

Court No. - 52

Case :- WRIT - C No. - 37840 of 2023

Petitioner :- Smt. Lalli

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Firoz Haider, Mohd. Naushad Siddiqui

Counsel for Respondent :- CSC, Achal Singh

Hon'ble Saurabh Srivastava, J.

1. Instructions filed today is take on record.
2. Heard Shri Mohd. Naushad Siddiqui, learned counsel for the petitioner, Shri Ambuj Srivastava holding brief of Shri Achal Singh, learned counsel for respondent no.6 and Shri Dhananjay Singh, learned standing counsel appearing for respondent nos. 1 to 5. Although the complainant at whose behest the lease extended in favour of the petitioner has been cancelled made party as respondent no.7, since the orders impugned in the present petition have been assailed only on the legal ground and as such procedure for service of notice in reference to respondent no.7 is hereby dispensed with.
3. Learned counsel for the petitioner submitted that in pursuance to the order date 3.12.2022, petitioner preferred recall application for seeking recall of the order dated 31.8.2022 before respondent no.4 but the same has been dismissed in default and as such the matter has not been finally adjudicated on its own merits, on the basis of the same the present petition has been instituted for seeking direction in the nature of mandamus alongwith certiorari in favour of respondent no.4 for deciding the matter as fresh after due opportunity of hearing afforded in favour of the petitioner.
4. Per contra Shri Ambuj Srivastava holding brief of Shri Achal Singh, learned counsel for respondent no.6, vehemently opposed the prayer and negated the entire stand taken up by learned counsel for the petitioner on the ground that at the time of availing opportunity in shape of filing objection, petitioner

failed to comply with the same and as such once the opportunity afforded in favour of the petitioner and the same has not been availed, there is hardly any cause of action arises in favour of the petitioner to pursue the instant writ petition and as such the same is liable to be dismissed. Shri Dhananjay Singh, learned standing counsel seconded the submission made by learned counsel appearing on behalf of respondent no.6.

5. After fine scrutiny of the orders appended alongwith petition as well as the records available therein, although the prayer made by learned counsel for the petitioner has been opposed passed by learned counsels appearing for responding authorities but at the same it has been agreed upon that the matter has ever been adjudicated on merit.

6. Once the opportunity has been provided by the learned Revisional Court for filing recall application in favour of the petitioner and the same has been preferred, it was duty incumbent upon respondent no.4 to decide the matter only on merits not with the orders by which the recall application preferred by the petitioner has been dismissed in default.

7. In view of the aforementioned facts and circumstances of the case, orders dated 23.2.2023 and 24.7.2023 are hereby set aside, respondent no.4 is hereby directed to restore the matter on its original number and decide the same after giving proper opportunity of hearing to all concerned, however the above mentioned exercise shall be expedited as early as possible preferably within a period of three months from the date of production of certified copy of this order.

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

Order Date :- 4.12.2023

Rakesh