

Court No. - 51

Case :- WRIT - C No. - 27574 of 2023

Petitioner :- Smt Anara Devi

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

Counsel for Petitioner :- Om Prakash Shukla, Amar Jeet

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant writ petition has been filed against the order dated 18.04.2022 passed by Tehsildar under Section 26 of the U.P. Revenue Code, 2006.

3. Stamp reporter has reported the laches of 388 days in filing the instant petition, which has been explained by the petitioner in paragraph Nos. 43 and 45 of the writ petition.

4. Learned counsel for the petitioner submitted that impugned order has been passed in illegal and arbitrary manner by the Tehsildar. He further submitted that case of the petitioner has not been considered at all and it has been held that passage is not blocked in any manner. He further submitted that impugned order will amount to not affording the reasonable opportunity of hearing to the petitioner, as such alternative remedy as provided under Section 27 of U.P. Revenue Code, 2006 will not come in the way of the petitioner to challenge the impugned order under Article 226 of the Constitution of India.

5. Mr. Abhishek Shukla, learned Additional Chief Standing

Counsel for the State-respondents submitted that proceeding under Section 26 of the U.P. Revenue Code was initiated and registered at the instance of the petitioner on the basis of the order passed by Division Bench of this Court on 05.08.2021 and after proper notice to the parties, the impugned order has been passed as such the writ petition is not maintainable as against the impugned order dated 18.04.2022 passed by Tehsildar under Section 26 of U.P. Revenue Code, 2006 remedy of revision under Section-27 of U.P. Revenue code is available to the petitioner, as such writ petition is liable to be dismissed on the ground of alternative remedy. He further submitted that civil suit filed by the petitioner is also pending before the civil court in respect to the plot in question as such the instant proceeding cannot be initiated. He further placed the reliance upon the judgment passed by this Court in **Writ-C No.29756 of 2019 (Hori Lal vs. State of U.P.) reported in 2019 (145)RD 857** in order to demonstrate that order impugned cannot be challenged under Article 226 of the Constitution of India.

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

7. In order to appreciate the controversy of the case, perusal of Section 26 and 27 of U.P. Revenue Code, 2006 will be relevant, which are as under:

"26 Removal of obstacle. - If the Tahsildar finds that any obstacle impedes the free use of a public road, path or common land of a village or obstructs the road or water course or source of water, he may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed.

27 Revisional powers of Sub-Divisional Officer.- The Sub-Divisional Officer may call for the record of any case decided by the Tahsildar under section 25 or 26, for the purpose of satisfying himself as to the legality or propriety of such decision,

and may, after affording opportunity of hearing to the parties concerned, pass such orders as he thinks fit:

Provided that no application under this section shall be entertained after the expiry of a period of thirty days from the date of the order sought to be revised."

8. In view of the provisions contained under Sections 26 and 27 of the U.P. Revenue Code, 2006 order impugned is revisable before the Sub Divisional Officer, as such the writ petition under Article 226 of the Constitution of India cannot be maintained.

9. In view of the alternative remedy, the writ petition is dismissed giving liberty to the petitioner to file revision under Section 27 of the U.P. Revenue Code, 2006 within a period of three weeks from today which shall be considered and disposed of by the Sub Divisional Officer, Phoolpur, District-Prayagraj on merit taking liberal view on delay condonation matter, expeditiously preferably within a period of three months from the date of filing of the revision along with the certified copy of this order after affording opportunity of hearing to the parties.

Order Date :- 28.10.2023

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