

Court No. - 49

Case :- WRIT - B No. - 3116 of 2023

Petitioner :- Smt. Nisha And 2 Others

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

Counsel for Petitioner :- Santosh Kumar Upadhyay, Vinod Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Sri Vinod Kumar Upadhyay, learned counsel for the petitioners, Sri Awadhesh Kumar Patel, learned Standing Counsel for the State-respondents No. 1 to 3.

2. The present writ petition has been filed seeking writ in the nature of certiorari quashing the impugned orders dated 17.07.2023 and 19.07.2023 passed by the Board of Revenue, U.P., Prayagraj/respondent no. 2 in Revision No. 2687 of 2022 (Smt. Nisha and others vs. Collector Saharanpur and others).

3. The contention of learned counsel for the petitioners is that the order passed by respondent no. 2 is arbitrary and has been passed without application of mind, as it has ignored the fact that the counsel for caveator/opposite party in the revision, were already appeared in the proceedings and argued the matter on merit and the revision was heard on admission as well as stay application but the learned Board of Revenue in the most mechanical manner issued notice to the caveator and did not consider the prayer made in the stay application or revision on merits.

4. Learned counsel for the petitioners further submits that respondent no. 2 has completely failed to consider and appreciate the fact that the allotment was made in favour of the petitioners on 07.12.1991 and the application on behalf of a non-aggrieved person that too after 31 years, was not maintainable. Moreover, the application filed by private-respondent under Section 128 (1) of the U.P. Revenue Code, 2006 was barred by the principles of *res-judicata*. He further submits that he has already filed an application for stay dated 24.8.2022 along with the revision, which is pending for orders.

5. After arguing the matter at some length, learned counsel for the

petitioners submitted that, at this stage, he confines his prayer to the extent that this Court may issue a direction to respondent No. 2 to pass appropriate orders on the above mentioned stay application dated 24.8.2022 on the next date fixed by taking into consideration the seriousness of the matter and the prayer made in the said application.

6. Learned Standing counsel has raised objections regarding the maintainability of the writ petition. He further submits that he has no objection to the extent that a direction is issued to respondent No. 2 to pass appropriate order on the pending stay application dated 24.8.2022 in accordance with law, on the next date fixed.

7. In view of the nature of order proposed to be passed, the service of notice upon the respondent No. 4 is dispensed with.

8. Heard the rival contentions of the parties and after taking into consideration the factual matrix of the case, this Court is of the view that since the Board of Revenue is already seized with the matter and the revision is fixed for admission on 20.11.2023, no useful purpose would be served to keep the writ petition pending.

9. Accordingly, without advertent on the merit of the case, this court directs the learned Board of Revenue, U.P. Prayagraj (respondent No. 2) to pass appropriate orders on the aforesaid stay application dated 24.8.2022 filed in Revision No. 2687 of 2022 (annexed as annexure No. 7 to the writ petition) on merit, on the next date already fixed in the matter i.e. 20.11.2023 or within a maximum period of one month thereafter, strictly in accordance with law.

10. The petition is **disposed of** accordingly.

Order Date :- 31.10.2023

Anjali