

Court No. - 6

Case :- WRIT - B No. - 998 of 2023

Petitioner :- Smt. Kanti Devi And 2 Others

Respondent :- Board Of Revenue, U.P., Lucknow Thru.
Chairman And Others

Counsel for Petitioner :- Virendra Kumar Shukla

Counsel for Respondent :- C.S.C.,Meera Jain

Hon'ble Rajnish Kumar,J.

Vakalatnama filed by Shri Amitesh Pratap Singh, Advocate on behalf of the respondent nos.3, 4, 5, 6 & 7 is taken on record.

Heard learned counsel for the parties.

This Court had passed the following order on 20.11.2023:-

*"Supplementary affidavit filed by the learned counsel for the petitioners today is taken on record.
Sri Virendra Kumar Shukla learned counsel for the petitioners undertakes to serve a copy of the supplementary affidavit on learned Standing counsel during course of the day.
Learned counsel for the petitioner submits that the Board of Revenue allowed the revision on the very first date without summoning the lower court records which could not have been done. He further submits that the petitioner had challenged the order passed by the Naib Tehsildar on 01.04.2021 on merit before the Commissioner which was allowed by means of the order dated 03.07.2023 merely on a technical ground that since the consolidation proceedings were going on in 2 villages, out of 5 villages, in regard to which the application for mutation were filed, namely Arzo and Gopalpur, but without considering it, the order has been passed by the Naib Tehsildar. However, a direction was issued to pass a fresh order on merit after affording opportunity of evidence and hearing to the parties. Though other grounds taken on merit were not considered, but the same has also not been considered by the Board of Revenue and in case the revision was being allowed on this technical ground by the Board of Revenue that on the aforesaid ground the matter could not have been remanded, the case should have been remanded to the first revisional authority to decide the revision on merit, but the Board of Revenue has failed to do so, therefore, the petitioner is constrained to approach this Court by means of the present petition.
Learned counsel for the respondent no.3 submits that the impugned order dated 12.10.2023 has been passed by the Board of Revenue because the matter could not have been remanded by the Additional Commissioner (Judicial) on the aforesaid technical ground because in regard to the villages Arzo and Gopalpur, the mutation applications were already abated on an application moved by the petitioners on account of consolidation proceedings. However, he could not dispute that the revision on merit has not been considered by the Additional Commissioner (Judicial) and submits that the Naib Tehsildar had passed the order after considering the pleadings and the evidence adduced before it, whereas the order passed by the Naib Tehsildar was challenged before the Additional*

Commissioner (Judicial) on merit also, the same should have been considered and decided.

The revision should have been decided considering all the grounds, however, if other grounds have not been considered and in further revision, the revisional authority finds that the ground on which the revision has been allowed is not tenable, the matter should have been remanded to the first revisional authority to decide afresh.

At this stage, learned counsel for the respondent no.3 fairly submits that the impugned order dated 12.10.2023 passed by the Board of Revenue may be modified to the extent that the matter may be remanded to the Additional Commissioner (Judicial) for deciding the revision of the petitioners on merit. However, since caveat was filed only on behalf of respondent no.3, he prays for and is granted two days time to file vakalatnama on behalf of respondent nos.4 to 7 also.

List on 23.11.2023 in top 20 cases.

Till the next date of listing, no third party rights shall be created by the parties on the property in dispute."

Learned counsel for the respondent nos.3 to 7 retreating his submissions made on the last date submits that the order dated 12.10.2023 passed by the Board of Revenue may be modified to the extent that the matter may be remanded to the Additional Commissioner (Judicial) for deciding the revision of the petitioner on merit. To which there is no objection by the learned counsel for the petitioner.

In view of above, the writ petition is **partly allowed** and the order dated 12.10.2023 passed by the Board of Revenue in Revision No.1930 of 2023 is modified to the extent that the matter is remitted back to the Commissioner/ Additional Commissioner, Ayodhya to decide the Revision No.00653 of 2021; Kanti Devi and Others Vs. Durga Prasad and Others, filed under Section 219 of the U.P. Land Revenue Act, 1901 a fresh after affording opportunity to the parties expeditiously and preferably within a period of six months in accordance with law from the date of production of certified copy of this order.

(Rajnish Kumar, J.)

Order Date :- 23.11.2023

Haseen U.