

Court No. - 52

Case :- WRIT - C No. - 29902 of 2022

Petitioner :- Dharmdeo (Dead) And 18 Others

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Bhola Nath Yadav, Vinod Kumar Yadav

Counsel for Respondent :- CSC, Rameshwar Prasad Shukla

Hon'ble Saurabh Srivastava,J.

1. Heard learned counsel for the parties and perused the record.
2. Petitioners preferred appeal under Section 331 of U.P.Z.A. & L.R. Act which was registered as Appeal No. 24 of 1991-92. The said appeal was dismissed due to non prosecution on dated 11.08.1998. For restoration of the order dated 11.08.1998, petitioners preferred Restoration Application with Delay Condonation Application on dated 11.05.2006 which was also dismissed in default on dated 26.07.2007.
3. For seeking restoration of the order dated 26.07.2007, a detailed Restoration Application along with Delay Condonation Application was preferred on dated 15.10.2009 which was dismissed vide order dated 03.09.2012 passed by Board of Revenue. Thereafter, after a gap of ten years, an application for restoration of the order dated 03.09.2012 has been preferred on dated 17.01.2022 and the same has been allowed by Board of Revenue, respondent no. 2, on dated 09.05.2022, but the original order passed on dated 11.08.1998, through which Second Appeal was dismissed due to non prosecution, was negated while considering the application dated 11.05.2006 by way of passing the order dated 30.08.2022, which is impugned in the present petition.
4. Learned counsel for the petitioner raised his arguments that once the subsequent restoration application along with delay condonation application has already been decided in favour of the petitioner although with the cost of Rs. 3,000/-, for adjudication of the controversy, which is pending at the level of second appeal, on merits, the petitioners may be given last opportunity for substantiating their claim in the shape of Second Appeal No. 24 of 1991-92 under Section 331 of U.P.Z.A. & L.R. Act.
5. Sri Vijay Bhan Singh, Advocate, holding brief of Sri Rameshwar Prasad Shukla, learned counsel for the Gaon Sabha as well as Sri Prabhakar Tripathi, learned counsel appearing for respondents no. 1 to 3 vehemently opposed the prayer made in the writ petition as well as rebutted the stand taken by learned counsel for the petitioners.

6. After hearing rival submissions extended by learned counsel for the parties, one thing is crystal clear that the matter has never been decided on merits and once the ancillary restoration application has already been allowed by respondent no. 2, that will be of no use if the original order, by which entire second appeal has been dismissed due to non prosecution, is not negated.

7. Considering the gravity and merits of the matter, as a last opportunity, order dated 30.08.2022 is hereby set aside and the matter is remitted back to respondent no. 2 for deciding Second Appeal No. 24 of 1991-92 on merits without extending any adjournment at the behest of the petitioners, as expeditiously as possible, preferably within a period of six months from the date of production of a certified copy of this order, by way of affording proper opportunity of hearing to all concerned.

8. The writ petition stands allowed.

9. During the pendency of the second appeal, both the parties are directed to maintain status quo.

Order Date :- 31.10.2023

P.Sri.