

Court No. - 49

Case :- WRIT - B No. - 2773 of 2023

Petitioner :- Vinod Kumar

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

Counsel for Petitioner :- Brajesh Shukla

Counsel for Respondent :- C.S.C., Arun Kumar Pandey, Brijesh Ojha

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Sri Brajesh Shukla, learned counsel for the petitioner, Sri Arunesh Singh, learned standing counsel for the State-respondent nos. 1 to 3, Sri Brijesh Ojha, learned counsel for the respondent no. 5 / Nagar Palika Parishad and Sri Arun Kumar Pandey, learned counsel appearing on behalf of the respondent no. 4 / Gaon Sabha.

2. By means of the present writ petition, the petitioner has prayed for a writ in the nature of mandamus directing the learned Board of Revenue (respondent no. 2) to decide the stay application filed by the petitioner along with a Second Appeal No. 1050 of 2021 (Muniraj & others Vs. State of U.P.), within a stipulated period fixed.

3. The submission of learned counsel for the petitioner is that the petitioner has preferred an appeal challenging the judgment and order dated 12.1.2021 passed by the Additional Commissioner (Administration), Moradabad Division, Moradabad, before the learned Board of Revenue.

4. The Learned Board of Revenue vide order dated 3.9.2021 summoned the lower court record and posted the case for admission on 28.10.2021 since then the matter is pending for disposal.

5. The contention of the learned counsel for the petitioner is that the appeal filed by the petitioner has already been entertained by the Board of Revenue but no order has been passed on his application for interim relief since 03.09.2021. He further contended that once the statutory appeal has been entertained by the appellate court, it is incumbent upon the appellate court to consider and pass order on the application for interim relief. In support of his contentions, he placed reliance on the judgment passed by Hon'ble Supreme Court in the case of ***Mool Chand Yadav & another Vs. Raza Buland Sugar Co. Ltd. Rampur & others***, reported in ***1982 (3) SCC 484***. The relevant paragraph of the said judgment is reproduced below:

"..... But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. Moreso, when appeal is admitted. Previous history of litigation cannot be overlooked."

6. Learned counsel for the petitioner has also drawn the attention of this Court to the order passed by Coordinate Bench of this Court on the same subject matter,

reported in **2007 (102) RD 498 (Ali Sher Vs. State of U.P. through Collector Bijnor & others)**.

7. The extract of the paragraph 5 of the said judgment is quoted below:

"It is well settled that once an appeal or revision is entertained by a higher Court against an order having civil consequences stay normally should be granted to avoid swinging pendulum unless the Court for the reasons to be recorded finds that there is no case for grant of stay as observed by the Hon'ble Apex Court in the case of Mool Chand v. Raza Buland Sugar Industries."

8. Per contra, learned standing counsel for the State submits that during pendency of the appeal, vide order dated 6.7.2022 passed by the District Magistrate, Amroha, the land in question has been resumed by the State Government for the purpose of construction of a building for Soldier Welfare and Rehabilitation Department.

9. The learned counsel appearing on behalf of the petitioner has informed this Court that the aforementioned Second Appeal No. SA/1050/2021 filed by the petitioner, before the Board of Revenue, U.P. at Allahabad is next fixed for 06.11.2023.

10. Considering the above-mentioned facts and circumstances, without advertng on the merits of the case; with the consent of the learned counsel for the parties, this Court deems it proper to dispose of this writ petition at this sage with a direction to the learned Board of Revenue (respondent no. 2) to consider and pass appropriate orders in accordance with law, on the application for interim relief filed along with the aforementioned second appeal which is pending for adjudication before it since 03.09.2021; on the next date already fixed i.e. 6.11.2023 or within the maximum period of one month, whichever is earlier.

11. It is made clear that this order has been passed without entering into the merits of the case, this Court hope and trust that the learned Board of Revenue (respondent no. 2) shall pass order on the merits of the case, strictly in accordance with law, by a reasoned and speaking order, expeditiously.

12. With these observations and directions, the writ petition is **disposed of**.

Order Date :- 13.10.2023

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