

Court No. - 52

Case :- WRIT - C No. - 1490 of 2016

Petitioner :- Ramsakal

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

Counsel for Petitioner :- Awadhesh Kumar Sharma, Shesh Nath Bhatt

Counsel for Respondent :- C.S.C., D.D. Chauhan, Maya Pati Pandey, Ravindra Prakash Srivastava

Hon'ble Saurabh Srivastava, J.

1. Heard learned counsel for the parties and perused the record.
2. The factual matrix of the instant petition derives that initially a declaratory suit has already been preferred by petitioner as well as respondent no. 6 jointly and the same has been decreed vide judgement and order dated 11.03.2003 passed by learned Civil Judge (Senior Division), District Basti through which it has been determined that separate residential accommodation of petitioner as well as respondents no. 6 is already situated over plot no. 26Kha area 3 biswa 6 dhur and as such there is hardly any dispute with regard to separate possession over residential accommodation owned by petitioner and respondent no. 6 over plot no. 26Kha situated at village Pachari Khurd, Tehsil Rudhauri, District Basti.
3. By the passage of time, at the behest of respondent no. 6 over the proceedings under Section 123(1) of U.P.Z.A. & L.R. Act the entry with regard to plot no. 26Kha measuring area 0.042 hectare has been entered under the category 6(2) vide order dated 04.02.2009 passed by respondent no. 4.
4. Being aggrieved with the order dated 04.02.2009, petitioner preferred revision under Section 333 of U.P.Z.A. & L.R. Act before respondent no. 2 on the ground that respondent no. 6 is not entitled to get the benefit of section 123(1) of U.P.Z.A. & L.R. Act and the entire proceedings carried by respondent no. 4 is without any intimation to the petitioner and the same was ex-parte. Respondent no. 2 while adjudicating the revision preferred by the petitioner determined that with regard to declaration of title against any specific portion of the land, it is not the proceedings under Section 123 of U.P.Z.A. & L.R. Act whereas the competent Court can only declare the title in favour of anyone who is seeking the

same. In the instant matter learned Civil Judge has already declared the title in favour of the petitioner as well as respondent no. 6 in respect of plot no. 26Kha which has been entered in the revenue records under category 6(2), so far as regarding application preferred by respondent no.6 the same has been decided under Section 123(1) and there is hardly any disparity between the petitioner as well as respondent no. 6 since both belong to backward category and as such the claim of the petitioner as mentioned in the memo of revision that the respondent no. 6 does not fall in any category under Section 123(1) has been negated by the respondent no. 2, moreover plot no. 26Kha has been considered under Section 123 of UPZA&LR Act and the same has been entered under category 6(2) which does not adversely effect any right pertained to petitioner.

5. Precise query has been made before learned counsel for the petitioner that is there any proceedings which has been initiated by the revenue authorities with regard to dispossession, change of entry or any other motion initiated against the petitioner, the same has been replied that no such proceedings has ever been initiated by any of the revenue authorities against the petitioner.

6. Per contra, learned Standing Counsel vehemently opposed the prayer made in the writ petition and rebutted the stand taken by learned counsel for the petitioner stating that no any adverse effect has been shown by learned counsel for the petitioner while assailing the order passed by respondents no. 2 and 3. However, petitioner is also entitled to get the same benefit by way of filing fresh application under Section 123 before respondent no. 4, if so instructed.

7. In case, the above mentioned application may be preferred by the petitioner, respondent no. 4 is hereby directed to consider the same in respect of condonation of delay since considerable period has already passed while challenging the order passed by respondent no. 4 which impugned the present writ petition along with the revisional order dated 21.09.2015, although it does not cause any prejudice to the petitioner.

8. The writ petition stands disposed of in terms of the directions made above.

Order Date :- 7.11.2023

P.Sri.