

Court No. - 51

Case :- WRIT - C No. - 39402 of 2023

Petitioner :- Brijendra Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vinod Kumar Kushwaha

Counsel for Respondent :- C.S.C, Hari Narayan Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Vinod Kumar Kushwaha, learned counsel for the petitioner, Sri G.K. Saxena, learned Addl. C.S.C. for the state-respondents and Sri Hari Narayan Singh, learned counsel for the respondent-gaon sabha.

2. The instant writ petition has been filed against the order dated 26.6.2023, passed by respondent no.2/Addl. Commissioner, Kanpur Division, Kanpur in Appeal No.2095/2021 (Brajendra Singh vs. Jitendra Singh and Others) and order dated 23.11.2021, passed by respondent no.3/S.D.M., Tehsil Sikandara, Kanpur Dehat in the proceeding under Section 116 of the U.P. Revenue Code, 2006.

3. Counsel for the petitioner states that in the proceedings under Section 116 of the U.P. Revenue Code, 2006, an order confirming the *kurra*, has been passed in accordance with law. It is further submitted that the contesting respondents have filed an application for restoration/recall which has been allowed in arbitrary manner and the earlier order passed in the partition suit was set aside on the ground that the order was passed in *ex parte* manner. It is further submitted that the orders were passed, following due procedure of law but in order to linger the proceeding, restoration application has been filed and the earlier orders have been set aside.

4. On the other hand, Sri G.K. Saxena, learned Addl. C.S.C. and Sri H.N. Singh, learned counsel for the respondent-gaon sabha submitted that while allowing the restoration application, the trial court has recorded finding that proper opportunity was not afforded to the parties, as such, the order was recalled and the matter has been restored, as such, the petitioner should appear in the pending proceeding which shall be decided in accordance with law.

5. I have considered the arguments advanced by learned

counsel for the parties and perused the records.

6. There is no dispute about the fact that the partition suit filed by the parties is pending before the trial court and the earlier orders passed in the partition suit have been set aside and partition suit has been restored for fresh decision.

7. In view of the finding of fact recorded by the court concerned, no case for interference is made out in exercise of writ jurisdiction.

8. Considering the entire facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.3 to decide the proceedings of the partition suit, as expeditiously as possible, preferably within a period of 6 months, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

Order Date :- 1.12.2023

C.Prakash