

Court No. - 52

Case :- WRIT - C No. - 28990 of 2023

Petitioner :- Sandeep

Respondent :- State Of U.P. And 14 Others

Counsel for Petitioner :- B.B.Rai

Counsel for Respondent :- C.S.C,Rameshwar Prasad
Shukla,Sunil Kumar Singh

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Brij Bhushan Rai, learned counsel for petitioner and Sri Shashi Kant Kushwaha, learned Standing counsel appearing for respondent no. 1 to 4 and Sri Sunil Singh, learned counsel for proposed respondents.

2. Present petition has been filed seeking following reliefs:

"i. Issue a writ, order or direction in the nature of certiorari call for record of the case and quash the impugned order dated 21.04.2018 as well as 23.05.2023 passed by respondent no. 3 (Sub Divisional Magistrate, Tehsil Sikandarpur, District Ballia).

ii. Issue a writ, order or direction in the nature of Mandamus commanding the respondent no. 2 (District Magistrate, District Ballia) to direct the respondent no. 3 (Sub Divisional Magistrate, Tehsil Sikandarpur, District Ballia), for giving the opportunity to the petitioner and has passed the order in presence of all parties."

3. It is the case of the petitioner that name of his father has been already existing in the revenue record against plot no. 50/1 and 50/2 situated at village Sikandarpur, Tehsil Sikandarpur, District Ballia, as bhumidhar with transferable right but later on when the father of the petitioner died in the year 2015 in spite of entering the name of legal heirs of father of the petitioner, the plot no. 50/1 and 50/2 has been entered against the 'pond' in 2018.

4. Being aggrieved with the above mentioned action taken by the responding authorities, petitioner preferred restoration application on dated 26.04.2019 but the same has been decided only on the ground of limitation and no merit has ever been decided as mentioned by the petitioner while preferring the restoration application.

5. Per contra, Sri Shashi Kant Kushwaha, learned Standing counsel as well as Sri Sunil Singh, learned counsel for proposed respondents although opposed the prayer made in the petition but at the same time showed their agreement that the matter has never been adjudicated upon the restoration application preferred by the petitioner on merits. Sri Sunil Singh also submitted that the petitioner is having alternative remedy.

6. Considering the core issue which is espousing cause of action for filing the present petition that name of the father of the petitioner was already entered in the revenue record but under which circumstances the same has been scored out and entered against pond after the death of the father of the petitioner and as such the legitimate right incurred in favour of the petitioner has been denied only on the ground of limitation.

7. In view of the aforementioned facts and circumstances, order dated 21.04.2018 as well as 23.05.2023 passed by respondent no. 3 is set aside. Respondent no. 3 is hereby directed to decide the restoration application preferred by the petitioner on dated 26.04.2019 on merits.

8. The above mentioned exercise shall be completed as expeditiously as possible preferably within a period of 3 months from the date of production of certified copy of this order by way of affording proper opportunity of hearing to all concerned.

9. Writ petition stands ***allowed*** accordingly.

Order Date :- 30.10.2023

Shaswat