

Court No. - 52

Case :- WRIT - C No. - 37123 of 2023

Petitioner :- Durga Prasad

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

Counsel for Petitioner :- Prakash Chandra Pathak, Ragini Mishra, Vijay Kumari Pathak

Counsel for Respondent :- CSC

Hon'ble Saurabh Srivastava, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The case of the petitioner is that petitioner and his family members are owner with transferable rights of Gata No. 136 situated in Village Vedmanpur, Asnaw, Tehsil Bhadohi, District Bhadohi. Respondent no. 3 being owner with transferable rights of adjacent plot no. 137, forcibly demolished the demarcation boundary (Mer) and encroached upon the land of the petitioner. Being aggrieved petitioner filed Case No. 3999 of 2020 under Section 24 of U.P. Revenue Code, 2006 in the Court of Sub-Divisional Magistrate, Tehsil Bhadohi, District Bhadohi. Notice was issued to respondent no. 3 who filed objection in the said case on 18.11.2020. Petitioner filed reply to the said objection on 04.11.2022. Thereafter respondent no. 2 passed order dated 28.06.2023 directing the Revenue Inspector and other revenue authorities for demarcation and *Pathar Gaddi* and thereafter for submitting the report. It is said that when said order was passed, the respondent no. 3 was not present before the Court either personally or through counsel. However, as the objection was filed by respondent no. 3, as such, the order was not ex-parte. But only with intention to linger the compliance of the order dated 28.06.2023 respondent no. 3 filed a restoration application on 03.07.2023 under Section 209(Ja) of U.P. Revenue Code, 2006 whereupon respondent no. 2 made the endorsement on 04.07.2023 "Put up with previous papers". On coming to knowledge of this fact, petitioner filed objection on 17.07.2023 regarding maintainability of the restoration application before respondent no. 2 stating that no restoration application is maintainable before respondent no. 2 against the order passed by SDM under Section 24 of Revenue Code and only the appeal lies before the Commissioner. It is said that despite fixation of various dates on the said restoration application, neither the said application nor the objection filed by the petitioner has been decided.

3. Learned Standing Counsel submits that no useful purpose would be served in keeping the writ petition pending and an appropriate direction may be issued to respondent no. 2 for resolution of the grievance of the petitioner.

4. Be that as it may, without entering into the merits of the case as well as if there is no other legal impediment available, the respondent no. 2 is hereby directed to consider and decide the restoration application preferred by respondent no. 3 in Case No. 03999 of 2020 preferred by the petitioner under Section 24 of Code, 2006 after taking into consideration the objection dated 17.07.2023 filed by the petitioner raising objection regarding maintainability of the restoration application before respondent no. 2, as expeditiously as possible, preferably within a period of three months from the date a certified copy of this order is produced before him after affording proper opportunity of hearing to all the concerned parties.

5. With the aforesaid directions, the writ petition is disposed of.

Order Date :- 30.10.2023

P.Sri.