

Court No. - 52

Case :- WRIT - C No. - 38919 of 2023

Petitioner :- C/M Maharsi Yogi Raj Devaraha Baba Harijan Prathmic Vidyalaya Gurawaliya And Another

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

Counsel for Petitioner :- Durga Tiwari

Counsel for Respondent :- C.S.C, Sudhir Bharti

Hon'ble Saurabh Srivastava, J.

1. Heard Smt. Durga Tiwari, learned counsel for petitioner and Sri Sudhir Bharti, learned counsel appearing on behalf of respondent no. 5 and Sri Rajesh Kumar Tiwari, learned Additional Chief Standing counsel for respondent no. 1 to 4.

2. Present petition has been filed seeking following reliefs:

"(a) Issue a writ, order or direction in the nature of certiorari call the record of the case and quash the notice dated 06.12.2022 issued by the respondent no. 4 (Tehsildar Kasia District Kushinagar).

(b) Issue a writ, order or direction in the nature of mandamus directing the respondent no. 3 (Sub Divisional Magistrate, Kasia, District Kushinagar) to decide the application under Section 101 of U.P. Revenue Code, 2006."

3. It is the case of the petitioner that petitioner being the Institution, imparting education for public at large specifically for the students coming from the weaker section as well as Scheduled Caste community at village Gurawaliya, Tehsil Kasia, District Kushinagar. The building of the primary school is situated over plot no. 163 but recently petitioner came into the knowledge regarding the fact that certain portion of the building of primary school falls inside the boundary of plot no. 158 which is recorded in the revenue records as chak road.

4. Petitioner no. 2 preferred an application under Section 101 of U.P. Revenue Code, 2006 before respondent no. 3, whereupon although the order dated 02.12.2022 has been passed for registering the same and sought report from concerned Tehsildar but no computerised/formal number has been given to the application under Section 101 preferred by the petitioner.

5. Learned counsel for the petitioner also submitted that after 02.12.2022, no order-sheet has been maintained and no further proceedings took place in the proceedings initiated at the behest of the petitioner under Section 101 of U.P. Revenue Code, 2006. For substantiating her arguments, learned counsel for the petitioner relied upon the questionnaire appended along with the supplementary affidavit, for

apprising the Court with regard to proper registration number of the application under Section 101 preferred by the petitioner but the same has been returned back to the petitioner without informing the same.

6. Learned counsel for petitioner challenged the action of the respondents in shape of notice under Section 67(1) of U.P. Revenue Code, 2006 issued by respondent no. 4 against the petitioner. For assailing notice dated 06.12.2022, learned counsel for the petitioner submitted that respondents are not permitted to blow hot and cold at the same time, on one hand the application preferred by the petitioner under Section 101 of U.P. Revenue Code, 2006 is still pending to be adjudicated and on another hand responding authorities are issuing notices under Section 67(1) of U.P. Revenue Code, 2006 against the petitioner, whereas petitioner is admitting this fact that certain portion of the building of primary school is falling inside the boundary of plot no. 158 situated at village Gurawaliya, Tehsil Kasia, District Kushinagar and for compensating the same, the adjoining plot has been put for exchange but the same is still pending to be adjudicated finally by the competent authority.

7. However, learned Standing counsel for State respondent as well as learned counsel for Gaon Sabha, opposed the prayer but showed their agreement only to the extent if any direction is hereby given to the authority for expedite disposal of the application preferred by the petitioner under Section 101 of U.P. Revenue Code, 2006.

8. Be that as it may, without interfering into the merits of the matter, respondent no. 3 is hereby directed to decide the application preferred by the petitioner under Section 101 of U.P. Revenue Code, 2006 within six months from the date of production of certified copy of this order. However, it is made clear that during pendency of the adjudication by the respondent no. 3 over an application preferred by the petitioner under Section 101 of U.P. Revenue Code, 2006, the entire exercise initiated under Section 67(1) of U.P. Revenue Code, 2006 shall remain kept in abeyance and the responding authorities will be at liberty to re-initiate the same after outcome of the adjudication which will be made over an application preferred under Section 101 by the petitioner.

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

Order Date :- 28.11.2023

Shaswat