

Court No. - 40

Case :- WRIT - C No. - 36799 of 2023

Petitioner :- Smt. Sangeeta And 4 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rekha Pundir, Ramesh Pundir

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Ramesh Pundir, learned counsel for the petitioners and Shri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The petitioners are before this Court assailing the validity of the order dated 23.03.2022 passed by the Sub-Divisional Magistrate, Kairana, Shamli, whereby, he has rejected the Legal Heir Certificate in favour of the petitioners.

3. Learned counsel for the petitioners in support of his submissions states that under Rule 5 (Correction of any existing entry), Rule 6 (Inclusion of names in the register) and Rule 6-A (to prefer an appeal before the SDO concerned) of the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970 provides the full-fledged mechanism and the legal heirs certificate can be obtained. While passing the order impugned, the SDM, has given a go-bye to the procedure.

4. *Per contra*, Shri Ambrish Shukla, learned ACSC states that no doubt, the order impugned can be challenged on the ground of procedural lapse but the same is to be blamed to the petitioners who themselves approached to the SDM for issuance of a legal heir certificate. He fairly states that as per the procedure prescribed therein, in case, incumbent is inclined to obtain the legal heir certificate, firstly, he has to approach the ADO, Panchayat and thereafter, on the said application, the report is to be submitted by the Secretary, Village Panchayat and thereafter, the application can be processed. He submits that, in case, the court is inclined to remit back to the competent authority for processing the application for the said purpose, he has no objection.

5. Considering the facts and circumstances, we are of the considered opinion that once the procedure is prescribed therein under the scheme in question then, definitely, the same is to be

processed in the light of Rule 5 (Correction of any existing entry), Rule 6 (Inclusion of names in the register) and Rule 6-A (to prefer an appeal before the SDO concerned) of the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970.

6. In the present matter, we find that the entire procedure has been given go by and the authority has passed an order without any jurisdiction. Accordingly, the order dated 23.03.2022 is set aside. The matter is relegated to the ADO, Panchayat who may proceed on the application as per the procedure.

7. Liberty is granted to the petitioners to move an application in accordance with law before the Assistant Development Officer (Panchayat). In case, any such application is filed by the petitioners within three weeks, then the Assistant Development Officer (Panchayat) shall consider the application of the petitioners and after due inquiry, pass an appropriate order, in accordance with law, expeditiously, preferably within next six weeks, after affording reasonable opportunity of hearing to all the parties concerned.

8. With the aforesaid leave, the present writ petition is **partly allowed**.

Order Date :- 13.12.2023
Rama Kant