

Court No. - 52

Case :- WRIT - C No. - 35059 of 2023

Petitioner :- Ali Azahar

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Kailash Nath Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Supplementary affidavit, filed today in the Court, is taken on record.
2. Heard Sri K.N. Singh, learned counsel for the petitioner and Sri Prabhakar Tripathi, learned Standing counsel appearing for State-respondents.
3. It is the case of the petitioner that on the application preferred by respondents no. 3 to 8 under Section 38(1) of U.P. Revenue Code, 2006, respondent no. 2 on the basis of report submitted by concerned Tehsildar passed order dated 25.11.2019, which has impugned the present petition.
4. The precise ground taken by learned counsel for the petitioner for challenging the order dated 25.11.2019 is that the order contains direction for entering the name in the revenue record of those persons, who have already expired, and, as such, the order is not sustainable in the eyes of law.
5. Per contra, learned Standing Counsel vehemently opposed the prayer made in the writ petition as well as rebutted the stand taken by learned counsel for the petitioner on the ground of availability of alternative remedy under Section 38(4) of U.P. Revenue Code, 2006.
6. On precise query made before learned counsel for the petitioner that any appeal or any application seeking interim relief has been preferred or not, he fairly admitted that no appeal has been preferred for challenging the order dated 25.11.2019 whereas a declaratory suit under Section 144 of U.P. Revenue Code, 2006 has already been preferred by the petitioner wherein all the shareholders of plot no. 276 measuring area 0.053 hectares have been arrayed as opposite parties wherein order dated 06.07.2023 has

been passed by respondent no. 2 restraining the opposite parties from raising any new construction over property in dispute.

7. Learned counsel for petitioner further submitted that the instant petition has been preferred for challenging the order dated 25.11.2019 passed by respondent no. 2 as well as seeking a direction to the parties to maintain status quo and not to create third party interest against the property which is disputed under Section 144 before respondent no. 2.

8. It is crystal clear that petitioner is having an alternative remedy of challenging the order dated 25.11.2019 along with the application seeking interim relief, whatsoever is applicable and feasible for restoration of his legal rights before the authority concerned. Once the interim protection has already been granted by respondent no. 2 in favour of the petitioner by way of directing private respondents not to raise any new construction over the property in dispute, there is hardly any occasion arises for this Court to believe that no interim relief shall be granted by the appellate authority and even if otherwise, petitioner will not be remediless for protection of his rights.

9. The writ petition is hereby disposed of in terms of the observations made above.

Order Date :- 17.11.2023

P.Sri.