

Court No. - 21

Case :- SPECIAL APPEAL DEFECTIVE No. - 857 of 2023

Appellant :- Vikas Sharma And Another

Respondent :- Swami Kartikey Mishra And 5 Others

Counsel for Appellant :- Pawnesh Tiwari

Counsel for Respondent :- C.S.C.,Azad Rai

Hon'ble Manoj Kumar Gupta,Acting Chief Justice

Hon'ble Donadi Ramesh,J.

1. Heard Sri R.K. Ojha, learned Senior Counsel appearing for the appellants, Sri Shailendra Singh, who has entered appearance on behalf of respondent no.1 and Sri Rajeev Gupta, learned Additional Chief Standing Counsel for the State respondents.

2. The instant intra court appeal has been filed challenging the order dated 29.05.2023 passed by learned Single Judge in Writ-C No.18579 of 2023. The writ petition was filed by respondent no.1 herein seeking a direction to the authorities to remove unauthorised possession of the appellants from Garahi Abadi Land No.1093, area 0.5480 hectare, Village Khai, P.S. & Tehsil Karchhana, District Prayagraj within stipulated period. The writ petition was disposed by learned Single Judge in terms of order dated 19.05.2023 in Writ-C No.17072 of 2023 (Daya Shankar Vs. State of U.P. and 4 others).

3. Learned Senior Counsel Sri R.K. Ojha appearing for the appellants submits that there was no proceeding under U.P. Revenue Code or under any other law pending against the appellants and, therefore, the order of the Writ Court disposing of the writ petition in terms of order dated 19.05.2023 in Daya Shankar (supra) is erroneous. He has invited our attention towards the order and judgement dated 19.05.2023 in Daya Shankar (supra) wherein a learned Single Judge Bench of this Court has issued general directions to various authorities to decide pending proceedings under different Statutes within specified period, apart from issuing other directions. He submits that since there was no proceeding pending against the appellants and, therefore, the disposal of the writ petition in terms of judgement dated 19.05.2023 in Daya Shankar (supra) is not sustainable in law.

4. Learned counsel appearing on behalf of respondent no.1 does not dispute that there is no proceeding pending against the appellants under U.P. Revenue Code or other allied laws. He

however submits that the appellants are in unauthorised possession over pond land and since it is Clause 6 (2) land, therefore, no person has any right over such land. He urges that in such circumstances, the petitioner is entitled for a direction to the authorities to remove the unauthorised possession of the appellants over such land.

5. Sri R.K. Ojha, learned Senior Counsel vehemently disputes the contention of learned counsel for respondent no.1. He submits that the appellants are not in possession over any pond land. It is part of the original holdings of the appellants and it was left out of consolidation operations, as it was found to be abadi land.

6. Thus, there is serious dispute between the parties whether the appellants are in possession over their original holding or they have encroached over pond land. This, in our opinion, requires to be enquired into before any proceedings is initiated under Section 67 of the U.P. Revenue Code or other provisions of law, even if order of learned Single Judge may not be correct, as no proceeding is pending as on date.

7. Accordingly, while setting aside the impugned order dated 29.05.2023 of learned Single Judge, we dispose of the appeal with direction to respondent no.4 to get the matter investigated as to whether any part of pond land has been encroached by any person and if he finds any prima facie evidence, he will initiate proceedings under Section 67 of the U.P. Revenue Code. For deciding whether proceeding under Section 67 of the Code has to be initiated, he will afford opportunity of hearing to both the sides.

8. This order disposes of the instant appeal well as the writ petition.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 1.12.2023

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