

Court No. - 49

Case :- WRIT - B No. - 3331 of 2023

Petitioner :- Dilshad And 3 Others

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

Counsel for Petitioner :- Rohit Kumar Singh, Surendra Kumar Sharma

Counsel for Respondent :- C.S.C., Kaushal Kishore Mani

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Supplementary affidavit dated 15.11.2023 filed by the petitioners today in the Court, is taken on record.
2. Heard Sri Rohit Kumar Singh, learned counsel for the petitioners and Sri Jitendra Narain Rai, learned Additional Chief Standing Counsel for the State-respondents no.1 to 3.
3. Notice on behalf of respondent no.4-Land Management Committee has been accepted by Sri Kaushal Kishore Mani.
4. The contention of the learned counsel for the petitioners is that the petitioners no.1 & 2 were allotted land of plots bearing No.968/2 and the petitioners no.3 & 4 were allotted the land of plots bearing No.968/5 by the Land Management Committee and their names were recorded in श्रेणी-3. He submits that the proceedings for conversion of the same as *Asankramniya Bhumidhar* is under process since 1999. The Sub Divisional Officer, Tehsil Behat, District Saharanpur, cancelled the aforesaid allotment by an ex-parte order dated 21.12.2017. Against the said order, the petitioners preferred a revision before the learned Board of Revenue (respondent no.2) under Section 210 of the U.P. Revenue Code, 2006, along with an application for interim relief.

5. Learned counsel for the petitioners further contends that the learned Board of Revenue vide order dated 11.05.2023 rejected the application of the petitioners for interim relief on the very first date even without summoning and perusing the records and fixed the case for hearing. He submits that the order under challenge before the learned Board of Revenue is an ex-parte order. He relied upon the judgment passed by the Hon'ble Apex Court in the case of **Mool Chand Yadav & another Vs. Raza Buland Sugar Co. Ltd. Rampur & others**, reported in 1982 (3) SCC 484, wherein it has been held that:

"..... But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. Moreso, when appeal is admitted. Previous history of litigation cannot be overlooked."

6. This Court in the case of **Ali Sher Vs. State of U.P. through Collector Bijnor & others**; reported in 2007 (102) RD 498, has held as under:

"It is well settled that once an appeal or revision is entertained by a higher Court against an order having civil consequences stay normally should be granted to avoid swinging pendulum unless the Court for the reasons to be recorded finds that there is no case for grant of stay as observed by the Hon'ble Apex Court in the case of Mool Chand v. Raza Buland Sugar Industries."

7. Learned counsel for the petitioners submits that since the Revision is already fixed for hearing, he does not want to press the prayer no.1 at this stage and prayed for a liberty to be granted to the petitioners to move a fresh application for interim relief before the learned Board of Revenue in the pending Revision No.870 of 2022.

8. Taking into consideration the facts and circumstances of the case, this Court is of the view that no useful purpose would be served in keeping this writ petition pending.

9. Accordingly, without advertng on merits of the case and with the consent of the parties, this Court deems it appropriate to finally dispose of the present writ petition with liberty to the petitioners to move a fresh application for interim relief in the said Revision No.870 of 2022, within a period of ten days from today.

10. It is provided that in case any such application for interim relief is produced before the learned Board of Revenue within the stipulated period, the same shall be considered and decided by the respondent no.2, by the next date fixed in the matter or within a month thereafter. Till then the 'status quo' as of today in respect of the possession over the land in dispute shall be maintained by the parties.

11. With the aforesaid directions/observations, the present writ petition is **disposed of**.

Order Date :- 23.11.2023
Abhishek Gupta