the Revenue authorities. He further submitted that writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the fact that writ B No. 3165 of 2022 filed before this Court on behalf of respondent Nos.4 and 5 for delivery of possession in pursuance of the final order passed by the Consolidation Court has been allowed and Sub Divisional officer has been directed to deliver the possession to the petitioner in accordance with law.

9. Since the proceeding for delivery of possession in pursuance of the order of Consolidation Court has been finalized as such the claim of the petitioner cannot be examined by this Court under Article 226 of the Constitution of India in respect to plot No.111 and 109. An appeal arising out of proceeding under Section 9A (2) of U.P.C.H. Act is pending before Settlement officer of Consolidation, as such petitioner can file appropriate application in the pending appeal or can initiate proper proceeding in accordance with law rather writ petition before this court for mandamus directing the authorities to deliver the possession to the petitioner in respect to plot No.109.

10. Writ petition is not maintainable and the same is accordingly dismissed.

Order Date :- 16.11.2023

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