

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 5799 of 2023

Petitioner :- M/S Naveen Sahkari Grih Nirman Samiti Ltd.
Thru. Secy. Lakhan Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Public
Revenue And Others

Counsel for Petitioner :- Mohammad Irfan Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

Heard Sri Mohammad Irfan Siddiqui, learned counsel for the petitioner and Sri Hemant Pandey, learned Standing Counsel for the State.

The instant petition has been filed with the following reliefs:-

Issue a writ, order or direction in the nature of Mandamus commending the opposite parties thereby directing the opposite party no. 3 _ to decide the application filed by the petitioner under section 340 Cr.P.C., M/S Naveen Sahkari Grih Nirman Samiti Ltd Versus Additional Commissioner, Lucknow Division Lucknow and others, pending before the court of Shri Rajnish Gupta, Hon'ble Member Board of revenue, Lucknow from 26.09.2019, first before deciding the case of second appeal no. 676 of 2021(in the place of old second appeal no. 859 of 2017) M/S Naveen Sahkari Grih Nirman Samiti Ltd Versus Additional Commissioner, Lucknow Division Lucknow and others.

The learned counsel appearing for the petitioner submits that in proceeding of second appeal no. 679 of 2021; M/S Naveen Sahkari Grih Nirman Samiti Ltd Vs. Additional Commissioner, Lucknow Division Lucknow and others, the petitioners have moved an application under Section 340 of CrPC on 26.09.2019 which is still pending consideration. He submits that the interest of justice would subserve if this Hon'ble Court is pleased to direct the authority concerned to decide the above said application within a stipulated period of time.

On the other hand, the learned counsel appearing for the State has made certain objection while contending that the second appeal is pending and there are number of respondents and even after the instruction by the Court, the petitioner is not proceeding in the matter and thus he is not with the clean hands before this Court and the petition is not maintainable.

Having heard the learned counsel for the parties and after perusal of the material placed on record, it transpires that second appeal is filed and running before the Board of Revenue, UP, wherein, an application was filed on 26.09.2019. It has been stated that even the notice is still not been issued on the aforesaid application and the matter is pending since last two years.

This Court has taken the note of the fact that the settled proposition of law is that, every miscellaneous application is to be decided first prior to the decision in the original petition pending before the Court concerned and therefore, if a miscellaneous application is pending since last two years, it is incumbent upon the Court concerned to decide it first. In view of the aforesaid, the Court concerned is hereby directed to decide the application under Section 340 of CrPC, if pending before the Court concerned within a period of three months after affording opportunity of hearing to all the parties concerned.

With the aforesaid observations, the instant petition is hereby **disposed of.**

Order Date :- 30.11.2023

Anurag