

Court No. - 51

Case :- WRIT - C No. - 40685 of 2023

Petitioner :- Babulal And 2 Others

Respondent :- State Of U.P. And 27 Others

Counsel for Petitioner :- Ram Raj Prajapati, Anant Prakash

Counsel for Respondent :- C.S.C., Virendra Kumar Gupta

Hon'ble Chandra Kumar Rai, J.

1. Heard learned counsel for the petitioners, Sri Abhishek Shukla, learned Additional Chief Standing Counsel for the State and Mr. Virendra Kumar Gupta, learned counsel for Nagar Palika Parishad.

2. This Writ petition has been filed for the following relief:

"(i) issue a writ, order or direction in the nature of mandamus commanding the respondents to not interfere in peaceful out and coming of the petitioners on the basis of order dated 17.02.2023 passed by Deputy District Magistrate, Mahoba District Mahoba in Case No. 490 of 2022, Computerized Case No. T202207480100490, Ram Bharoshe Tiwari VS. Raj Kishore and Others under section 116 of U.P. Revenue Code, 2006 and decree dated 20.02.2023 (contained as Annexure No. 7 to this writ petition).

(ii) issue a writ order or direction in the nature of mandamus commanding the respondents not to interfere for out and coming of the petitioners on the road situated near the house of the petitioners over the plot no. 509.

(iii) issue a writ order or direction in the nature of mandamus commanding the respondent no. 2 to decide the stay application alongwith appeal filed by the petitioners within short stipulated period as fixed by this Hon'ble Court in the interest of justice.

(iv) issue any such other and further suitable writ petition, order or direction in this Hon'ble Court may deem and proper under the circumstances of the case."

3. Learned counsel for the petitioner submitted that ex-parte order has been passed in a suit for partition under section 116 of the U.P. Revenue Code, 2006. He further submitted that appeal against the judgment of Sub Divisional Officer has been filed before the Commissioner, Chitrakoot Dham Mandal, Banda u/s 207 of the

U.P. Revenue Code, 2006, which is pending along with stay application. He further submitted that contesting respondents are interfering with the right, title and possession of the petitioner as such respondents be directed to decide the pending stay application within stipulated period and till the disposal of the application for stay interim protection be granted.

4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State and Mr. Virendra Kumar Gupta, learned counsel for Nagar Palika Parishad submitted that petitioner should approach the court of Commissioner for necessary relief in the matter rather writ petition before this court.

5. I have considered the arguments advanced by the learned counsel for the parties.

6. There is no dispute about the fact that appeal filed by the petitioner along with stay application is pending before the respondent no. 2 against the judgment and decree dated 17.02.2023 & 22.02.2003.

7. In view of the pendency of the aforementioned proceedings, the instant petition is finally disposed of directing the respondent no. 2 i.e. Commissioner, Chitrakootdham Mandal, Banda to decide the stay application in aforementioned appeal within a period of four weeks after giving opportunity of hearing to both parties in accordance with law. After deciding the stay application as well as any other application, if any, the appeal itself shall be decided within a time of four months from the date of passing of the order on the stay application.

Order Date :- 4.12.2023

Vibha