

Court No. - 52

Case :- WRIT - C No. - 38368 of 2023

Petitioner :- Jamuna Prasad And 5 Others

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Bhagwan Dutt Pandey

Counsel for Respondent :- C.S.C.,Pradeep Singh,Prem Prakash

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Bhagwan Dutt Pandey, learned counsel for petitioners, Sri Sanjay Kumar Dwivedi, Advocate holding brief of Sri Prem Prakash, learned counsel for respondent nos.4 to 6, Sri Tarun Gaur, learned Standing Counsel for the State-respondent nos.1 to 3 and Sri Pradeep Singh, learned counsel for respondent no.9.

2. Present petition has been instituted for challenging the order dated 09.10.2023 and order dated 01.04.2005 passed by respondent no.3 over the application preferred by petitioners for challenging the suit preferred by respondent nos.4 to 6 on the ground of maintainability, wherein application dated 14.01.2005 preferred by petitioners has been decided by way of recording the reasoning that outcome of proceedings under Section 176 of U.P. Z.A. and L.R. Act, 1950 preferred by petitioners will have no bearing over the suit preferred by respondents under Section 229(B) of U.P. Z.A. and L.R. Act, 1950, it has also been mentioned by respondent no.3 while passing the order dated 01.04.2005 that on repeated occasion, opportunity has been granted in favour of petitioners but no written statement has been preferred and as such, no issues were framed, in absence of framing of issue, the vital issue as demonstrated by petitioners with regard to maintainability was also not framed and as such, application preferred by petitioners for challenging the maintainability of suit under Section 229(B) of U.P. Z.A. and L.R. Act, 1950 filed by respondent nos.4 to 6, has been negated by respondent no.3 vide order dated 01.04.2005.

3. Being aggrieved with the order dated 01.04.2005, petitioners preferred revision under Section 333 of U.P. Z.A. and L.R. Act, 1950 before respondent no.2, whereupon similar stand has been taken by respondent no.2 by way of upholding the order dated 01.04.2005 passed by respondent no.3.

4. Learned counsel for respondent no.4 to 6 vehemently opposed the prayer as made in the present petition and rebutted the stand taken up by learned counsel for petitioners on the ground that one writ petition preferred by petitioners themselves is already pending before Lucknow Bench of this Court which is arising out of proceedings under Section 34 of U.P. Land Revenue Act, 1901, wherein interim protection has already been granted in favour of petitioners through which entries available in the revenue record in favour of petitioners, are intact.

5. After hearing the rival submissions extended by learned counsel for petitioner as well learned counsel for respondent nos.4 to 6 and by bare perusal of the orders which impugned the present petition, it is crystal clear that the application preferred by petitioners for challenging the maintainability of the proceedings initiated by respondent nos.4 to 6 under Section 229(B) of U.P. Z.A. and L.R. Act, 1950 has been decided by respondent no.3 only within three proceedings that is on 25.02.2005 when the matter was taken up as fresh at the first time and thereafter 11.03.2005 when advocates were abstained from judicial work and the matter was posted for 01.04.2005 and the application preferred by petitioners on dated 14.01.2005 has been decided on that very same date i.e. 01.04.2005. Respondent no.3 has not adjudicated the issue put for consideration over the maintainability of the proceedings under Section 229(B) of U.P. Z.A. and L.R. Act, 1950, rather the same was decided on the basis of non filing of written statement at the behest of petitioners, meaning thereby there was no adjudication made by respondent no.3 over maintainability of the suit preferred by respondent nos.4 to 6 under Section 229 (B) of U.P. Z.A. and L.R. Act, 1950 and the same has been upheld by respondent no.2 while adjudicating the revision preferred by petitioners.

6. In view of the aforesaid facts and circumstances, the material adjudication warranted from respondent no.3 has not been made and the application preferred by petitioners for challenging the maintainability, has only been decided on the basis of non filing of written statement in the matter which is pending to be adjudicated under Section 229(B) of U.P. Z.A. and L.R. Act, 1950. The grounds mentioned for deciding the application preferred by petitioners are seem to be unjustified and the adjudication whatsoever has been made by respondent no.3 is only on conjecture and surmises that if written statement would have been filed by petitioners then question of maintainability might be considered at the time of framing of issue.

7. Learned counsel for petitioners relied upon the judgment passed

by Hon'ble the Supreme Court in the case of **Union of India and others Vs. Ranbir Singh Rathaur and others [Appeal (Civil) No.2949-2950 of 2001, decided on 22.03.2006]**, wherein it has been held that question of maintainability has to be decided at the first instance before proceeding further in the matter. The extract of the said judgment is quoted as under:-

"...The present appellants in the counter affidavit filed had raised a preliminary objection as regards the maintainability of the writ petitions and had requested the High Court to grant further opportunity if the necessity so arises to file a detailed counter affidavit after the preliminary objections were decided. The High Court in fact in one of the orders clearly indicated that the preliminary objections were to be decided first. But strangely it did not do so. It reserved the judgment and delivered the final judgment after about three years. There is also dispute as to whether the relevant documents were produced. What baffles us is that the High Court records with original documents were shown to it and the Bench wanted the copies to be filed. In the impugned judgment the High Court proceeded on the basis as if only a few pages of the files were shown. If that was really the case, there was no necessity for the High Court to direct the present appellants to file copies. If after perusal of the documents the High Court felt that these were not sufficient the same would have been stated. But that does not appear to have been done. The High Court also had not discussed as to how the matters which stood concluded could be reopened in the manner done. No sufficient grounds have been even indicated as to why the High Court felt it necessary to do so. To say that though finality had been achieved justice stood at a higher pedestal is not an answer to the basic question as to whether the High Court was competent to re-open the whole issue which had become concluded. The persons whom the High Court felt were responsible for alleged manipulation or persons behind false implication were not impleaded as parties. Newspaper reports are not to be considered as evidence. The authenticity of the newspaper reports was not established by the writ-petitioners. Even otherwise, this could not have been done in a writ petition, as disputed questions of fact were apparently involved. The matters which the High Court found to have been established were really not so. The conclusions were based on untested materials, and the writ-petitioners had not established them by evidence. Since the High Court has not dealt with the matter in the proper perspective we feel it would be proper for the High Court to re- hear the matter. The High Court shall first decide the preliminary objections raised by the present appellants about the non-maintainability of the writ petitions. Normally such a course is not to be adopted. But in view of the peculiar facts involved, it would be the appropriate course to be adopted in the present case. Therefore, we remit the matter to the High Court for fresh hearing. We make it clear that whatever we have observed should not be treated to be the conclusive findings on the subject matter of controversy. The appeals are allowed without any order as to costs. Since the matter is pending since long, we request the High Court to dispose of the matter as early as practicable, preferably within four months from the date of receipt of the judgment. No costs."

8. Having regard to the dictum rendered by Hon'ble the Supreme

Court in the aforesaid case, order dated 09.10.2023 passed by respondent no.2 and order dated 01.04.2005 passed by respondent no.3 are hereby set aside, matter is remitted back to the respondent no.3 for deciding afresh especially the objection raised while preferring application dated 14.01.2005 precisely on the ground of maintainability and if so required, thereafter decide the matter after affording proper opportunity of hearing to all concerns.

9. The present petition stands **allowed** accordingly.

Order Date :- 7.11.2023

Vivek Kr.