

Court No. - 46

Case :- WRIT - C No. - 34348 of 2023

Petitioner :- Dharmatma Prasad And Another

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

Counsel for Petitioner :- Devendra Dahma, Vinod Kumar Singh

Counsel for Respondent :- C.S.C., Rajesh Kumar Chitragnpt

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Amendment application filed today in Court is taken on record.

Heard.

Amendment application is allowed.

Petitioners are permitted to carry out necessary amendment, during the course of the day.

Prayer made in the writ petition is to forthwith stop on-going construction of Gata No.361/4 and 361/2, situated in Village Dumariyaganj, Nagar Panchayat Dumariyaganj, District Siddharth Nagar. It is asserted that without any acquisition or consent of the petitioners the authorities are raising construction of a pond.

On instructions, learned State Counsel had produced an order passed by the Sub-Divisional Magistrate concerned dated 18.9.2020, whereby the entry made in favour of the petitioners and their predecessor in interest was expunged on the ground that Plot No.361 measuring 17-16-14 bigha was actually a pond, and at the stage of computerization of revenue records, due to inadvertence the rights of individuals were recognized. It is also the case of the respondents that only the existing pond is being strengthened by the State Authorities.

By way of amendment in the writ petition the order dated 18.9.2020, passed under Section 38(1) of the U.P. Revenue Code, 2006, has been challenged. Section 38 of the U.P. Revenue Code provides for correction of errors and omission in the revenue records. As per the statute an application for correction of any error can be made to the Tehsildar, who would submit its report to the Sub-Divisional Magistrate, and after considering any objection filed and evidence produced, the

concerned authority shall take a decision in the matter. Any person aggrieved by such order of Sub-Divisional Magistrate has the remedy of preferring appeal before the Commissioner. On behalf of respondents, it is therefore submitted that petitioners may challenge the order of Sub-Divisional Magistrate dated 18.9.2020 by filing appeal.

Learned counsel for the petitioners, however, submits that no notice of any kind has been issued to the petitioners and unilateral expunging of revenue entries vide order dated 18.9.2020 is wholly arbitrary. It is also argued that filing of writ petition would not be barred merely because an alternate remedy exists, particularly when principles of natural justice have been violated.

We have perused the order of the Sub-Divisional Magistrate, which refers to report of Tehsildar dated 1.10.2020, as also issuance of notice to the recorded tenure holders. However, the order records that none of the recorded tenure holders have appeared and their version has not been considered.

In the facts of the case, we are of the opinion that ends of justice would be met if an opportunity of post decisional hearing is given to the petitioners in respect of order dated 18.9.2020.

In such view of the matter, this writ petition stands disposed of with liberty reserved to the petitioners to represent against the order dated 18.9.2020, before the Sub-Divisional Magistrate, annexing all relevant materials in support of their claim, alongwith a certified copy of this order, within two weeks from today. The concerned Sub-Divisional Magistrate shall summon the original records and after considering the objection of the petitioners, shall pass necessary orders, in accordance with law, within a further period of six weeks, thereafter.

The order dated 18.9.2020 shall abide by the orders to be passed by the Sub-Divisional Magistrate in terms of above direction. The authorities shall be at liberty to proceed with beautification of the pond but no permanent construction would be raised till the disposal of petitioners' representation, in terms of the above direction.

Order Date :- 28.11.2023

Anil