

Court No. - 48

Case :- WRIT - B No. - 3751 of 2023

Petitioner :- Sheo Prasad

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Nandan

Counsel for Respondent :- C.S.C., Sher Bahadur Singh

Hon'ble Saurabh Shyam Shamshery,J.

1. Sri Siddharth Nandan, learned counsel for petitioner has not been able to dispute that petitioner has an alternative remedy to challenge the impugned order dated 22.09.2023 passed under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953. He, however, refers para 21 of writ petition which is reproduced as under:

“21. That there being no other alternative efficacious remedy except to invoke the extra ordinary writ jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India. The petitioner is filing the present writ petition on the following amongst grounds:”

2. Learned counsel further submits that petitioner has approached this Court directly for efficacious remedy since Consolidation Officer has rejected objections filed by petitioner on the ground that it has no jurisdiction to decide the issue of adverse possession and he also refers para 18 of writ petition in this regard, which is reproduced hereinafter:

“18. That since the finding returned by the Court below is undisputed and the objection under Section 9-A(2) of the Act 1953 has been rejected only on the ground of jurisdiction, it is humbly submitted that though there is a provision of Appeal under Section 11 of the Act, 1953 but the same may not be an efficacious remedy and accordingly present writ petition under Article 226 of the Constitution of India is being filed.”

3. Learned counsel for petitioner further refers following part of impugned order as under:

“ इस प्रकार वाद पत्र के किसी तथ्य का कोई खण्डन प्रतिवादी संख्या १ द्वारा नहीं किया है वादी द्वारा अभिकथनों को साक्ष्यों द्वारा सिद्ध किया गया है कब्जे के सम्बन्ध में सिविल की डिक्री दिनांक 06.01.83 का समादर करते हुये कब्जा प्रतिवादी द्वारा स्वीकृत होने के कारण तथा मौके पर 0.514 हे० आबादी सम्पार्श्विक साक्ष्य कब्जा होने के कारण, 50 वर्षों का प्रतिकूल अध्यासन सिद्ध होने से धारा 210 यू०पी०जेड०ए०एल०आर० एक्ट व अनुच्छेद 65 परिसीमा अधिनियम के अन्तर्गत अधिकार पूर्णतया परिपक्व हो चुके हैं। परन्तु इस न्यायालय को प्रतिकूल अध्यासन के आधार पर स्वत्व प्रदान करने का क्षेत्राधिकार नहीं है प्रतिवादी संख्या 01 पर्याप्त तामील के बाद भी कभी इस न्यायालय में हाजिर नहीं आया वह जीवित है या मृतक है यदि मृतक है तो उसने कौन-2 विधिक वारिस है यह भी सिद्ध नहीं है जिस कारण भूमि ग्रामसभा में निहित किये जाने योग्य है तदनुसार दावा वादी निस्तारित किया जाता है। ”

4. The assumption of learned counsel for petitioner that grievance of petitioner could not be decided efficaciously by Appellate Authority / Revisional Authority has no legal basis since while recording aforesaid finding Consolidation Officer has touched the issue of jurisdiction, therefore, it could be a ground to agitate before Appellate Authority/ Revisional Authority and said authority has wide power to consider, whether or not in given circumstances, the Consolidation Officer has jurisdiction to decide the issue of adverse possession. Therefore, there is no circumstance exist to approach this Court directly.

5. In view of above, without interfering with impugned order, the writ petition is disposed of reserving liberty to petitioner to file appeal or revision against impugned order, as the case may be.

Order Date :- 8.11.2023
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