

Court No. - 18

Case :- WRIT - B No. - 1117 of 2023

Petitioner :- Naseem Khan @ Mohd. Naseem Khan

Respondent :- Board Of Revenue, Lko. Thru. Chairman And Others

Counsel for Petitioner :- Nitin Srivastava, Jitendra Kushwaha

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Shree Prakash Singh, J.

At the very outset, learned counsel appearing for the petitioner submits that he may be permitted to withdraw the part of the prayer, wherein the order dated 16-04-2019 is under challenge.

Learned Standing Counsel as well as learned counsel for the Gaon Sabha have no objection to the contention aforesaid.

In view of aforesaid submissions, learned counsel for the petitioner is permitted to withdraw the part of the prayer, whereby the order dated 16-04-2019, is under challenge.

Since, the instant matter is decided at the admission stage, notices to private opposite parties are dispensed with.

Heard learned counsel for the petitioner, Sri Pankaj Gupta, learned counsel for the Gaon Sabha, learned Standing Counsel for the State and perused the material placed on record.

The instant petition has been filed with the prayer to quash the impugned orders dated 27-04-2023, 14-08-2023 and 16-04-2023 passed by the opposite parties no. 1 & 2.

Learned counsel appearing for the petitioner submits that a lease was granted in favour of the present petitioner in the year 1993 by the Land Management Committee. Thereafter, due to some annoyance, the Gaon Sabha moved a cancellation suit in the year 1998, which was decided on 05-01-2001, and thereafter, a revision was moved, which was decided after 18 years of the period on 10-08-2022 and that too, is against a dead person. He added that the present petitioner assailed the

aforesaid order before the Board of Revenue, wherein an order dated 10-08-2021 was passed, whereby summoning the record from the court of District Collector. He added that the matter was fixed for hearing on 17-11-2021, whereas the District Collector, decided the matter on 21-11-2021, and an application was moved before the Board of Revenue annexing that order with the request that the matter pending before the Board of Revenue has become infructuous and the Board of Revenue, without considering the fact that the record was summoned and the issue before the Board of Revenue had not become infructuous, passed the order on 27-04-2023, which is erroneous and against the settled proposition of law. Therefore, submission is that the orders dated 27-04-2023 and 14-04-2023, may be set aside. He further added that the Board of Revenue may be directed to consider and decide the aforesaid revision within a stipulated period of time, as may be filed by this court alongwith Revision No. 2350 of 2022.

On the other hand, learned Standing Counsel as well learned counsel appearing for the Gaon Sabha have vehemently opposed the contentions aforesaid and submitted that there was no requisition before the District Collector with respect to the direction made vide order dated 10-08-2021 and therefore, the District Collector passed the order and thus, there is no erroneousness in the same. They added that no prejudice is caused to the petitioner and the petitioner can assail the order of the District Collector by way of moving a revision at an appropriate stage.

Considering the submissions of learned counsels for the parties and after perusal of material placed on record, it transpires that against the order passed by the District Collector, a revision was filed while agitating the question of law that the order was passed against a dead person, which is not permissible under law and that was pending consideration before the Board of Revenue. Thereafter, the Board of Revenue, after hearing the matter, passed the order on 10-08-2021 and summoned the record, but, in the meantime, on

21-11-2021, the District Collector, finalized the proceedings and passed a final order and only by moving an application that now the matter has become infructuous, the Board of Revenue has passed the impugned orders dated 27-04-2023 and 14-08-2023 and dismissed the revision, as infructuous.

When this court examines the aforesaid case in its facts and law, it transpires that a legal issue was involved before the Board of Revenue to be decided, though, only on the basis of an application that the District Collector has decided the issue, the same was dismissed as having become infructuous, whereas the legal question with respect to an order passed against a dead person is still alive for adjudication and the repercussion would be that the present petitioner would not be in a position to challenge the same at further stage.

In view of the aforesaid submissions and discussions, the orders dated 27-04-2023 and 14-08-2023 are hereby set aside.

The matter is remitted back to the Board of Revenue concerned to decide the Revision No. 1226 of 2021 alongwith Revision No. 2350 of 2022 within a period of six months from the date of this order, after affording opportunity of hearing to all the parties concerned, in accordance with law, if there is no legal impediment.

The Board of Revenue, is further directed not to grant any unnecessary adjournment to either of the parties.

Learned counsel for the petitioner is at liberty to move an Interim Relief Application before the Board of Revenue concerned, which shall be considered and decided within a period of 30 days from the date of its filing.

The writ petition is **allowed** accordingly.

Order Date :- 14.12.2023

AKS