

Court No. - 51

Case :- WRIT - C No. - 37255 of 2023

Petitioner :- Khursheed Ahmad

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Parmeshwar Yadav, Madan Mohan

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant petition has been filed for the following reliefs:

"i. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.3.2023 passed by respondent no.3 (Annexure No.1) and consequential order dated 17.3.2023 passed by respondent no.2 (Annexure No.2).

ii. issue a writ, order or direction in the nature of mandamus directing the respondents to not change nature, possession and title in pursuance of the representation dated 13.11.2021 (Annexure No.17) and representation dated 13.8.2022 (Annexure No.19) submitted by respondent no.6 ignoring the government order dated 16.9.2015 (Annexure No.23) issued by Chief Secretary, Uttar Pradesh Shashan, Lucknow."

3. Learned counsel for the petitioner submitted that the impugned order has been passed in arbitrary manner by the Sub-Divisional Officer, Handia, Prayagraj. He further submitted that the proceedings with respect to the cancellation of the lease alleged to be executed in favour of respondent no.6 is pending before the appellate / revisional Court after decision by the Sub-Divisional Officer, as such, there was no occasion to pass the impugned order dated 15.3.2023/ 17.3.2023. He further submitted that respondent no.6 has no right to change the nature of the plot which is recorded as kabristan in the revenue records. He next submitted that the impugned order cannot be passed by the Sub-Divisional Officer, as such, the same is liable to be set aside.

4. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel submitted that the petitioner has no right to file the instant writ petition. He further submitted that regular proceedings are pending before the Court concerned, as such, no interference is required in respect to the order impugned. He also submitted that the order which is under challenged in the instant petition is actually a report submitted by the authorities, as such, the same cannot be challenged by the petitioner in exercise of jurisdiction under Article 226 of the Constitution of India. He further submitted that regular suit under Section 144 of U.P. Revenue Code, 2006 filed by the petitioner in respect to the plot in dispute has been

dismissed by the Sub-Divisional Officer, as such, the petitioner has no right to file the instant petition before this Court rather he should contest the proceedings of suit under Section 144 of U.P. Revenue Code, 2006 in appeal in accordance with law.

5. In reply, learned counsel for the petitioner submitted that the appeal filed against the judgment of Sub-Divisional Officer under Section 144 of U.P. Revenue Code, 2006 is pending before the Commissioner, as such, the order passed by the Sub-Divisional Officer has not attained finality and petitioner is entitled to the relief claimed in the petition.

6. I have considered the argument advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the proceedings for cancellation of lease of respondent no.6 is pending before the Court concerned and the suit under Section 144 of U.P. Revenue Code, 2006 filed by the petitioner has been dismissed by the trial Court and appeal is pending before the Commissioner.

8. Considering the entire facts relating to the pendency of the revenue proceedings before the revenue Court, no interference is required in the matter at the instance of the petitioner.

9. The writ petition is misconceived and ***dismissed accordingly.***

Order Date :- 2.12.2023

Rameez