

Court No. - 51

Case :- WRIT - C No. - 27027 of 2023

Petitioner :- Shri Thakur Ji Maharaj Birajman Sri Balikarneshwar Utthan Samiti

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava, Abhinav Tripathi, Preetam Yadav, Rahul Mehrotra

Counsel for Respondent :- C.S.C., Krishna Kant Singh, Preetam Yadav, Rahul Mehrotra

Hon'ble Chandra Kumar Rai, J.

1. Vakalatnama filed by Mr. Anshu Chaudhary, Advocate on behalf of the proposed respondent, is taken on record.

2. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Abhinav Tripathi, learned counsel for the petitioner, Mr. O.P. Sharma, learned Additional Chief Standing Counsel for the State-respondents, Mr. Krishna Kant Singh, learned counsel for respondent no.5- Gaon Sabha and Mr. Anshu Chaudhary, learned counsel for the proposed respondent.

3. The instant petition has been filed for quashing the impugned order dated 22.2.2023 passed by respondent no.2 as well as for mandamus as prayed in the writ petition.

4. On 22.8.2023 following order was passed by this Court:

"1. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Abhinav Tripathi, Counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Krishna Kant Singh for respondent no.5, Gaon Sabha.

2. Learned Senior Counsel for the petitioner submitted that petitioner was recorded in the proceeding under Section 34 of the U.P. Land Revenue Act vide order dated 16.4.1979 which has attained finality. He further submitted that proceeding under Section 38 has been initiated in arbitrary manner and the order dated 8.2.2023 has been passed against the petitioner. He further submitted that appeal under Section 38 (4) has been filed at the instance of the petitioner and operation of the order dated 8.2.2023 stayed. He submitted that District Magistrate has appointed receiver in respect to the property in dispute in arbitrary manner and the order has been incorporated in the khatauni although the copy of the order has not been provided to petitioner in spite of the efforts made by the petitioner. He further submitted that District Magistrate has no power to appoint receiver in the miscellaneous proceeding.

3. In view of the arguments advanced by learned Senior Counsel for the petitioner, learned Additional Chief Standing Counsel for the State-respondents is directed to obtain instruction to the effect that in what capacity and under what provision District Magistrate has appointed the receiver in

respect to the property in dispute.

4. List/ put up this matter as fresh on 12.9.2023.

5. Till the next date of listing, the effect and operation of the order of District Magistrate dated 22.2.2023 appointing receiver in respect to the property in dispute shall remain stayed."

5. On 20.9.2023 following order was passed by this Court:

"1. In pursuance of the order of this court dated 22.8.2023, instruction dated 2.9.2023 has been placed before the Court by learned Standing Counsel for the State-respondents which is taken on record.

2. In the instruction dated 2.9.2023, it is mentioned that order dated 22.2.2023 passed by District Magistrate, appointing receiver has been withdrawn by the authorities, as such, no cause of action survives in the matter.

3. On the other hand, Mr. R.C. Singh, learned Senior Counsel submitted that still the cause of action survives in the matter.

4. Learned Counsel for the petitioner is granted two weeks time to file reply to the facts mentioned in the instruction as well as address the Court regarding further relief in the matter as the impugned order dated 22.2.2023 has been withdrawn by the authorities.

5. Put up this matter as fresh on 10.10.2023.

6. Interim order granted on 22.8.2023 is extended till the next date of listing."

6. In view of withdrawal of the order impugned dated 22.2.2023 passed by the District Magistrate, Etah, no further cause of action survives in the matter.

7. The writ petition is accordingly, ***disposed of finally.***

Order Date :- 28.11.2023

Rameez