

Court No. - 52

Case :- WRIT - C No. - 39755 of 2023

Petitioner :- Meghnath

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

Counsel for Petitioner :- Ramesh Chandra Dwivedi

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

Hon'ble Saurabh Srivastava,J.

1. Heard learned counsel for the parties and perused the record.
2. This writ petition is directed against the order dated 30.09.2022 passed by Tehsildar, Hata, District Kushinagar directing for eviction of the petitioner from the land in dispute and the order dated 29.08.2023 passed by District Magistrate, Kushinagar, respondent no. 2 rejecting the appeal preferred by petitioner.
3. It is contended by learned counsel for the petitioner that earlier the proceedings initiated in respect to the same land under Section 122B of U.P.Z.A.&L.R. Act was dropped in favour of petitioner's father holding that eviction and imposition of damages is not proper, but ignoring this fact again the order dated 30.09.2022 has been passed against the petitioner in the proceedings under *pari materia* provision, i.e., Section 67 of U.P. Revenue Code, 2006 directing for eviction of petitioner and imposing Rs. 1050/- as damages. Petitioner preferred appeal which has also been dismissed by respondent no. 2 on merits arbitrarily without applying judicial mind, and, in absence of petitioner's counsel, while as per provision of Order 41 Rule 17 of Code of Civil Procedure, which is applicable to U.P. Revenue Code, 2006, the appeal cannot be decided on merits in absence of counsel for the appellant and at the best appellate authority can dismiss the appeal in non-prosecution.
4. Learned Standing Counsel, when confronted, fairly conceded that the matter may be remanded to respondent no. 2 to decide the appeal preferred by the petitioner afresh after hearing learned counsel for the petitioner.
5. In view of above, the writ petition is allowed. The order dated 29.08.2023 passed by District Magistrate, Kushinagar, respondent no. 2, rejecting petitioner's appeal is hereby set aside. Matter is remitted back to respondent no. 2 with direction to hear the appeal preferred by the petitioner, being Case No. 942 of 2023 (Meghnath Vs. Gaon Sabha) afresh and decide the same, after hearing all the parties concerned including the petitioner. It is further observed that in case petitioner prefers any application seeking interim relief, the same shall be considered within a month from the date of filing.

Order Date :- 20.11.2023

P.Sri.