

Court No. - 52

Case :- WRIT - C No. - 37446 of 2023

Petitioner :- Neha Devi And Another

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Saroj Kumar Pandey

Counsel for Respondent :- CSC,Shibli Naseem

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Saroj Kumar Pandey, learned counsel for the petitioners, Shri Abhishek Shukla, learned standing counsel appearing on behalf of respondent nos. 1 to 4 and Shri Siraj Ahmad holding brief of Shibli Naseem, learned counsel for respondent no.9.

2. The case of the petitioner is that order dated 21.1.2021 passed by respondent no.4 came into the knowledge of the petitioners only on 20.8.2023 when some persons came on the spot and tried to dispossess the petitioners from the land in dispute, whereas the petitioners were under the impression that they are the recorded tenure holder and their names have already been entered in the revenue record in pursuance to the registered sale deed executed by original tenure holder in their favour. The action of the private respondents rises of cause of action in favour of the petitioners for preferring the instant writ petition under Article 226 of the Constitution of India directly before this court without availing the alternative remedy available to the petitioners under the statutory provisions.

3. Learned Additional Chief Standing Counsel vehemently opposed the prayer as made in the petition and raised his arguments by way of making a prayer before the court for dismissing the same on the ground of availability of alternative remedy to the petitioners. In response to the contention as raised by learned Additional Chief Standing Counsel, learned counsel for the petitioners submitted that since the order which impugned the present petition referred to be appealable before the appellate authority has been passed way back in the year 2021 and if in

case the appeal is preferred by the petitioners, the same shall adversely affecting the rights by way of non-extension of any interim order in their favour and as such the present petition has been instituted for seeking quashing of the order dated 21.01.2021 which has been passed ex-parte completely behind the back of the petitioners alongwith the separate application for seeking interim relief for seeking directions commanding the respondents not to dispossess the petitioners from the land in dispute, not to interfere in peaceful possession over plot no.167/20 area 1.30 acre situated at Village Mavai Khurd, Pargana Mavai, Pandit Deen Dayal Upadhyay Nagar (Mughalsarai) District Chandauli which is at present recorded as pond.

4. Considering the arguments raised by learned counsel for the petitioners, petitioners are directed to avail the remedy available under law by way of filing first appeal under Section 331(3) of U.P.Z.A.&L.R. Act with the specific separate application for seeking interim relief as sought in the present petition. If petitioners prefer the appeal alongwith application for seeking interim relief the application for interim relief shall be decided within a period of one month from the date of its filing alongwith delay condonation application. However, it is made clear that the application for seeking interim relief may not be rejected only on the ground of delay.

6. Writ petition stands **disposed of** accordingly.

7. Shri Saroj Kumar Pandey, learned counsel for the petitioners has given an undertaking over the instructions that he will prefer the appeal within a month from today, considering the undertaking rendered by learned counsel for the petitioners, respondent nos. 1 to 4 are hereby directed not take any coercive action against the petitioners for a period of one month from today.

Order Date :- 20.11.2023

Rakesh