

Court No. - 52

Case :- WRIT - C No. - 37537 of 2023

Petitioner :- Dinesh Kumar And 7 Others

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

Counsel for Petitioner :- Manoj Kumar Yadav

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Manoj Kumar Yadav, learned counsel for petitioners and Sri Prabhakar Tripathi, learned Standing counsel for State respondents.

2. Present petition has been filed seeking following reliefs:

"i) to issue a writ, order or direction in the nature of certiorari quashing the impugned illegal unconstitutional and arbitrary resumption order dated 02.07.2022 (Annexure no. 05 to the writ petition) passed by the respondent no. 2 and the consequential endorsement order dated 03.08.2022 (Annexure no. 6 to the writ petition) passed by Tehsildar, Tehsil Machhlishahar, District Jaunpur.

ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents authorities not to dispossess the petitioners from plot in dispute and maintain status quo.

iii) to issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to decide the recall application filed by the petitioners dated 01.05.2023 presented by Additional Collector (L.R) Jaunpur in Case no. 5113 of 2023 and Computerized case no. D202314360005113 of 2023 (Raghuraj and others vs. Amrit Lal and others) pending before him within stipulated period."

3. At the very outset, learned counsel for petitioners relied upon the judgment rendered by Division Bench of this Court in Writ Petition no. 41708 of 2001 (***Baboo Ram and another vs. Commissioner, Basti Division, Basti and others***) wherein the opportunity of hearing has been decided as a preliminary duty to be afforded by the authority who is rendering the quasi-judicial duty in shape of deciding the statutory application preferred by the parties for their grievances.

4. Learned counsel for petitioners submitted that the ratio of judgment rendered by Division Bench of this Court is squarely

covering the facts and circumstances of the instant matter. The ratio of the judgment relied upon by learned counsel for petitioner is, if the land pertains to the public utility in that case also same cannot be decided without affording proper opportunity of hearing to the concerned parties. In the instant matter, proceedings initiated at the behest of the complaint made by complainants against the petitioner after the gap of more than 48 years and the same has been adjudicated by the respondent no. 2 which is apparent in the order dated 02.07.2022 that no opportunity of hearing has been afforded to the petitioner.

5. Although judgment rendered by Division Bench of this Court is attracting the facts and circumstances of the instant matter but one factual aspect is admitted that against the order dated 02.07.2022 a recall application has already been preferred by the petitioner which is still pending to be adjudicated by respondent no. 2 himself wherein all these grounds have already been taken up by the petitioner and without seeking final adjudication of the recall application the instant writ petition has been preferred for challenging the order which has been sought to be recalled by way of filing the recall application on dated 01.05.2023 and as such there is hardly any occasion arises in favour of the petitioner to pursue the instant petition till the outcome of the recall application, if so aggrieved.

6. Writ petition stands ***disposed of*** accordingly. However, respondent no. 2 is hereby directed to expedite the proceedings which has been initiated at the behest of recall application preferred by the petitioner as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

7. Learned counsel for the petitioner also informed that a separate application for seeking interim relief has already been preferred on dated 16.08.2020 which is also pending for adjudication, the same shall be decided by the respondent no. 2 within a month from the date of production of certified copy of this order.

Order Date :- 7.11.2023

Shaswat