

Court No. - 52

Case :- WRIT - C No. - 33000 of 2022

Petitioner :- Shravan Kumar Singh

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

Counsel for Petitioner :- Ashutosh Kumar Pandey, Sarvesh Chaturvedi

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Srivastava, J.

In Re: Civil Misc. Amendment Application no. 4 of 2023.

Heard learned counsel for parties.

Cause shown for filing amendment application has been sufficiently explained.

Amendment application is ***allowed***.

Necessary incorporation shall be carried out by learned counsel for petitioner during course of the day.

Order on petition.

1. Heard Sri Ashutosh Kumar Pandey learned counsel for the petitioner and learned Standing Counsel for respondent Nos.1 to 4 and Sri Bhupendra Kumar Tripathi, learned counsel for respondent No.5.

2. The petitioner has preferred the present writ petition with the prayer to quash the order dated 27.04.2022 passed by respondent No.3/Sub Divisional Officer, Pt. Deen Dayal Upadhyay Nagar, District Chandauli.

3. Learned Standing Counsel raised a preliminary objection that against the aforesaid order, the petitioner has an alternative remedy for filing appeal as provided under Sub Section (4) of Section 38 of the U.P. Land Revenue Code, 2006.

4. In response to the same, learned counsel for the petitioner placed upon a judgement of Hon'ble Supreme Court passed in the case of ***Dr. Smt. Kunesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others*** reported in ***1987 AIR 2186***.

5. On the basis of the aforesaid judgement, it is argued by learned counsel for the petitioner that alternative remedy is no absolute bar to the maintainability of the writ petition when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the

Constitution of India on the ground of existence of alternative remedy.

6. Facts in brief as contained in the writ petition are that the petitioner is a resident of Village Muhammadpur, Pargana Dhoos, Tehsil Pt. Deen Dayal Upadhyay Nagar (Mugalsarai), District-Chandauli (U.P.). It is stated in paragraph 5 of the writ petition is that the Araji No. 84 Area 0.045 hectare and Araji No. 115 Area 2.824 hectare were recorded as private pond in revenue record of Village Sarane, Pargana Dhoos, Tahsil Pt. Deen Dayal Upadhyay Nagar (Mugalsarai), District-Chandauli (U.P.), which belong to the petitioner and other co-sharer. A report was submitted by the Revenue Inspector regarding Araji No.84 and 115 to cancel the name of the petitioner and other co-sharer from the revenue records on 01.04.2022. On the basis of the aforesaid report, a Case No.3228 of 2022 (Radheshyam and others Vs. State of U.P.) was registered before the Court of respondent No.3/Sub Divisional Magistrate Pt. Deen Dayal Upadhyay Nagar, District Chandauli under Sub Section (1) of Section 38 of U.P. Land Revenue Code, 2006. In the aforesaid case, the deceased father of petitioner was shown as complainant while no application in the shape of complaint has been ever made by the petitioner. It is stated in paragraph 8 of the writ petition that the petitioner and other co-sharer was never served any notice to appear. The grievance of the petitioner is that in the aforesaid case only three dates were fixed and thereafter a final decision has been taken in the matter on 27.04.2022 by which direction was given to cancel the names of the petitioner and other co-sharer from the arazi in questions.

7. It is argued by learned counsel for the petitioner that the order dated 27.04.2022 has been passed without providing any notice or opportunity of hearing to the petitioner. It is further argued that Araji Nos.84 and 115 were private ponds and belongs to the petitioner and other co-sharer and they maintained the aforesaid pond till date. It is further argued that the order impugned has been passed in gross violation of the fundamental rights guaranteed under Article 14 and 21 of the Constitution of India, therefore, the order impugned is liable to be set aside.

8. On the other hand, it is argued by learned counsel for the respondents that since alternative remedy of appeal is available to the petitioner, therefore, the petitioner should avail the aforesaid remedy and file appeal against the aforesaid order.

9. Heard learned counsel for the parties and perused the record.

10. From perusal of the record, it is clear that the proceedings were initiated under Sub Section (1) of Section 38 of the U.P. Land Revenue Code, 2006 against the petitioner. In the aforesaid proceedings, total four dates were fixed, i.e., 04.04.2022, 12.04.2022, 19.04.2022 and 27.04.2022, Following orders were passed on the aforesaid dates:-

"04.04.2022

"वाद दर्ज। पत्रावली विचारण हेतु न्यायालय उपजिलाधिकारी न्यायिक में स्थानान्तरण किया जाता है। पत्रावली

दिनांक 12.04.2022 को पेश हो।

12.04.2022

आज पत्रावली स्थानान्तरित होकर प्रस्तुत पत्रावली वास्तें दिनांक 19.04.2022 को पेश हो।

19.04.2022

आज पत्रावली प्रस्तुत। पत्रावली का अवलोकन किया गया। पत्रावली वास्तें आदेश हेतु दिनांक 27.04.2022 को पेश हो।"

11. From perusal of the same, this Court is of the opinion that the procedure as prescribed under the U.P. Land Revenue Code, 2006 read with U.P. Land Revenue Code Rules, 2016 have not at all been complied with and at no point of time any opportunity of hearing was provided nor any notice had been given to the petitioner.

12. Insofar the objection regarding alternative is concerned, the Hon'ble Supreme Court passed in the case of **Dr. Smt. Kunesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others (supra)** held that the alternative remedy would not bar the maintainability of a writ petition. The relevant portion of the aforesaid judgement is reproduced below:-

"It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 of the Constitution on the ground of existence of an alternative remedy."

13. The Hon'ble Apex Court in **Civil Appeal No.5728 of 2021 (M/s Magadh Sugar & Energy Ltd. Vs. The State of Bihar & Ors)** decided on 24.09.2021 held that existence of alternative remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. The paragraph No.19 of the aforesaid judgement are reproduced hereinbelow :-

*"19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in Whirlpool Corporation v. Registrar of Trademarks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahni v. Indian Oil Corporation Ltd (2003) 2 SCC 107. Recently, in **Radha Krishan Industries v. State of Himachal Pradesh & Ors (2021) SCC Online SC 334** a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:*

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for

the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and (1998) 8 SCC 1 (2003) 2 SCC 107 2021 SCC OnLine SC 334.

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with." (emphasis supplied)."

14. In view of the aforesaid discussions, the Court is of the opinion that although the petitioner has an alternative remedy but since the order impugned has been passed without providing any opportunity of hearing and notice and in violation of the principles of natural justices, the order impugned dated 27.04.2022 is liable to be set aside, the same is hereby set aside.

15. The respondent No.3/Sub Divisional Magistrate, Pt. Deen Dayal Upadhyay Nagar (Mugalsarai), District Chandauli. is directed to pass fresh order strictly in accordance with law and after providing opportunity of hearing to all the parties concerned, if so advice.

16. With the aforesaid observations, present writ petition is ***allowed***.

Order Date :- 16.10.2023

Shaswat