

Court No. - 40

Case :- WRIT - C No. - 28830 of 2023

Petitioner :- Dayashankar And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ashwini Kumar, Ganesh Shanker Srivastava

Counsel for Respondent :- C.S.C

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioners and Shri Sharad Chandra Upadhyay, learned Standing Counsel for State respondents.

2. Present writ petition has been preferred for following reliefs:-

"A. Issue a writ, order or direction in the nature of mandamus directing the respondents to restore the position of construction situated at Arazi No.210 Mauja Akhari, Pargana Kaswar Raja, Thsil Sadar, District Varanasi, anti (i.e. on 25.2.2023).

B. Issue a writ, order or direction in the nature of mandamus directing the respondents to pay compensation in addition to restore the position of construction situated at Arazi No.210 Mauja Akhari, Pargana Kaswar Raja, Tehsil Sadar, District Varanasi."

3. At the very outset, learned Standing Counsel has raised an objection regarding the maintainability of the writ petition on the ground that entire action has been taken in view of the order dated 20.1.2022 under Section 67 of the U.P. Revenue Code, 2006 (in short "the Code"). Without challenging the said order, the relief as has been asked for cannot be accorded under writ jurisdiction. Moreover, the order dated 20.1.2022 is appellable under Section 67 (3) of the Code. Once alternative remedy is available, there is no reason or occasion to byepass the same and as such the writ petition is liable to be dismissed.

4. Considering the facts and circumstances of the case, once we have declined to entertain the writ petition, learned counsel for the petitioner states that leave may be accorded to the petitioner to press the appeal under Section 67 (3) of the Code.

5. In view of above, it is observed that in case the petitioner prefers said appeal within two weeks, the same shall be considered and decided on merits.

6. The writ petition stands **disposed of** accordingly.

Order Date :- 13.10.2023

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