

Court No. - 48

Case :- WRIT - B No. - 3099 of 2023

Petitioner :- Wazid Husain

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

Counsel for Petitioner :- Zafeer Ahmad

Counsel for Respondent :- C.S.C.,Brajesh Shukla

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Zafeer Ahmad, learned counsel for petitioner and Sri Brijesh Shukla, Advocate for contesting-respondent.
2. Petitioner is aggrieved that contesting-respondent has simultaneously taken two remedies. He has filed a restoration application to recall the order passed by Settlement Officer of Consolidation as well as filed a substantive revision against said order. It is not in dispute that revision was dismissed being not pressed whereas restoration application was allowed and order passed by Settlement Officer of Consolidation was recalled and was placed for hearing of both parties.
3. It is further pointed out that later on petitioner filed a restoration application before Settlement Officer of Consolidation that has been allowed and consequently restoration application filed by contesting-respondent is now posted for hearing.
4. Since petitioner was still aggrieved with regard to issue of maintainability of restoration application, he has approached Revisional Authority but by means of impugned order dated 25.07.2023 revision was dismissed on the ground that restoration application filed by contesting-respondent is still to be heard.
5. I have perused the order dated 01.02.2023 passed by Settlement Officer of Consolidation whereby objection raised by petitioner

with regard to maintainability of restoration application filed by contesting-respondent was rejected. The said authority has noted that revision filed by contesting-respondent was dismissed being not pressed which could not be considered to be an order passed on merit.

6. A petition which has been withdrawn being not pressed is considered to be an application on which no order on merit was passed and it would not be a factor to be considered as res judicata so much as not to consider the restoration application filed before Settlement Officer of Consolidation. I, therefore, find no illegality in the orders passed by Settlement Officer of Consolidation as well as Deputy Director of Consolidation.

7. Since restoration application filed by contesting-respondent is to be heard on merit, therefore, this writ petition is disposed of with direction to Settlement Officer of Consolidation to decide restoration application on merit after hearing both parties, expeditiously, preferably within a period of three months from today, taking note of judgment passed by this Court in **Smt. Sivraji and others vs. Dy. Director of Consolidation, Allahabad and others, 1997 SCC OnLine All 505.**

Order Date :- 18.10.2023

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